

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1961. Locally convenient day schools

(a) Sense of Congress

It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc.

The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Pub. L. 95-608, title IV, §401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

“Department of Health and Human Services” substituted for “Department of Health, Education, and Welfare” in subsec. (b), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

(Pub. L. 95-608, title IV, §402, Nov. 8, 1978, 92 Stat. 3078.)

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

(Pub. L. 95-608, title IV, §403, Nov. 8, 1978, 92 Stat. 3078.)

CHAPTER 22—BUREAU OF INDIAN AFFAIRS PROGRAMS

- Sec. 2000. Declaration of policy.
- 2001. Accreditation for the basic education of Indian children in Bureau of Indian Affairs schools.
- 2002. National criteria for home-living situations.

- Sec. 2003. Codification of regulations.
- 2004. School boundaries.
- 2005. Facilities construction.
- 2006. Bureau of Indian Affairs education functions.
- 2007. Allotment formula.
- 2008. Administrative cost grants.
- 2009. Division of Budget Analysis.
- 2010. Uniform direct funding and support.
- 2011. Policy for Indian control of Indian education.
- 2012. Indian education personnel.
- 2013. Computerized management information system.
- 2014. Recruitment of Indian educators.
- 2015. Annual report; audits.
- 2016. Rights of Indian students.
- 2017. Regulations.
- 2018. Regional meetings and negotiated rule-making.
- 2019. Early childhood development program.
- 2020. Tribal departments or divisions of education.
- 2021. Definitions.

CODIFICATION

Part B of title XI of the Education Amendments of 1978, comprising this chapter, was originally enacted as part B of title XI of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2316, and amended by 1978 Reorg. Plan No. 2, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96-46, Aug. 6, 1979, 93 Stat. 338; Pub. L. 96-88, Oct. 17, 1979, 93 Stat. 668; Pub. L. 97-375, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-511, Oct. 19, 1984, 98 Stat. 2366; Pub. L. 99-89, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99-228, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207; Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130; Pub. L. 100-427, Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101-301, May 24, 1990, 104 Stat. 206; Pub. L. 102-531, Oct. 27, 1992, 106 Stat. 3469; Pub. L. 103-382, Oct. 20, 1994, 108 Stat. 3518; Pub. L. 104-134, Apr. 26, 1996, 110 Stat. 1321; Pub. L. 104-140, May 2, 1996, 110 Stat. 1327; Pub. L. 105-244, Oct. 7, 1998, 112 Stat. 1581; Pub. L. 105-362, Nov. 10, 1998, 112 Stat. 3280; Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763. Part B of title XI of the Act is shown herein, however, as having been added by Pub. L. 107-110 without reference to such intervening amendments because of the extensive amendment of the part's provisions by Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2007.

§ 2000. Declaration of policy

Congress declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has established on or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes toward the goal of ensuring that the programs of the Bureau of Indian Affairs-funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.

(Pub. L. 95-561, title XI, §1120, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2007.)

EFFECTIVE DATE

Chapter effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

## SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–110, title X, §1041, Jan. 8, 2002, 115 Stat. 2007, provided that: “This part [part D (§§1041–1045) of title X of Pub. L. 107–110, enacting this chapter and sections 2501 to 2511 of this title, amending section 13d–2 of this title, and repealing former sections 2501 to 2511 of this title] may be cited as the ‘Native American Education Improvement Act of 2001’.”

## SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–297, title V, §5101, Apr. 28, 1988, 102 Stat. 363, provided that: “This part [part A (§§5101–5120) of title V of Pub. L. 100–297, enacting sections 2008a, 2022a, and 2022b of this title, amending sections 2001 to 2005, 2008 to 2011, and 2019 of this title, repealing section 241bb–1 of Title 20, Education, enacting provisions set out as notes under section 2011 of this title and section 1411 of Title 20, and repealing provisions set out as a note under section 241aa of Title 20] may be cited as the ‘Indian Education Amendments of 1988’.”

## SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–89, §1(a), Aug. 15, 1985, 99 Stat. 379, provided that: “This Act [amending sections 2001, 2004, 2006, 2008, 2009, 2016, 2020, 2021, and 2022 of this title, repealing section 2023 of this title, and enacting provisions formerly set out as a note under section 2001 of this title] may be cited as the ‘Indian Education Technical Amendments Act of 1985’.”

## SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–511, title V, §501(a), Oct. 19, 1984, 98 Stat. 2391, provided that: “This title [enacting sections 2020 to 2023 of this title, amending sections 2001, 2004, 2006, 2008, 2009, 2011, 2012, 2016, 2018 of this title, and sections 241aa to 241ff, 1211a, 1221g, 3385, 3385a, and 3385b of Title 20, Education, and enacting provisions set out as a note under section 241ff of Title 20] may be cited as the ‘Indian Education Amendments of 1984’.”

## THERAPEUTIC MODEL DEMONSTRATION SCHOOLS

Pub. L. 103–382, title V, §566, Oct. 20, 1994, 108 Stat. 4059, provided that:

## “(a) AUTHORIZATION.—

“(1) IN GENERAL.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, is authorized to establish demonstration schools, based on the therapeutic model described in this section, to provide services necessary to achieve positive changes in the attitudes, behavior, and academic performance of Indian youth attending off-reservation boarding schools.

“(2) PURPOSE.—The purpose of the therapeutic model demonstration schools is—

“(A) to provide a program, based on an annual written plan, linking clinicians, counselors, and mental health professionals with academic program personnel in a culturally sensitive residential program tailored to the particular needs of Indian students;

“(B) to provide for a continued evaluation of the planning and implementation of the therapeutic model in the designated schools; and

“(C) to determine what steps the Bureau of Indian Affairs must take and what resources are required to transform existing off-reservation boarding schools to meet the needs of chemically dependent, emotionally disturbed, socially troubled, or other at-risk Indian youth who attend such schools.

“(b) LOCATION.—The Secretary shall initiate the therapeutic model at two schools during school years 1994 through 1996, and shall give priority to—

“(1) one school that is the recipient of a grant under section 5204 of the August [Augustus] F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 [25 U.S.C. 2503] during the 1994–1995 school year; and

“(2) one school operated by the Bureau of Indian Affairs during the 1995–1996 school year.

“(c) SERVICES.—The demonstration schools shall provide an integrated residential environment that may include—

“(1) mental health services;

“(2) education;

“(3) recreation therapy;

“(4) social service programs;

“(5) substance abuse education and prevention; and

“(6) other support services for aftercare.

“(d) STAFFING.—The demonstration schools shall be staffed with health and social service professionals, and educators, and may include—

“(1) clinical psychologists;

“(2) child psychologists;

“(3) substance abuse counselors;

“(4) social workers; and

“(5) health educators.

“(e) ENROLLMENT.—Notwithstanding any other provision of law, the Secretary of the Interior may limit the enrollment at the demonstration schools.

“(f) ASSISTANCE.—The Secretary is authorized to enter into agreements with other organizations and agencies, including the Indian Health Service, to carry out this section.

“(g) REPORT.—Not later than July 31 of each year, the Secretary of the Interior shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Education and Labor of the House of Representatives on the progress of the Department of the Interior in the development of the demonstration schools.”

## § 2001. Accreditation for the basic education of Indian children in Bureau of Indian Affairs schools

### (a) Purpose; declarations of purpose

#### (1) Purpose

The purpose of the accreditation required under this section shall be to ensure that Indian students being served by a school funded by the Bureau of Indian Affairs are provided with educational opportunities that equal or exceed those for all other students in the United States.

#### (2) Declarations of purpose

Local school boards for schools operated by the Bureau of Indian Affairs, in cooperation and consultation with the appropriate tribal governing bodies and their communities, are encouraged to adopt declarations of purpose for education for their communities, taking into account the implications of such declarations on education in their communities and for their schools. In adopting such declarations of purpose, the school boards shall consider the effect the declarations may have on the motivation of students and faculties.

### (b) Accreditation

#### (1) Deadline

##### (A) In general

Not later than 24 months after January 8, 2002, each Bureau-funded school shall, to the extent that necessary funds are provided, be a candidate for accreditation or be accredited—

(i) by a tribal accrediting body, if the accreditation standards of the tribal accrediting body have been accepted by formal action of the tribal governing body and such accreditation is acknowledged by a generally recognized State certification or regional accrediting agency;

- (ii) by a regional accreditation agency;
- (iii) by State accreditation standards for the State in which the Bureau-funded school is located; or
- (iv) in the case of a Bureau-funded school that is located on a reservation that is located in more than one State, in accordance with the State accreditation standards of one State as selected by the tribal government.

**(B) Feasibility study**

Not later than 12 months after January 8, 2002, the Secretary of the Interior and the Secretary of Education shall, in consultation with Indian tribes, Indian education organizations, and accrediting agencies, develop and submit to the appropriate committees of Congress a report on the desirability and feasibility of establishing a tribal accreditation agency that would—

- (i) review and acknowledge the accreditation standards for Bureau-funded schools; and
- (ii) establish accreditation procedures to facilitate the application, review of the standards and review processes, and recognition of qualified and credible tribal departments of education as accrediting bodies serving tribal schools.

**(2) Determination of accreditation to be applied**

The accreditation type applied for each school shall be determined by the tribal governing body, or the school board, if authorized by the tribal governing body.

**(3) Assistance to school boards**

**(A) In general**

The Secretary, through contracts and grants, shall provide technical and financial assistance to Bureau-funded schools, to the extent that necessary amounts are made available, to enable such schools to obtain the accreditation required under this subsection, if the school boards request that such assistance, in part or in whole, be provided.

**(B) Entities through which assistance may be provided**

The Secretary may provide such assistance directly or through the Department of Education, an institution of higher education, a private not-for-profit organization or for-profit organization, an educational service agency, or another entity with demonstrated experience in assisting schools in obtaining accreditation.

**(4) Application of current standards during accreditation**

A Bureau-funded school that is seeking accreditation shall remain subject to the standards issued under this section<sup>1</sup> and in effect on the day before January 8, 2002, until such time as the school is accredited, except that if any of such standards are in conflict with the standards of the accrediting agency, the

standards of such agency shall apply in such case.

**(5) Annual report on unaccredited schools**

Not later than 90 days after the end of each school year, the Secretary shall prepare and submit to the Committee on Appropriations, the Committee on Education and the Workforce, and the Committee on Resources of the House of Representatives and the Committee on Appropriations, the Committee on Indian Affairs, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning unaccredited Bureau-funded schools that—

(A) identifies those Bureau-funded schools that fail to be accredited or to be candidates for accreditation within the period provided for in paragraph (1);

(B) with respect to each Bureau-funded school identified under subparagraph (A), identifies the reasons that each such school is not accredited or a candidate for accreditation, as determined by the appropriate accreditation agency, and a description of any possible way in which to remedy such non-accreditation; and

(C) with respect to each Bureau-funded school for which the reported reasons for the lack of accreditation under subparagraph (B) are a result of the school's inadequate basic resources, contains information and funding requests for the full funding needed to provide such schools with accreditation, such funds if provided shall be applied to such unaccredited school under this paragraph.

**(6) Opportunity to review and present evidence**

**(A) In general**

Prior to including a Bureau-funded school in an annual report required under paragraph (5), the Secretary shall—

- (i) ensure that the school has exhausted all administrative remedies provided by the accreditation agency; and
- (ii) provide the school with an opportunity to review the data on which such inclusion is based.

**(B) Provision of additional information**

If the school board of a school that the Secretary has proposed for inclusion in an annual report under paragraph (5) believes that such inclusion is in error, the school board may provide to the Secretary such information as the board believes is in conflict with the information and conclusions of the Secretary with respect to the determination to include the school in such annual report. The Secretary shall consider such information provided by the school board before making a final determination concerning the inclusion of the school in any such report.

**(C) Publication of accreditation status**

Not later than 30 days after making an initial determination to include a school in an annual report under paragraph (5), the Secretary shall make public the final determination on the accreditation status of the school.

<sup>1</sup> See References in Text note below.

**(7) School plan****(A) In general**

Not later than 120 days after the date on which a school is included in an annual report under paragraph (5), the school shall develop a school plan, in consultation with interested parties including parents, school staff, the school board, and other outside experts (if appropriate), that shall be submitted to the Secretary for approval. The school plan shall cover a 3-year period and shall—

(i) incorporate strategies that address the specific issues that caused the school to fail to be accredited or fail to be a candidate for accreditation;

(ii) incorporate policies and practices concerning the school that have the greatest likelihood of ensuring that the school will obtain accreditation during the 3-year period beginning on the date on which the plan is implemented;

(iii) contain an assurance that the school will reserve the necessary funds, from the funds described in paragraph (3), for each fiscal year for the purpose of obtaining accreditation;

(iv) specify how the funds described in clause (iii) will be used to obtain accreditation;

(v) establish specific annual, objective goals for measuring continuous and significant progress made by the school in a manner that will ensure the accreditation of the school within the 3-year period described in clause (ii);

(vi) identify how the school will provide written notification about the lack of accreditation to the parents of each student enrolled in such school, in a format and, to the extent practicable, in a language the parents can understand; and

(vii) specify the responsibilities of the school board and any assistance to be provided by the Secretary under paragraph (3).

**(B) Implementation**

A school shall implement the school plan under subparagraph (A) expeditiously, but in no event later than the beginning of the school year following the school year in which the school was included in the annual report under paragraph (5) so long as the necessary resources have been provided to the school.

**(C) Review of plan**

Not later than 45 days after receiving a school plan, the Secretary shall—

(i) establish a peer-review process to assist with the review of the plan; and

(ii) promptly review the school plan, work with the school as necessary, and approve the school plan if the plan meets the requirements of this paragraph.

**(8) Corrective action****(A) Definition**

In this subsection, the term “corrective action” means any action that—

(i) substantially and directly responds to—

(I) the failure of a school to achieve accreditation; and

(II) any underlying staffing, curriculum, or other programmatic problem in the school that contributed to the lack of accreditation; and

(ii) is designed to increase substantially the likelihood that the school will be accredited.

**(B) Waiver**

The Secretary shall grant a waiver which shall exempt a school from any or all of the requirements of this paragraph and paragraph (7) (though such school shall be required to comply with the standards contained in part 36 of title 25, Code of Federal Register,<sup>2</sup> as in effect on January 8, 2002) if the school—

(i) is identified in the report described in paragraph (5)(C); and

(ii) fails to be accredited for reasons that are beyond the control of the school board, as determined by the Secretary, including, but not limited to—

(I) a significant decline in financial resources;

(II) the poor condition of facilities, vehicles, or other property; and

(III) a natural disaster.

**(C) Duties of Secretary**

After providing assistance to a school under paragraph (3), the Secretary shall—

(i) annually review the progress of the school under the applicable school plan to determine whether the school is meeting, or making adequate progress toward achieving the goals described in paragraph (7)(A)(v) with respect to reaccreditation or becoming a candidate for accreditation;

(ii) except as provided in subparagraph (B), continue to provide assistance while implementing the school’s plan, and, if determined appropriate by the Secretary, take corrective action with respect to the school if it fails to be accredited at the end of the third full year immediately following the date that the school’s plan was first in effect under paragraph (7);

(iii) provide all students enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) with the option to transfer to another public or Bureau-funded school, including a public charter school, that is accredited;

(iv) promptly notify the parents of children enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) of the option to transfer their child to another public or Bureau-funded school; and

(v) provide, or pay for the provision of, transportation for each student described in clause (iii) to the school described in clause (iii) to which the student elects to be transferred to the extent funds are available, as determined by the tribal governing body.

<sup>2</sup> So in original. Probably should be “Regulations.”

**(D) Failure of school plan of Bureau-operated school**

With respect to a Bureau-operated school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7), the Secretary may take one or more of the following corrective actions:

(i) Institute and fully implement actions suggested by the accrediting agency.

(ii) Consult with the tribe involved to determine the causes for the lack of accreditation including potential staffing and administrative changes that are or may be necessary.

(iii) Set aside a certain amount of funds that may only be used by the school to obtain accreditation.

(iv)(I) Provide the tribe with a 60-day period during which to determine whether the tribe desires to operate the school as a contract or grant school before meeting the accreditation requirements in section 5207(c) of the Tribally Controlled Schools Act of 1988<sup>1</sup> at the beginning of the next school year following the determination to take corrective action. If the tribe agrees to operate the school as a contract or grant school, the tribe shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7), to achieve accreditation.

(II) If the tribe declines to assume control of the school, the Secretary, in consultation with the tribe, may contract with an outside entity, consistent with applicable law, or appoint a receiver or trustee to operate and administer the affairs of the school until the school is accredited. The outside entity, receiver, or trustee shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7).

(III) Upon accreditation of the school, the Secretary shall allow the tribe to continue to operate the school as a grant or contract school, or if the school is being controlled by an outside entity, provide the tribe with the option to assume operation of the school as a contract school, in accordance with the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or as a grant school in accordance with the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], at the beginning of the school year following the school year in which the school obtains accreditation. If the tribe declines, the Secretary may allow the outside entity, receiver, or trustee to continue the operation of the school or reassume control of the school.

**(E) Failure of school plan of contract or grant school****(i) Corrective action**

With respect to a contract or grant school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was

first in effect under paragraph (7), the Secretary may take one or more of the corrective actions described in subparagraph (D)(i) and (D)(ii). The Secretary shall implement such corrective action for at least 1 year prior to taking any action described under clause (ii).

**(ii) Outside entity**

If the corrective action described in clause (i) does not result in accreditation of the school, the Secretary, in conjunction with the tribal governing body, may contract with an outside entity to operate the school in order to achieve accreditation of the school within 2 school years. Prior to entering into such a contract, the Secretary shall develop a proposal for such operation which shall include, at a minimum, the following elements:

(I) The identification of one or more outside entities each of which has demonstrated to the Secretary its ability to develop a satisfactory plan for achieving accreditation and its willingness and availability to undertake such a plan.

(II) A plan for implementing operation of the school by such an outside entity, including the methodology for oversight and evaluation of the performance of the outside entity by the Secretary and the tribe.

**(iii) Proposal amendments**

The tribal governing body shall have 60 days to amend the plan developed pursuant to clause (ii), including identifying another outside entity to operate the school. The Secretary shall reach agreement with the tribal governing body on the proposal and any such amendments to the plan not later than 30 days after the expiration of the 60-day period described in the preceding sentence. After the approval of the proposal and any amendments, the Secretary, with continuing consultation with such tribal governing body, shall implement the proposal.

**(iv) Accreditation**

Upon accreditation of the school, the tribe shall have the option to assume the operation and administration of the school as a contract school after complying with the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or as a grant school, after complying with the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], at the beginning of the school year following the year in which the school obtains accreditation.

**(v) Retrocede**

Nothing in this subparagraph shall limit a tribe's right to retrocede operation of a school to the Secretary pursuant to section 105(e) of the Indian Self-Determination Act [25 U.S.C. 450j(e)] (with respect to a contract school) or section 5204(f) of the Tribally Controlled Schools Act of 1988<sup>1</sup> (with respect to a grant school).

**(vi) Consistent**

The provisions of this subparagraph shall be construed to be consistent with the pro-

visions of the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] and the Indian Self-Determination Act [25 U.S.C. 450f et seq.] as in effect on the day before January 8, 2002, and shall not be construed as expanding the authority of the Secretary under any other law.

**(F) Hearing**

With respect to a school that is operated pursuant to a grant, or a school that is operated under a contract under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], prior to implementing any corrective action under this paragraph, the Secretary shall provide notice and an opportunity for a hearing to the affected school pursuant to section 5207 of the Tribally Controlled Schools Act of 1988.<sup>1</sup>

**(9) Statutory construction**

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to school employees under applicable law (including applicable regulations or court orders) or under the terms of any collective bargaining agreement, memorandum of understanding, or other agreement between such employees and their employers.

**(10) Fiscal control and fund accounting standards**

The Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools. Such standards shall provide data comparable to those used by Bureau-operated schools.

**(c) Annual plan**

**(1) In general**

Except as provided in subsection (b) of this section, the Secretary shall implement the standards in effect under this section<sup>1</sup> on the day before January 8, 2002.

**(2) Plan**

On an annual basis, the Secretary shall submit to the appropriate committees of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools a detailed plan to ensure that all Bureau-funded schools are accredited, or if such schools are in the process of obtaining accreditation that such schools meet the Bureau standards in effect on the day before January 8, 2002, to the extent that such standards do not conflict with the standards of the accrediting agency. Such plan shall include detailed information on the status of each school's educational program in relation to the applicable standards, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school up to the level required by such standards.

**(d) Closure or consolidation of schools**

**(1) In general**

Except as specifically required by law—

(A) no Bureau-funded school or dormitory operated on or after January 1, 1992, may be

closed, consolidated, or transferred to another authority; and

(B) no program of such a school may be substantially curtailed except in accordance with the requirements of this subsection.

**(2) Exceptions**

This subsection (other than this paragraph) shall not apply—

(A) in those cases in which the tribal governing body for a school, or the local school board concerned (if designated by the tribal governing body to act under this paragraph), requests the closure, consolidation, or substantial curtailment; or

(B) if a temporary closure, consolidation, or substantial curtailment is required by facility conditions that constitute an immediate hazard to health and safety.

**(3) Regulations**

The Secretary shall, by regulation, promulgate standards and procedures for the closure, transfer to another authority, consolidation, or substantial curtailment of Bureau schools, in accordance with the requirements of this subsection.

**(4) Notice**

**(A) In general**

In a case in which closure, transfer to another authority, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified immediately in writing, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review.

**(B) Decision to close**

If a formal decision is made to close, transfer to another authority, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated school board shall be notified not later than 180 days before the end of the school year preceding the proposed closure date.

**(C) Copies**

Copies of any such notices and information shall be—

(i) submitted promptly to the appropriate committees of Congress; and

(ii) published in the Federal Register.

**(5) Report**

The Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the designated school board, a report describing the process of the active consideration or review referred to in paragraph (4) that includes—

(A) a study of the impact of such action on the student population;

(B) a description of those students with particular educational and social needs;

(C) recommendations to ensure that alternative services are available to such students; and

(D) a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representatives and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students.

**(6) Limitation on certain actions**

No irrevocable action may be taken in furtherance of any such proposed school closure, transfer to another authority, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) prior to the end of the first full academic year after such report is made.

**(7) Approval of Indian tribes**

The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.

**(e) Application for contracts or grants for non-Bureau-funded schools or expansion of Bureau-funded schools**

**(1) Review by Secretary**

**(A) Consideration of factors**

**(i) In general**

The Secretary shall consider only the factors described in subparagraph (B) in reviewing—

(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau-funded school; and

(II) applications from any tribe or school board of any Bureau-funded school for—

(aa) a school which is not a Bureau-funded school; or

(bb) the expansion of a Bureau-funded school which would increase the amount of funds received by the Indian tribe or school board under section 2007 of this title.

**(ii) No denial based on geographic proximity**

With respect to applications described in this subparagraph, the Secretary shall give consideration to all factors described in subparagraph (B), but no such application shall be denied based primarily upon the geographic proximity of comparable public education.

**(B) Factors**

With respect to applications described in subparagraph (A), the Secretary shall consider the following factors relating to the program and services that are the subject of the application:

(i) The adequacy of the facilities or the potential to obtain or provide adequate facilities.

(ii) Geographic and demographic factors in the affected areas.

(iii) The adequacy of the applicant's program plans or, in the case of a Bureau-funded school, of projected needs analysis done either by the tribe or the Bureau.

(iv) Geographic proximity of comparable public education.

(v) The stated needs of all affected parties, including students, families, tribal governments at both the central and local levels, and school organizations.

(vi) Adequacy and comparability of programs already available.

(vii) Consistency of available programs with tribal educational codes or tribal legislation on education.

(viii) The history and success of those services for the proposed population to be served, as determined from all factors, including standardized examination performance.

**(2) Determination on application**

**(A) In general**

Not later than 180 days after the date on which an application described in paragraph (1)(A) is submitted to the Secretary, the Secretary shall make a determination of whether to approve the application.

**(B) Failure to make determination**

If the Secretary fails to make a determination with respect to an application by the date described in subparagraph (A), the application shall be deemed to have been approved by the Secretary.

**(3) Requirements for applications**

**(A) In general**

Notwithstanding paragraph (2)(B), an application described in paragraph (1)(A) may be approved by 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) Included information**

Each application described in paragraph (1)(A) shall include information concerning each of the factors described in paragraph (1)(B).

**(4) Denial of applications**

If the Secretary denies an application described in paragraph (1)(A), the Secretary shall—

(A) state the objections to the application in writing to the applicant not later than 180 days after the date the application is submitted to the Secretary;

(B) provide assistance to the applicant to overcome the stated objections;

(C) provide to the applicant a hearing on the record regarding the denial, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]; and

(D) provide to the applicant a notice of the applicant's appeals rights and an oppor-

tunity to appeal the decision resulting from the hearing under subparagraph (D).

**(5) Effective date of a subject application**

**(A) In general**

Except as otherwise provided in this paragraph, an action that is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective—

(i) at the beginning of the academic year following the fiscal year in which the application is approved; or

(ii) at an earlier date determined by the Secretary.

**(B) Applications deemed approved**

If an application is deemed to have been approved by the Secretary under paragraph (2)(B), the action that is the subject of the application shall become effective—

(i) on the date that is 18 months after the date on which the application is submitted to the Secretary; or

(ii) at an earlier date determined by the Secretary.

**(6) Statutory construction**

Nothing in this section or any other provision of law, shall be construed to preclude the expansion of grades and related facilities at a Bureau-funded school, if such expansion is paid for with non-Bureau funds. Subject to the availability of appropriated funds the Secretary is authorized to provide the necessary funds needed to supplement the cost of operations and maintenance of such expansion.

**(f) Joint administration**

Administrative, transportation, and program cost funds received by Bureau-funded schools, and any program from the Department of Education or any other Federal agency for the purpose of providing education or related services, and other funds received for such education and related services from nonfederally funded programs, shall be apportioned and the funds shall be retained at the school.

**(g) General use of funds**

Funds received by Bureau-funded schools from the Bureau of Indian Affairs, and under any program from the Department of Education or any other Federal agency, for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program for all Indian students.

**(h) Study on adequacy of funds and formulas**

**(1) Study**

The Comptroller General of the United States shall conduct a study to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau-funded schools, taking into account unique circumstances applicable to Bureau-funded schools. The study shall analyze existing information gathered and contained in germane studies that have been conducted or are currently being conducted with regard to Bureau-funded schools.

**(2) Action**

Upon completion of the study, the Secretary of the Interior shall take such action as nec-

essary to ensure distribution of the findings of the study to all affected Indian tribes, local school boards, and associations of local school boards.

(Pub. L. 95-561, title XI, § 1121, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2007; amended Pub. L. 109-54, title I, § 127, Aug. 2, 2005, 119 Stat. 525.)

REFERENCES IN TEXT

This section, referred to in subsec. (b)(4) and the second place appearing in subsec. (c)(1), mean section 1121 of Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 107-110. See Prior Provisions notes below.

The Indian Self-Determination Act, referred to in subsec. (b)(8)(D) to (F), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in subsec. (b)(8)(D) to (F), is part B (§§ 5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. Sections 5204 and 5207 of the Act were classified to sections 2503 and 2506, respectively, of this title, prior to repeal by Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2063. Pub. L. 107-110 enacted new sections 5204 and 5207 which are classified to sections 2503 and 2506, respectively, of this title. Pub. L. 107-110 enacted new sections 5203 and 5206 of Pub. L. 100-297, relating to subject matter similar to that of former sections 5204 and 5207, respectively, which are classified to sections 2502 and 2505, respectively, of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act referred to in subsec. (e)(4)(C), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

A prior section 2001, Pub. L. 95-561, title XI, § 1121, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979; amended Pub. L. 104-134, title I, § 101(d) [title VII, § 703(d)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-255; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-362, title VIII, § 801(c)(1), Nov. 10, 1998, 112 Stat. 3287, related to standards for basic education of Indian children in Bureau of Indian Affairs schools, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2001, Pub. L. 95-561, title XI, § 1121, Nov. 1, 1978, 92 Stat. 2316; Pub. L. 96-46, § 2(b)(2)-(4), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 98-511, title V, § 502, Oct. 19, 1984, 98 Stat. 2391; Pub. L. 99-89, § 2, Aug. 15, 1985, 99 Stat. 379; Pub. L. 99-570, title IV, § 4133(b)(3), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§ 5102, 5104, Apr. 28, 1988, 102 Stat. 363, 365; Pub. L. 100-427, § 1(a), (b), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 102-531, title III, § 312(b), Oct. 27, 1992, 106 Stat. 3504, related to standards for basic education of Indian children in Bureau or contract schools, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

2005—Subsec. (d)(7). Pub. L. 109-54 added par. (7) and struck out heading and text of former par. (7). Text read as follows: “The Secretary may, with the approval of the tribal governing body, terminate, contract,



transfer to any other authority, consolidate, or substantially curtail the operation or facilities of—

- “(A) any Bureau-funded school that is operated on or after January 1, 1999;
- “(B) any program of such a school that is operated on or after January 1, 1999; or
- “(C) any school board of a school operated under a grant under the Tribally Controlled Schools Act of 1988.”

#### CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives and Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

### § 2002. National criteria for home-living situations

#### (a) Revision of standards

##### (1) In general

The Secretary, in consultation with the Secretary of Education, Indian organizations and tribes, and Bureau-funded schools, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, needs for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy.

##### (2) Implementation

Such standards shall be implemented in Bureau-operated schools, and shall serve as minimum standards for contract or grant schools.

##### (3) Revision after establishment

Once established, any revisions of such standards shall be developed according to the requirements established under section 2017 of this title.

#### (b) Implementation

The Secretary shall implement the revised standards established under this section immediately upon completion of the standards.

#### (c) Plan

##### (1) In general

The Secretary shall submit to the appropriate committees of Congress, the tribes, and the affected schools, and publish in the Federal Register, a detailed plan to bring all Bureau-funded schools that provide home-living (dormitory) situations up to the standards established under this section.

##### (2) Components of plan

The plan described in paragraph (1) shall include—

- (A) a statement of the relative needs of each Bureau-funded home-living (dormitory) school;
- (B) projected future needs of each Bureau-funded home-living (dormitory) school;
- (C) detailed information on the status of each school in relation to the standards established under this section;
- (D) specific cost estimates for meeting each standard for each such school;

(E) aggregate cost estimates for bringing all such schools into compliance with the criteria established under this section; and

(F) specific timelines for bringing each school into compliance with such standards.

#### (d) Waiver

##### (1) In general

A tribal governing body or local school board may, in accordance with this subsection, waive the standards established under this section for a school described in subsection (a) of this section.

##### (2) Inappropriate standards

###### (A) In general

A tribal governing body, or the local school board so designated by the tribal governing body, may waive, in whole or in part, the standards established under this section if such standards are determined by such body or board to be inappropriate for the needs of students from that tribe.

###### (B) Alternative standards

The tribal governing body or school board involved shall, not later than 60 days after providing a waiver under subparagraph (A) for a school, submit to the Director a proposal for alternative standards that take into account the specific needs of the tribe's children. Such alternative standards shall be established by the Director for the school involved unless specifically rejected by the Director for good cause and in writing provided to the affected tribes or local school board.

##### (e) Closure for failure to meet standards prohibited

No school in operation on or before July 1, 1999 (regardless of compliance or noncompliance with the standards established under this section), may be closed, transferred to another authority, or consolidated, and no program of such a school may be substantially curtailed, because the school failed to meet such standards.

(Pub. L. 95-561, title XI, §1122, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2018.)

#### PRIOR PROVISIONS

A prior section 2002, Pub. L. 95-561, title XI, §1122, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3984; amended Pub. L. 105-362, title VIII, §801(c)(2), Nov. 10, 1998, 112 Stat. 3288, related to national criteria for dormitory situations, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2002, Pub. L. 95-561, title XI, §1122, Nov. 1, 1978, 92 Stat. 2318; Pub. L. 96-46, §2(b)(5), Aug. 6, 1979, 93 Stat. 341; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 100-297, title V, §5105, Apr. 28, 1988, 102 Stat. 367, related to national criteria for dormitory situations, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2003. Codification of regulations

#### (a) Part 32 of Title 25, Code of Federal Regulations

The provisions of part 32 of title 25, Code of Federal Regulations, as in effect on January 1, 1987, are incorporated into this Act and shall be treated as though such provisions are set forth

in this subsection. Such provisions may be altered only by means of an Act of Congress. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before November 1, 1978, the provisions of this Act and the provisions of such other statutory law shall govern.

**(b) Definition of regulation**

In this section, the term “regulation” means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.

(Pub. L. 95-561, title XI, §1123, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2019.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 2003, Pub. L. 95-561, title XI, §1123, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3985, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2003, Pub. L. 95-561, title XI, §1123, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, §5106, Apr. 28, 1988, 102 Stat. 367, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2004. School boundaries**

**(a) Establishment by Secretary**

The Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau-funded school.

**(b) Establishment by tribal body**

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.

**(c) Boundary revisions**

**(1) Notice**

On or after July 1, 2001, no geographical attendance area shall be revised or established with respect to any Bureau-funded school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been afforded—

(A) at least 6 months notice of the intention of the Bureau to revise or establish such attendance area; and

(B) the opportunity to propose alternative boundaries.

**(2) Revision process**

Any tribe may petition the Secretary for revision of existing attendance area boundaries.

The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. The Secretary shall cause such revisions to be published in the Federal Register.

**(3) Tribal resolution determination**

Nothing in this section shall deny a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents the choice of the Bureau-funded school their children may attend, regardless of the attendance boundaries established under this section.

**(d) Funding restrictions**

**(1) In general**

The Secretary shall not deny funding to a Bureau-funded school for any eligible Indian student attending the school solely because that student's home or domicile is outside of the geographical attendance area established for that school under this section.

**(2) Transportation**

No funding shall be made available without tribal authorization to enable a school to provide transportation for any student to or from the school and a location outside the approved attendance area of the school.

**(e) Reservation as boundary**

When there is only one Bureau-funded program located on an Indian reservation—

(1) the attendance area for the program shall be the boundaries (established by treaty, agreement, legislation, court decisions, or executive decisions and as accepted by the tribe) of the reservation served; and

(2) those students residing near the reservation shall also receive services from such program.

**(f) Off-reservation home-living (dormitory) schools**

**(1) In general**

Notwithstanding any geographical attendance areas, attendance at off-reservation home-living (dormitory) schools shall include students requiring special emphasis programs to be implemented at each off-reservation home-living (dormitory) school.

**(2) Coordination**

Such attendance shall be coordinated between education line officers, the family, and the referring and receiving programs.

(Pub. L. 95-561, title XI, §1124, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2019.)

PRIOR PROVISIONS

A prior section 2004, Pub. L. 95-561, title XI, §1124, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3986, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2004, Pub. L. 95-561, title XI, §1124, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 98-511, title V, §503, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, §3, Aug. 15, 1985, 99 Stat. 380; Pub. L. 100-297, title V, §5120, Apr.

28, 1988, 102 Stat. 384, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2005. Facilities construction

#### (a) National survey of facilities conditions

##### (1) In general

Not later than 12 months after January 8, 2002, the Government Accountability Office shall compile, collect, and secure the data that are needed to prepare a national survey of the physical conditions of all Bureau-funded school facilities.

##### (2) Data and methodologies

In preparing the national survey required under paragraph (1), the Government Accountability Office shall use the following data and methodologies:

(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

(B) Data related to conditions of Bureau-funded schools that has previously been compiled, collected, or secured from whatever source derived so long as the data are accurate, relevant, timely, and necessary to the survey.

(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

##### (3) Consultations

###### (A) In general

In carrying out the survey required under paragraph (1), the Government Accountability Office shall, to the maximum extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

###### (B) Requests for information

All Bureau-funded schools shall comply with reasonable requests for information by the Government Accountability Office and shall respond to such requests in a timely fashion.

##### (4) Submission

Not later than 2 years after January 8, 2002, the Government Accountability Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate and the Committee on Resources, the Committee on Education and the Workforce, and the Committee on Appropriations of the House of Representatives and to the Secretary. The Secretary shall submit the results of the national survey to school boards of Bureau-funded schools and their respective tribes.

##### (5) Negotiated rulemaking committee

###### (A) In general

Not later than 6 months after the date on which the submission is made under para-

graph (4), the Secretary shall establish a negotiated rulemaking committee pursuant to section 2018(b)(3) of this title. The negotiated rulemaking committee shall prepare and submit to the Secretary the following:

(i) A catalog of the condition of school facilities at all Bureau-funded schools that—

(I) incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;

(II) rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;

(III) establishes a routine maintenance schedule for each facility;

(IV) identifies the complementary educational facilities that do not exist but that are needed; and

(V) makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

(ii) A school replacement and new construction report that determines replacement and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

(I) the size of school;

(II) school enrollment;

(III) the age of the school;

(IV) the condition of the school;

(V) environmental factors at the school; and

(VI) school isolation.

(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such report shall identify needed repairs or renovations with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in clause (ii).

##### (B) Submission of reports

Not later than 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national and regional Indian education organizations, and to all school boards of Bureau-funded schools and their respective tribes.

##### (6) Facilities information systems support database

The Secretary shall develop a Facilities Information Systems Support Database to main-

tain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by Government Accountability Office, and shall be made available to school boards of Bureau-funded schools and their respective tribes, and Congress.

**(b) Compliance with health and safety standards**

**(1) In general**

The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau, into compliance with—

(A) all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards);

(B) section 794 of title 29; and

(C) the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.].

**(2) No termination required**

Nothing in this subsection requires termination of the operations of any facility that—

(A) does not comply with the provisions and standards described in paragraph (1); and

(B) is in use on January 8, 2002.

**(c) Compliance plan**

At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (a) of this section into compliance with the standards referred to in that subsection that includes—

(1) detailed information on the status of each facility's compliance with such standards;

(2) specific cost estimates for meeting such standards at each school; and

(3) specific timelines for bringing each school into compliance with such standards.

**(d) Construction priorities**

**(1) System to establish priorities**

On an annual basis, the Secretary shall submit to the appropriate committees of Congress and cause to be published in the Federal Register, the system used to establish priorities for replacement and construction projects for Bureau-funded schools and home-living schools, including boarding schools and dormitories. At the time any budget request for education is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all Bureau-funded school construction priorities.

**(2) Long-term construction and replacement list**

In addition to the plan submitted under subsection (c) of this section, the Secretary shall—

(A) not later than 18 months after January 8, 2002, establish a long-term construction

and replacement list for all Bureau-funded schools;

(B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau-funded education-related facilities over a period of 40 years to enable planning and scheduling of budget requests;

(C) cause the list prepared under subparagraph (B) to be published in the Federal Register and allow a period of not less than 120 days for public comment;

(D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and

(E) cause the final list to be published in the Federal Register.

**(3) Effect on other list**

Nothing in this section shall interfere with or change in any way the construction priority list as it existed on the day before January 8, 2002.

**(e) Hazardous condition at Bureau-funded school**

**(1) Closure, consolidation, or curtailment**

**(A) In general**

A Bureau-funded school may be closed or consolidated, or the programs of a Bureau-funded school may be substantially curtailed, by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated at the beginning of the school year by the tribe involved under subparagraph (B) determine that such conditions exist at a facility of the Bureau-funded school.

**(B) Designation of individual by tribe**

To be designated by a tribe for purposes of subparagraph (A), an individual shall—

(i) be a licensed or certified facilities safety inspector;

(ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or

(iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

**(C) Inspection**

After making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety. Such inspection shall be completed as expeditiously as practicable, but not later than 20 days after the date on which the action described in subparagraph (A) is taken.

**(D) Failure to concur**

If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (C) do not concur that conditions at the facility constitute an immediate hazard to health and safety, such of-

ficer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

**(E) Consideration by tribal governing body**

Not later than 10 days after a tribal governing body receives notice under subparagraph (D), the tribal governing body shall consider all information relating to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

**(F) Agreement to close, consolidate, or curtail**

**(i) In general**

If the Bureau health and safety officer and the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E), the facility involved shall be closed immediately.

**(ii) Reopening of facility if no immediate hazard found to exist**

If the Bureau health and safety officer or the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C) determines that conditions at the facility do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made under this paragraph shall immediately cease and any school closed by reason of conditions at the facility shall be reopened immediately.

**(G) General closure report**

If a Bureau-funded school is temporarily closed or consolidated or the programs of a Bureau-funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 90 days after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

- (i) the reasons for such temporary action;
- (ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;
- (iii) an estimated date by which the actions described in clause (ii) will be concluded; and
- (iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

**(2) Nonapplication of certain standards for temporary facility use**

**(A) Classroom activities**

The Secretary shall permit the local school board to temporarily utilize facilities

adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 2001 of this title relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

**(B) Administrative activities**

The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

**(C) Temporary**

In this paragraph, the term “temporary” means—

- (i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and
- (ii) with respect to a school that is to be closed for not less than 1 year, a time period determined appropriate by the Bureau.

**(3) Treatment of closure**

Any closure of a Bureau-funded school under this subsection for a period that exceeds 30 days but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

**(4) Use of funds**

With respect to a Bureau-funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau-funded school, involved may authorize the use of funds allocated pursuant to section 2007 of this title, to abate the hazardous conditions without further action by Congress.

**(f) Funding requirement**

**(1) Distribution of funds**

Beginning with the first fiscal year following January 8, 2002, all funds appropriated to the budget accounts for the operations and maintenance of Bureau-funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay for administrative or other costs of any facilities branch or office, at any level of the Bureau.

**(2) Requirements for certain uses**

No funds shall be withheld from the distribution to the budget of any school operated under contract or grant by the Bureau for maintenance or any other facilities or road-related purpose, unless such school has consented, as a modification to the contract or in writing for grants schools, to the withholding of such funds, including the amount thereof, the purpose for which the funds will be used, and the timeline for the services to be provided. The school may, at the end of any fiscal year, cancel an agreement under this para-

graph upon giving the Bureau 30 days notice of its intent to do so.

**(g) No reduction in Federal funding**

Nothing in this section shall diminish any Federal funding due to the receipt by the school of funding for facilities improvement or construction from a State or any other source.

(Pub. L. 95-561, title XI, §1125, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2021; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(5)(A)(i)(V), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(1)(C), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 2005, Pub. L. 95-561, title XI, §1125, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3986, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2005, Pub. L. 95-561, title XI, §1125, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, §5103, Apr. 28, 1988, 102 Stat. 364, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 103-382.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” wherever appearing.

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives and Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

USE OF TRIBAL PRIORITY ALLOCATIONS FUNDS FOR SCHOOL FACILITIES

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-246, provided in part: “That hereafter tribes may use tribal priority allocations funds for the replacement and repair of school facilities in compliance with [former] 25 U.S.C. 2005(a) [see now 25 U.S.C. 2005(b)], so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocation funds”.

**§ 2006. Bureau of Indian Affairs education functions**

**(a) Formulation and establishment of policy and procedure; supervision of programs and expenditures**

The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure and supervision of programs and expenditures of Federal funds for the purpose of

Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

**(b) Direction and supervision of personnel operations**

**(1) In general**

Not later than 180 days after January 8, 2002, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.

**(2) Transfers**

The Assistant Secretary for Indian Affairs shall, not later than 180 days after January 8, 2002, coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

**(c) Inherent Federal function**

For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], unless determined by the Secretary to be inherently Federal functions as defined in section 2021(12) of this title.

**(d) Evaluation of programs; services and support functions; technical and coordinating assistance**

Education personnel who are under the direction and supervision of the Director of the Office of Indian Education Programs in accordance with subsection (b)(1) of this section shall—

(1) monitor and evaluate Bureau education programs;

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, curriculum, and operation and maintenance of school facilities.

**(e) Construction, improvement, operation, and maintenance of facilities**

**(1) Plan for construction**

The Assistant Secretary shall submit as part of the annual budget a plan—

(A) for school facilities to be constructed under section 2005(c) of this title;

(B) for establishing priorities among projects and for the improvement and repair of educational facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) for capital improvements to be made over the 5 succeeding years.

**(2) Program for operation and maintenance**

**(A) Establishment**

The Assistant Secretary shall establish a program, including the distribution of ap-

propriated funds, for the operation and maintenance of education facilities. Such program shall include—

(i) a method of computing the amount necessary for each educational facility;

(ii) similar treatment of all Bureau-funded schools;

(iii) a notice of an allocation of appropriated funds from the Director of the Office of Indian Education Programs directly to the education line officers and appropriate school officials;

(iv) a method for determining the need for, and priority of, facilities repair and maintenance projects, both major and minor (to be determined, through the conduct by the Assistant Secretary, of a series of meetings at the agency and area level with representatives of the Bureau-funded schools in those areas and agencies to receive comment on the lists and prioritization of such projects); and

(v) a system for the conduct of routine preventive maintenance.

#### **(B) Local supervisors**

The appropriate education line officers shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers, except that no funds under this chapter may be authorized for expenditure unless such appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner.

#### **(3) Implementation**

This subsection shall be implemented as soon as practicable after January 8, 2002.

#### **(f) Acceptance of gifts and bequests**

##### **(1) Guidelines**

Notwithstanding any other provision of law, the Director of the Office shall promulgate guidelines for the establishment and administration of mechanisms for the acceptance of gifts and bequests for the use and benefit of particular schools or designated Bureau-operated education programs, including, in appropriate cases, the establishment and administration of trust funds.

##### **(2) Monitoring and reports**

Except as provided in paragraph (3), in a case in which a Bureau-operated education program is the beneficiary of such a gift or bequest, the Director shall—

(A) make provisions for monitoring use of the gift or bequest; and

(B) submit a report to the appropriate committees of Congress that describes the amount and terms of such gift or bequest, the manner in which such gift or bequest shall be used, and any results achieved by such use.

##### **(3) Exception**

The requirements of paragraph (2) shall not apply in the case of a gift or bequest that is valued at \$5,000 or less.

#### **(g) Definition of functions**

For the purpose of this section, the term “functions” includes powers and duties.

(Pub. L. 95-561, title XI, §1126, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2026.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (c), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 2006, Pub. L. 95-561, title XI, §1126, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3988, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2006, Pub. L. 95-561, title XI, §1126, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 96-46, §2(b)(6), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §504, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, §4, Aug. 15, 1985, 99 Stat. 381; Pub. L. 100-427, §1(c)(3), Sept. 9, 1988, 102 Stat. 1603, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 103-382.

#### **§ 2007. Allotment formula**

##### **(a) Factors considered; revision to reflect standards**

###### **(1) Formula**

The Secretary shall establish, by regulation adopted in accordance with section 2017 of this title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau-funded school. In establishing such formula, the Secretary shall consider—

(A) the number of eligible Indian students served and total student population of the school;

(B) special cost factors, such as—

(i) the isolation of the school;

(ii) the need for special staffing, transportation, or educational programs;

(iii) food and housing costs;

(iv) maintenance and repair costs associated with the physical condition of the educational facilities;

(v) special transportation and other costs of isolated and small schools;

(vi) the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board;

(vii) costs associated with greater lengths of service by education personnel;

(viii) the costs of therapeutic programs for students requiring such programs; and

(ix) special costs for gifted and talented students;

(C) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(D) whether the available funding will enable the school involved to comply with the accreditation standards applicable to the school under section 2001 of this title; and

(E) such other relevant factors as the Secretary determines are appropriate.

**(2) Revision of formula**

**(A) In general**

Upon the establishment of the standards required in section 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost of funding such standards.

**(B) Review of formula**

Not later than January 1, 2003, the Secretary shall review the formula established under this section and shall take such steps as are necessary to increase the availability of counseling and therapeutic programs for students in off-reservation home-living (dormitory) schools and other Bureau-operated residential facilities.

**(C) Review of standards**

Concurrent with such action, the Secretary shall review the standards established under section 2002 of this title to be certain that adequate provision is made for parental notification regarding, and consent for, such counseling and therapeutic programs.

**(b) Pro rata allotment**

Notwithstanding any other provision of law, Federal funds appropriated for the general local operation of Bureau-funded schools shall be allotted pro rata in accordance with the formula established under subsection (a) of this section.

**(c) Annual adjustment; reservation of amount for school board activities**

**(1) Annual adjustment**

For fiscal year 2003, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) of this section to ensure that the formula does the following:

(A) Uses 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) Considers a school with an enrollment 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.

(C) Takes into account the provision of residential services on less than a 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.

(D) Uses a weighted unit of 2.0 for each eligible Indian student that—

- (i) is gifted and talented; and
- (ii) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school.

(E) Uses a weighted unit of 0.25 for each eligible Indian student who is enrolled in a year-long credit course in an Indian or Native language as part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school. The adjustment required under this subparagraph shall be used for such school after—

(i) the certification of the Indian or Native language curriculum by the school board of such school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second school year for which the certification is made; and

(ii) the funds appropriated for allotment under this section are designated by the appropriations Act appropriating such funds as the amount necessary to implement such adjustment at such school without reducing allotments made under this section to any school by virtue of such adjustment.

**(2) Reservation of amount**

**(A) In general**

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

- (i) \$8,000; or
- (ii) the lesser of—
  - (I) \$15,000; or
  - (II) 1 percent of such allotted funds,

for school board activities for such school, including (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.

**(B) Training**

**(i) In general**

Each local school board, and any agency school board that serves as a local school board for any grant or contract school, shall ensure that each individual who is a new member of the school board receives, within 1 year after the individual becomes a member of the school board, 40 hours of training relevant to that individual's service on the board.

**(ii) Types of training**

Such training may include training concerning legal issues pertaining to Bureau-funded schools, legal issues pertaining to school boards, ethics, and other topics determined to be appropriate by the school board.

**(iii) Recommendation**

The training described in this subparagraph shall not be required, but is recommended, for a tribal governing body that serves in the capacity of a school board.



**(d) Reservation of amount for emergencies****(1) In general**

The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount that, in the aggregate, equals 1 percent of the funds available for such purpose for that fiscal year, to be used, at the discretion of the Director of the Office of Indian Education Programs, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section.

**(2) Use of funds**

Funds reserved under this subsection may be expended only for education services or programs, including emergency repairs of educational facilities, at a schoolsite (as defined by section 2503(c)(2)<sup>1</sup> of this title).

**(3) Availability of funds**

Funds reserved under this subsection shall remain available without fiscal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds.

**(4) Report**

When the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

**(e) Supplemental appropriations**

Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

**(f) Eligible Indian student defined**

In this section, the term “eligible Indian student” means a student who—

- (1) is a member of, or is at least one-fourth degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians;
- (2) resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and
- (3) is enrolled in a Bureau-funded school.

**(g) Tuition****(1) In general**

No eligible Indian student or a student attending a Bureau school under paragraph (2)(C) may be charged tuition for attendance at a Bureau school or contract or grant school.

**(2) Attendance of non-Indian students at Bureau schools**

The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

- (A) the Secretary determines that the student’s attendance will not adversely affect the school’s program for eligible Indian students because of cost, overcrowding, or violation of standards or accreditation;

(B) the school board consents;

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site; or

(D) tuition is paid for the student that is not more than the tuition charged by the nearest public school district for out-of-district students and shall be in addition to the school’s allocation under this section.

**(3) Attendance of non-Indian students at contract and grant schools**

The school board of a contract or grant school may permit students who are not eligible Indian students under this subsection to attend its contract school or grant school. Any tuition collected for those students shall be in addition to funding received under this section.

**(h) Funds available without fiscal year limitation**

Notwithstanding any other provision of law, at the election of the school board of a Bureau school made at any time during the fiscal year, a portion equal to not 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. The Assistant Secretary shall take such steps as are necessary to implement this subsection.

**(i) Students at Richfield dormitory, Richfield, Utah****(1) In general**

Tuition for the instruction of each out-of-State Indian student in a home-living situation at the Richfield dormitory in Richfield, Utah, who attends Sevier County high schools in Richfield, Utah, for an academic year, shall be paid from Indian school equalization program funds authorized in this section and section 2009<sup>2</sup> of this title, at a rate not to exceed the weighted amount provided for under subsection (b) of this section for a student for that year.

**(2) No administrative cost funds**

No additional administrative cost funds shall be provided under this chapter to pay for administrative costs relating to the instruction of the students.

(Pub. L. 95-561, title XI, §1127, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2028.)

## PRIOR PROVISIONS

A prior section 2007, Pub. L. 95-561, title XI, §1127, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3989, related to allotment formula, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2007, Pub. L. 95-561, title XI, §1127, Nov. 1, 1978, 92 Stat. 2320, related to policies and procedures for implementation of transferred administrative functions, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2008. Administrative cost grants****(a) Definitions**

In this section:

<sup>1</sup> So in original. Probably should be section “2502(c)(2)”.

<sup>2</sup> So in original. Probably should be section “2010”.

**(1) Administrative cost****(A) In general**

The term “administrative cost” means the cost 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) Inclusions**

The term “administrative cost” may include—

- (i) contract or grant (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) Bureau elementary and secondary functions**

The term “Bureau elementary and secondary functions” means—

- (A) all functions funded at Bureau schools by the Office;
- (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) Direct cost base****(A) In general**

Except as otherwise provided in subparagraph (B), 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) Functions not previously operated**

In the case of Bureau elementary or secondary education functions which have not

previously been operated by a tribe or tribal organization under contract, grant, 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.

**(4) Maximum base rate**

The term “maximum base rate” means 50 percent.

**(5) Minimum base rate**

The term “minimum base rate” means 11 percent.

**(6) Standard direct cost base**

The term “standard direct cost base” means \$600,000.

**(7) Tribal elementary or secondary educational programs**

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 funded through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

**(b) Grants; effect upon appropriated amounts****(1) Grants**

Subject to the availability of funds, the Secretary shall provide grants to each tribe or tribal organization operating a contract school or grant 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 or grant schools, provided that no school operated as a stand-alone institution shall receive less than \$200,000 per year for these purposes, in order to—

- (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) Effect upon appropriated amounts**

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 or grant school.

**(c) Determination of grant amount****(1) In general**

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 the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau.

**(2) Direct cost base funds**

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.

**(d) Administrative cost percentage rate****(1) In general**

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

(A) the sum of—

(i) 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

(ii) the amount equal to—

(I) the standard direct cost base; multiplied by

(II) the maximum base rate; by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year; plus

(ii) the standard direct cost base.

**(2) Rounding**

The administrative cost percentage rate shall be determined to the  $\frac{1}{100}$  of a decimal point.

**(3) Applicability**

The administrative cost percentage rate determined under this subsection shall not apply to other programs operated by the tribe or tribal organization.

**(e) Combining funds****(1) In general**

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

**(2) Indirect cost funds**

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 paragraph (1).

**(f) Availability of funds**

Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract or grant 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.

**(g) Treatment of funds**

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.

**(h) Treatment of entity operating other programs**

In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450j-1] with respect to an Indian tribe or tribal organization that—

(1) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.]; and

(2) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.],

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs that are associated with operating the contract or grant school, and of the indirect costs, that are associated with all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

**(i) Studies for determination of factors affecting costs; base rates limits; standard direct cost base; report to Congress****(1) Studies**

Not later than 120 days after January 8, 2002, the Director of the Office of Indian Education Programs shall—

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

(B) conduct 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 (d) of this section 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) Guidelines**

The studies required under paragraph (1) shall—

(A) be conducted in full consultation (in accordance with section 2011 of this title) with—

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

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

(B) be conducted onsite with 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 to substantially affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to ensure 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 the factors may effectively be incorporated into such formula.

## **(3) Consultation with Inspector General**

In carrying out the studies required under this subsection, the Director shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.

## **(4) Consideration of delivery of administrative services**

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

## **(5) Report**

Upon completion of the studies conducted under paragraph (1), the Director shall submit to Congress a report on the findings of the studies, together with determinations based upon such studies that would affect the definitions set forth under subsection (e) of this section that are used in the formula set forth in subsection (c) of this section.

## **(6) Projection of costs**

The Secretary shall include in the Bureau's justification for each appropriations request beginning in the first fiscal year after the completion of the studies conducted under paragraph (1), a projection of the overall costs associated with the formula set forth in subsection (c) of this section for all tribal elementary or secondary education programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

## **(7) Determination of program size**

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.

## **(j) Authorization of appropriations**

### **(1) In general**

There are authorized to be appropriated to carry out this section such sums as may be necessary.

### **(2) Reductions**

If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (c) of this section for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (c) of this section for such fiscal year by an amount that bears the same relationship to such excess as

the amount of such grants determined under subsection (c) of this section bears to the total of all grants determined under subsection (c) section<sup>1</sup> for all tribes and tribal organizations for such fiscal year.

**(k) Applicability to schools operating under Tribally Controlled Schools Act of 1988**

The provisions of this section shall apply to schools operating under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

**(l) Administrative cost grant budget requests**

**(1) In general**

Beginning with President's<sup>2</sup> annual budget request under section 1105 of title 31 for fiscal year 2002, and with respect to each succeeding budget request, at the discretion of the Secretary, the Secretary shall submit to the appropriate committees of Congress information and funding requests for the full funding of administrative costs grants required to be paid under this section.

**(2) Requirements**

**(A) Funding for new conversions to contract or grant school operations**

With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe or tribal organization expected to begin operation of a Bureau-funded school as contract or grant school in the academic year funded by such annual budget request, the amount so required shall not be less than 10 percent of the amount required for subparagraph (B).

**(B) Funding for continuing contract and grant school operations**

With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe or tribal organization operating a contract or grant school at the time the annual budget request is submitted, which amount shall include the amount of funds required to provide full funding for an administrative cost grant for each tribe or tribal organization which began operation of a contract or grant school with administrative cost grant funds supplied from the amount described in subparagraph (A).

(Pub. L. 95-561, title XI, §1128, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2032.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (h)(1) and (k), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (h)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

<sup>1</sup> So in original.

<sup>2</sup> So in original. Probably should be preceded by "the".

PRIOR PROVISIONS

A prior section 2008, Pub. L. 95-561, title XI, §1128, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3993, related to administrative cost grants, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2008 and a prior section 2008a were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2008, Pub. L. 95-561, title XI, §1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, §2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99-89, §5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99-228, §1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100-297, title V, §§5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100-427, §§2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101-301, §5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103-382, title III, §393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95-561, title XI, §1128A, as added Pub. L. 100-297, title V, §5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100-427, §4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101-301, §5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

**§ 2009. Division of Budget Analysis**

**(a) Establishment**

Not later than 1 year after January 8, 2002, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (hereafter in this section referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

**(b) Functions**

In consultation with the tribal governing bodies and tribal school boards, the Director of the Office, through the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau-funded schools and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

**(c) Annual reports**

Not later than the date on which the Assistant Secretary for Indian Affairs makes the annual budget submission, for each fiscal year after January 8, 2002, the Director of the Office shall submit to the appropriate committees of Congress (including the Appropriations committees), all Bureau-funded schools, and the tribal governing bodies of such schools, a report that contains—

(1) projections, based upon the information gathered pursuant to subsection (b) of this section and any other relevant information, of amounts necessary to provide Indian students in Bureau-funded schools the educational program set forth in this chapter;

(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

(3) such other information as the Director of the Office considers appropriate.

**(d) Use of reports**

The Director of the Office and the Assistant Secretary for Indian Affairs shall use the annual report required by subsection (c) of this section when preparing annual budget submissions.

(Pub. L. 95-561, title XI, §1129, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2038.)

## PRIOR PROVISIONS

A prior section 2009, Pub. L. 95-561, title XI, §1129, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3998, related to Division of Budget Analysis, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2009, Pub. L. 95-561, title XI, §1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98-511, title V, §§506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99-89, §6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99-570, title IV, §4133(b)(4), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100-427, §§6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2010. Uniform direct funding and support****(a) Establishment of system and forward funding****(1) In general**

The Secretary shall establish, by regulation adopted in accordance with section 2016 of this title, a system for the direct funding and support of all Bureau-funded schools. Such system shall allot funds in accordance with section 2007 of this title. All amounts appropriated for distribution in accordance with this section shall be made available in accordance with paragraph (2).

**(2) Timing for use of funds****(A) Availability**

For the purposes of affording adequate notice of funding available pursuant to the allotments made under section 2007 of this title and the allotments of funds for operation and maintenance of facilities, amounts appropriated in an appropriations Act for any fiscal year for such allotments—

(i) shall become available for obligation by the affected schools on July 1 of the fiscal year for which such allotments are appropriated without further action by the Secretary; and

(ii) shall remain available for obligation through the succeeding fiscal year.

**(B) Publications**

The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

(i) publish, not later than July 1 of the fiscal year for which the amounts are appropriated, information indicating the amount of the allotments to be made to each affected school under section 2007 of this title, of 80 percent of such appropriated amounts; and

(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 2007 of this title, from the remaining 20 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

**(C) Overpayments**

Any overpayments made to tribal schools shall be returned to the Secretary not later than 30 days after the final determination that the school was overpaid pursuant to this section.

**(3) Limitation****(A) Expenditures**

Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau-operated school may expend an aggregate of not more than \$50,000 of the amount allotted to the school under section 2007 of this title to acquire materials, supplies, equipment, operation services, maintenance services, and other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

(i) the cost for any single item acquired does not exceed \$15,000;

(ii) the school board approves the acquisition;

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

(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

**(B) Notice**

Not later than 6 months after January 8, 2002, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

**(C) Application and guidelines**

The Director of the Office shall be responsible for—

(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

(ii) ensuring that there is at least one such individual at each Bureau facility; and

(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

**(4) Effect of sequestration order**

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 2007 of this title for any fiscal year by more than 7 percent of the amount of funds available for allotment under such section during the preceding fiscal year—

(A) to fund allotments under section 2007 of this title, the Secretary, notwithstanding any other law, may use—

(i) funds appropriated for the operation of any Bureau-funded school that is closed or consolidated; and

(ii) funds appropriated for any program that has been curtailed at any Bureau school; and

(B) the Secretary may waive the application of the provisions of section 2001(h) of this title 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 2007 of this title for such fiscal year.

**(b) Local financial plans for expenditure of funds**

**(1) Plan required**

Each Bureau-operated school that receives an allotment under section 2007 of this title shall prepare a local financial plan that specifies the manner in which the school will expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school pursuant to section 2001 of this title.

**(2) Requirement**

A local financial plan under paragraph (1) shall comply with all applicable Federal and tribal laws.

**(3) Preparation and revision**

**(A) In general**

The financial plan for a school under subparagraph (A)<sup>1</sup> shall be prepared by the supervisor of the school in active consultation with the local school board for the school.

**(B) Authority of school board**

The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

**(4) Role of supervisor**

The supervisor of the school—

(A) shall implement the decisions of the school board relating to the financial plan under paragraph (1);

(B) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board; and

(C) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

**(5) Statements**

**(A) In general**

A copy of each statement filed under paragraph (4)(C) shall be submitted to the local

school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

**(B) Overturned actions**

After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board.

**(C) Transmission of determination**

The appropriate education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

**(c) Tribal division of education, self-determination grant and contract funds**

The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 450h(a) of this title.

**(d) Technical assistance and training**

In carrying out this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the maximum extent practicable, provide those services and make appropriate provisions in the budget of the Office for the provision of those services.

**(e) Summer program of academic and support services**

**(1) Plan**

**(A) In general**

A financial plan under subsection (b) of this section for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school.

**(B) Prevention activities**

Any such program may include activities related to the prevention of alcohol and substance abuse.

**(C) Summer use**

The Assistant Secretary for Indian Affairs shall provide for the use of any such school facility during any summer in which such use is requested.

**(2) Use of other funds**

Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 [25 U.S.C. 452 et seq.], and this Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

**(3) Technical assistance and program coordination**

The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall—

(A) provide technical assistance and coordination for any program described in paragraph (1); and

<sup>1</sup> So in original. Probably should be "paragraph (1)".

(B) to the extent practicable, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

**(f) Cooperative agreements**

**(1) Implementation**

**(A) In general**

From funds allotted to a Bureau school under section 2007 of this title, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school.

**(B) Terms**

The tribe, the Bureau, the school board, and the local public school district shall determine the terms of an agreement entered into under subparagraph (A).

**(2) Coordination provisions**

An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would not continue to be so accredited if the agreement encompassed the program and curriculum.

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

(C) Transportation.

**(3) Equal benefit and burden**

**(A) In general**

Each agreement entered into under paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed by the school.

**(B) Limitation**

Subparagraph (A) shall not be construed to require equal expenditures, or an exchange of similar services, by the Bureau school and schools in the school district.

**(g) Product or result of student projects**

Notwithstanding any other provision of law, in a case in which there is agreement on action between the superintendent and the school board of a Bureau-funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

**(h) Matching fund requirements**

**(1) Not considered Federal funds**

Notwithstanding any other provision of law, funds received by a Bureau-funded school under this chapter for education-related activities (not including funds for construction, maintenance, and facilities improvement or repair) shall not be considered Federal funds for the purposes of a matching funds requirement for any Federal program.

**(2) Limitation**

In considering an application from a Bureau-funded school for participation in a program or project that requires matching funds, the entity administering such program or project or awarding such grant shall not give positive or negative weight to such application based solely on the provisions of paragraph (1).

(Pub. L. 95-561, title XI, § 1130, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2039.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

This Act, referred to in subsec. (e)(2), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h)(1), was in the original "this title", meaning title XI (§1101 et seq.) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95-561, title XI, §1130, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3999, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2010, Pub. L. 95-561, title XI, §1130, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 100-297, title V, §5111, Apr. 28, 1988, 102 Stat. 376; Pub. L. 100-427, §7, Sept. 9, 1988, 102 Stat. 1605, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2011. Policy for Indian control of Indian education**

**(a) Facilitation of Indian control**

It shall be the policy of the United States acting through the Secretary, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

**(b) Consultation with tribes**

**(1) In general**

All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.



**(2) Requirements****(A) Definition of consultation**

In this subsection, the term “consultation” 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.

**(B) Discussion and joint deliberation**

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity—

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

**(C) Explanation by Secretary**

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 Secretary which is not consistent with the views of the interested parties described in subparagraph (B).

(Pub. L. 95-561, title XI, § 1131, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2043.)

## REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

## PRIOR PROVISIONS

A prior section 2011, Pub. L. 95-561, title XI, § 1131, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4001, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2011, Pub. L. 95-561, title XI, § 1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98-511, title V, § 507(b), Oct. 19, 1984, 98 Stat. 2396; Pub. L. 100-297, title V, §§ 5112(a), (b)(1), 5114, 5115, Apr. 28, 1988, 102 Stat. 377, 378, 380; Pub. L. 100-427, § 9(a)-(c), Sept. 9, 1988, 102 Stat. 1606, related to education personnel, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2012. Indian education personnel****(a) In general**

Chapter 51, subchapter III of chapter 53, and chapter 61 of title 5, relating to classification, pay and leave, respectively, and the sections of such title relating to the appointment, promotion, hours of work, and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (p) of this section).

**(b) Regulations**

Not later than 60 days after January 8, 2002, the Secretary shall prescribe regulations to carry out this section. Such regulations shall provide for—

(1) the establishment of education positions;

(2) the establishment of qualifications for educators and education personnel;

(3) the fixing of basic compensation for educators and education positions;

(4) the appointment of educators;

(5) the discharge of educators;

(6) the entitlement of educators to compensation;

(7) the payment of compensation to educators;

(8) the conditions of employment of educators;

(9) the leave system for educators;

(10) the annual leave and sick leave for educators;

(11) the length of the school year applicable to education positions described in subsection (a) of this section; and

(12) such additional matters as may be appropriate.

**(c) Qualifications of educators****(1) Requirements**

In prescribing regulations to govern the qualifications of educators, the Secretary shall require that—

(A) lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies;

(B) a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2) of this section, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (e)(2) of this section, a determination by a school board that such a person be hired shall be instituted by the supervisor of the school involved; and

(C) that<sup>1</sup> it shall not be a prerequisite to the employment of an individual in an education position at the local level that—

(i) such individual's name appear on a list maintained pursuant to subparagraph (A); or

(ii) such individual have applied at the national level for an education position.

**(2) Exception for certain temporary employment**

The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations if the Secretary determines that failure to do

<sup>1</sup> So in original. The word “that” probably should not appear.

so would result in that position remaining vacant.

**(d) Hiring of educators**

**(1) Requirements**

In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school; and

(II) in a case in which there are no qualified applicants available to fill a vacancy at a Bureau school, the supervisor may consult a list maintained pursuant to subsection (c)(1)(A) of this section;

(ii) each supervisor of a Bureau school shall be hired by the education line officer of the agency office of the Bureau for the jurisdiction in which the school is located;

(iii) each educator employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office; and

(iv) each education line officer and educator employed in the office of the Director of the Office shall be hired by the Director;

(B)(i) before an individual is employed in an education position in a Bureau school by the supervisor of the school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted; and

(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be so employed shall be instituted by the supervisor (or with respect to the position of supervisor, by the superintendent for education of the agency office);

(C)(i) before an individual is employed in an education position in an agency or area office of the Bureau, the appropriate agency school board shall be consulted; and

(ii) a determination by such school board, as evidenced by school board records, that such individual should or should not be employed shall be instituted by the superintendent for education of the agency office; and

(D) all employment decisions or actions be in compliance with all applicable Federal, State, and tribal laws.

**(2) Information regarding application at national level**

**(A) In general**

Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau.

**(B) Determination of accuracy**

If such individual is employed at the local level, such individual's name shall be immediately forwarded to the Secretary, who shall, as soon as practicable but in no event

in more than 30 days, ascertain the accuracy of the statement made by such individual pursuant to subparagraph (A).

**(C) False statements**

Notwithstanding subsection (e) of this section, if the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged.

**(D) Conditional appointment for national provision**

If the individual has applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of 90 days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii)<sup>2</sup> of this section to the position to which such individual was appointed.

**(3) Statutory construction**

Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards authority over, or control of, educators at Bureau-funded schools or the authority to issue management decisions.

**(4) Appeals**

**(A) By supervisor**

**(i) In general**

The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

**(ii) Action by board**

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.

**(iii) Overturning of determination**

After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board.

**(iv) Transmission of determination**

The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

**(B) By education line officer**

**(i) In general**

The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by

<sup>2</sup>So in original. Subsec. (c)(1)(A) of this section does not contain clauses.

the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

**(ii) Action by board**

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.

**(iii) Overturning of determination**

After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board.

**(iv) Transmission of determination**

The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

**(5) Other appeals**

**(A) In general**

The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

**(B) Action by board**

A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

**(C) Overturning of determination**

After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board.

**(D) Transmission of determination**

The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

**(e) Discharge and conditions of employment of educators**

**(1) Regulations**

In promulgating regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures shall be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons for the discharge and an opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) that each educator employed in a Bureau school shall be notified 30 days prior to the end of an academic year whether the employment contract of the individual will be renewed for the following year.

**(2) Procedures for discharge**

**(A) Determinations**

**(i) In general**

Except as provided in clause (iii), the supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school.

**(ii) Notification of board**

On giving notice to an educator of the supervisor's intention to discharge the educator, the supervisor shall immediately notify the local school board of the proposed discharge.

**(iii) Determination by board**

If the local school board determines that such educator shall not be discharged, that determination shall be followed by the supervisor.

**(B) Appeals**

**(i) In general**

The supervisor shall have the right to appeal to the education line officer of the appropriate agency office of the Bureau a determination by a local school board under subparagraph (A)(iii), as evidenced by school board records, not to discharge an educator.

**(ii) Decision of agency education line officer**

Upon hearing such an appeal, the agency education line officer may, for good cause, issue a decision overturning the determination of the local school board with respect to the employment of such individual.

**(iii) Form of decision**

The education line officer shall make the decision in writing and submit the decision to the local school board.

**(3) Recommendations of school boards for discharge**

Each local school board for a Bureau school shall have the right—

(A) to recommend to the supervisor that an educator employed in the school be discharged; and

(B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

**(f) Applicability of Indian preference laws**

**(1) Applicability**

**(A) In general**

Notwithstanding any provision of the Indian preference laws, such laws shall not

apply in the case of any personnel action carried out under this section with respect to an applicant or employee not entitled to an Indian preference if each tribal organization concerned—

(i) grants a written waiver of the application of those laws with respect to the personnel action; and

(ii) states that the waiver is necessary.

**(B) No effect on responsibility of Bureau**

This paragraph shall not be construed to relieve the responsibility of the Bureau to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).

**(2) Definitions**

In this subsection:

**(A) Indian preference laws**

**(i) In general**

The term “Indian preference laws” means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions.

**(ii) Exclusion**

The term “Indian preference laws” does not include section 450e(b) of this title.

**(B) Tribal organization**

The term “tribal organization” means—

(i) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of title 43); or

(ii) in connection with any personnel action referred to in this subsection, any local school board to which the governing body has delegated the authority to grant a waiver under this subsection with respect to a personnel action.

**(g) Compensation or annual salary**

**(1) In general**

**(A) Compensation for educators and education positions**

Except as otherwise provided in this section, the Secretary shall establish the compensation or annual salary rate for educators and education positions—

(i) at rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5 is applicable; or

(ii) on the basis of the Federal Wage System schedule in effect for the locality involved, and for the comparable positions, at the rates of compensation in effect for the senior executive service.

**(B) Compensation or salary for teachers and counselors**

**(i) In general**

The Secretary shall establish the rate of compensation, or annual salary rate, for

the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rate of compensation applicable (on January 8, 2002, and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.].

**(ii) Essential provisions**

The Secretary shall allow the local school boards involved authority to implement only the aspects of the Defense Department Overseas Teachers Pay and Personnel Practices Act pay provisions that are considered essential for recruitment and retention of teachers and counselors. Implementation of such provisions shall not be construed to require the implementation of that entire Act.

**(C) Rates for new hires**

**(i) In general**

Beginning with the first fiscal year following January 8, 2002, each local school board of a Bureau school may establish a rate of compensation or annual salary rate described in clause (ii) for teachers and counselors (including academic counselors) who are new hires at the school and who had not worked at the school, as of the first day of such fiscal year.

**(ii) Consistent rates**

The rates established under clause (i) shall be consistent with the rates paid for individuals in the same positions, with the same tenure and training, as the teachers and counselors, in any other school within whose boundaries the Bureau school is located.

**(iii) Decreases**

In a case in which the establishment of rates under clause (i) causes a reduction in compensation at a school from the rate of compensation that was in effect for the first fiscal year following January 8, 2002, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of January 8, 2002, by applying those rates at each contract renewal for the employees so that the reduction takes effect in three equal installments.

**(iv) Increases**

In a case in which adoption of rates under clause (i) leads to an increase in the payment of compensation from that which was in effect for the fiscal year following January 8, 2002, the school board may make such rates applicable at the next contract renewal such that—

(I) the increase occurs in its entirety;

or

(II) the increase is applied in three equal installments.

**(D) Use of regulations; continued employment of certain educators**

The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not—

(i) preclude the use of regulations and procedures used by the Bureau prior to April 28, 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; or

(ii) affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make an election under subsection (p)<sup>3</sup> as in effect on January 1, 1990.

**(2) Post differential rates**

**(A) In general**

The Secretary may pay a post differential rate, not to exceed 25 percent of the rate of compensation, for educators or education positions, on the basis of conditions of environment or work that warrant additional pay, as a recruitment and retention incentive.

**(B) Supervisor's authority**

**(i) In general**

Except as provided in clause (ii), on 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 differential rates under subparagraph (A).

**(ii) Exception**

The Secretary shall disapprove, or approve with a modification, a request for authorization to provide a post differential rate if the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that the rate should be disapproved or decreased because the disparity of compensation between the appropriate educators or positions in the Bureau school, and the comparable educators or positions at the nearest public school, is—

(I)(aa) at least 5 percent; or

(bb) less than 5 percent; and

(II) does not affect the recruitment or retention of employees at the school.

**(iii) Approval of requests**

A request made under clause (i) shall be considered to be approved at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time the request is approved, approved with a modification, or disapproved by the Secretary.

**(iv) Discontinuation of or decrease in rates**

The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential rate provided for under this paragraph at the beginning of an academic year if—

(I) the local school board requests that such differential be discontinued or decreased; or

(II) the Secretary or the supervisor, respectively, 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.

**(v) Reports**

On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and approvals of authorization made under this paragraph during the previous year and listing the positions receiving post differential rates under contracts entered into under those authorizations.

**(h) Liquidation of remaining leave upon termination**

Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual covered by this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, except that leave earned or accrued under regulations promulgated pursuant to subsection (b)(10) of this section shall not be so liquidated.

**(i) Transfer of remaining sick leave upon transfer, promotion, or reemployment**

In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations promulgated pursuant to subsection (b)(10) of this section shall be transferred to such person's credit in the employing agency on an adjusted basis in accordance with regulations which shall be promulgated by the Office of Personnel Management.

**(j) Ineligibility for employment of voluntarily terminated educators**

An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

**(k) Dual compensation**

In the case of any educator employed in an education position described in subsection (l)(1)(A)<sup>4</sup> of this section who—

(1) is employed at the close of a school year;

(2) agrees in writing to serve in such position for the next school year; and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in section 5533 of title 5, relating to dual compensation,

shall not apply to such educator by reason of any such employment during a recess period for any receipt of additional compensation.

<sup>3</sup> See References in Text note below.

<sup>4</sup> So in original. Subsec. (l)(1) of this section does not contain subpars.

**(l) Voluntary services****(1) In general**

Notwithstanding section 1342 of title 31, the Secretary may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools.

**(2) Federal employee protection**

Nothing in this chapter requires Federal employees to work without compensation or allows the use of volunteer services to displace or replace Federal employees.

**(3) Federal status**

An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5 and chapter 171 of title 28.

**(m) Proration of pay****(1) Election of employee****(A) In general**

Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school year over the entire 12-month period.

**(B) Election**

Each educator employed for the academic school year shall annually elect to be paid on a 12-month basis or for those months while school is in session.

**(C) No loss of pay or benefits**

No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

**(2) Change of election**

During the course of such year the employee may change election once.

**(3) Lump sum payment**

That portion of the employee's pay which would be paid between academic school years may be paid in a lump sum at the election of the employee.

**(4) Nonapplicability**

This subsection applies to those individuals employed under the provisions of this section or title 5.

**(5) Definitions**

For purposes of this subsection, the terms "educator" and "education position" have the meanings contained in paragraphs (1) and (2) of subsection (o) of this section.

**(n) Extracurricular activities****(1) Stipend****(A) In general**

Notwithstanding any other provision of law, the Secretary may provide, for each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off.

**(B) Provision to employees**

Any employee of the Bureau who performs additional activities to provide services to

students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend.

**(C) Nature of stipend**

Such stipend shall be paid as a supplement to the employee's base pay.

**(2) Election not to receive stipend**

If an employee elects not to be compensated through the stipend established by this subsection, the appropriate provisions of title 5 shall apply.

**(3) Applicability of subsection**

This subsection applies to all Bureau employees, regardless of whether the employee is employed under this section or title 5.

**(o) Definitions**

In this section:

**(1) Education position**

The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A)(i) are performed on a school year basis principally in a Bureau school; and

(ii) involve—

(I) classroom or other instruction or the supervision or direction of classroom or other instruction;

(II) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

(III) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(IV) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position for agency superintendent for education.

**(2) Educator**

The term "educator" means an individual whose services are required, or who is employed, in an education position.

**(p) Covered individuals; election**

This section shall apply with respect to any educator hired after November 1, 1979 (and to any educator who elected for coverage under that provision after November 1, 1979) and to the position in which such individual is employed. The enactment of this section shall not affect the continued employment of an individual employed on October 31, 1979, in an education position, or such person's right to receive the compensation attached to such position.

**(q) Furlough without consent****(1) In general**

An educator who was employed in an education position on October 31, 1979, who was el-

igible to make an election under subsection (p)<sup>5</sup> at that time, and who did not make the election under such subsection, may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5,<sup>6</sup> 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 education line officer 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 an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 2009(b)<sup>7</sup> of this title; and

(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue one or more educators in pay status if—

(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

(ii) such educators are selected based upon such educator's qualifications after public notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, non-supervisory, or other status of the educators who apply.

## (2) Appeals

The supervisor of a Bureau school may appeal to the appropriate agency education line officer 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 education line officer may, for good cause, approve the determination of the supervisor. The educational line officer 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.

## (r) Stipends

The Secretary is authorized to provide annual stipends to teachers who become certified by the National Board of Professional Teaching Standards, the National Council on Teacher Quality,

or other nationally recognized certification or credentialing organizations.

(Pub. L. 95-561, title XI, § 1132, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2044.)

### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (g)(1)(A)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

The Defense Department Overseas Teachers Pay and Personnel Practices Act, referred to in subsec. (g)(1)(B), is Pub. L. 86-91, July 17, 1959, 73 Stat. 213, as amended, which is classified generally to chapter 25 (§ 901 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 901 of Title 20 and Tables.

Subsection (p), referred to in subsecs. (g)(1)(D)(ii) and (q)(1), probably should be a reference to subsec. (o) of prior section 1131 of Pub. L. 95-561 which was classified to section 2011 of this title prior to the general amendment of this chapter by Pub. L. 103-382. See Prior Provisions note set out under section 2011 of this title.

### PRIOR PROVISIONS

A prior section 2012, Pub. L. 95-561, title XI, § 1132, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4002; amended Pub. L. 105-362, title VIII, § 801(c)(3), Nov. 10, 1998, 112 Stat. 3288, related to education personnel, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2012, Pub. L. 95-561, title XI, § 1132, Nov. 1, 1978, 92 Stat. 2326; Pub. L. 96-46, § 2(b)(9), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, § 508, Oct. 19, 1984, 98 Stat. 2397, related to establishment of a computerized management information system, prior to the general amendment of this chapter by Pub. L. 103-382.

### ADJUSTMENTS TO RATES OF BASIC COMPENSATION OR ANNUAL SALARY RATES FOR EDUCATION POSITIONS

Pub. L. 104-208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193, provided in part: "That in fiscal year 1997 and thereafter, notwithstanding the provisions of [former] 25 U.S.C. 2012(h)(1)(A) and (B) [see now 25 U.S.C. 2012(g)(1)(A), (B)], upon the recommendation of either (i) a local school board and school supervisor for an education position in a Bureau of Indian Affairs operated school, or (ii) an Agency school board and education line officer for an Agency education position, the Secretary [of the Interior] shall establish adjustments to the rates of basic compensation or annual salary rates established under [former] 25 U.S.C. 2012(h)(1)(A) and (B) for education positions at the school or the Agency, at a level not less than that for comparable positions in the nearest public school district, and the adjustment shall be deemed to be a change to basic pay and shall not be subject to collective bargaining: *Provided further*, That any reduction to rates of basic compensation or annual salary rates below the rates established under [former] 25 U.S.C. 2012(h)(1)(A) and (B) shall apply only to educators appointed after June 30, 1997, and shall not affect the right of an individual employed on June 30, 1997, in an education position, to receive the compensation attached to such position under [former] 25 U.S.C. 2012(h)(1)(A) and (B) so long as the individual remains in the same position at the same school".

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321-156, 1321-171; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105-83, title I, Nov. 14, 1997, 111 Stat. 1555, provided in part: "That beginning in fiscal year 1998 and thereafter and notwithstanding [former] 25 U.S.C. 2012(h)(1)(B) [see now 25 U.S.C. 2012(g)(1)(B)], when the rates of basic compensation for teachers and counselors at Bureau-operated schools are established at the rates

<sup>5</sup> See References in Text note below.

<sup>6</sup> So in original. The comma probably should be a closing parenthesis.

<sup>7</sup> So in original. Probably should be section "2010(b)".

of basic compensation applicable to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.], such rates shall become effective with the start of the next academic year following the issuance of the Department of Defense salary schedule and shall not be effected retroactively”.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193.

### § 2013. Computerized management information system

#### (a) In general

Not later than 12 months after January 8, 2002, the Secretary shall update the computerized management information system within the Office. The information to be updated shall include information regarding—

- (1) student enrollment;
- (2) curricula;
- (3) staffing;
- (4) facilities;
- (5) community demographics;
- (6) student assessment information;
- (7) information on the administrative and program costs attributable to each Bureau program, divided into discrete elements;
- (8) relevant reports;
- (9) personnel records;
- (10) finance and payroll; and
- (11) such other items as the Secretary determines to be appropriate.

#### (b) Implementation of system

Not later than July 1, 2003, the Secretary shall complete the implementation of the updated computerized management information system at each Bureau field office and Bureau-funded school.

(Pub. L. 95-561, title XI, §1133, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2055.)

#### PRIOR PROVISIONS

A prior section 2013, Pub. L. 95-561, title XI, §1133, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010, related to management information system, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2013, Pub. L. 95-561, title XI, §1133, Nov. 1, 1978, 92 Stat. 2327, related to Bureau education policies, practices, and procedures, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2014. Recruitment of Indian educators

The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

(Pub. L. 95-561, title XI, §1134, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2055.)

#### PRIOR PROVISIONS

A prior section 2014, Pub. L. 95-561, title XI, §1134, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010, related to Bureau education policies, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2014, Pub. L. 95-561, title XI, §1134, Nov. 1, 1978, 92 Stat. 2327, related to uniform edu-

cation procedures and practices by Bureau divisions, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2015. Annual report; audits

#### (a) Annual reports

The Secretary shall submit to each appropriate committee of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools, a detailed annual report on the state of education within the Bureau, and any problems encountered in Indian education during the period covered by the report, that includes—

- (1) suggestions for the improvement of the Bureau educational system and for increasing tribal or local Indian control of such system; and
- (2) information on the status of tribally controlled community colleges.

#### (b) Budget request

The annual budget request for the education programs of the Bureau, as submitted as part of the President's next annual budget request under section 1105 of title 31 shall include the plans required by sections 2001(c), 2002(c), and 2004(c)<sup>1</sup> of this title.

#### (c) Financial and compliance audits

The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits, based upon the extent to which a school described in subsection (a) of this section has complied with the local financial plan under section 2010 of this title, are conducted of each Bureau-operated school at least once every 3 years.

#### (d) Administrative evaluation of schools

The Director shall, at least once every 3 to 5 years, conduct a comprehensive evaluation of Bureau-operated schools. Such evaluation shall be in addition to any other program review or evaluation that may be required under Federal law.

(Pub. L. 95-561, title XI, §1135, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2056.)

#### PRIOR PROVISIONS

A prior section 2015, Pub. L. 95-561, title XI, §1135, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010, related to uniform education procedures and practices, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2015, Pub. L. 95-561, title XI, §1135, Nov. 1, 1978, 92 Stat. 2327, related to recruitment policy for Indian educators and promotion plan for Bureau employees, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2016. Rights of Indian students

The Secretary shall prescribe such rules and regulations as are necessary to ensure the constitutional and civil rights of Indian students attending Bureau-funded schools, including such students' rights to—

- (1) privacy under the laws of the United States;
- (2) freedom of religion and expression; and
- (3) due process in connection with disciplinary actions, suspensions, and expulsions.

<sup>1</sup> So in original. Probably should be “2005(c)”.



(Pub. L. 95-561, title XI, §1136, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2056.)

#### PRIOR PROVISIONS

A prior section 2016, Pub. L. 95-561, title XI, §1136, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010, related to recruitment of Indian educators, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2014 of this title.

Another prior section 2016, Pub. L. 95-561, title XI, §1136, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 97-375, title II, §208(b), Dec. 21, 1982, 96 Stat. 1825; Pub. L. 98-511, title V, §509, Oct. 19, 1984, 98 Stat. 2397; Pub. L. 99-89, §7, Aug. 15, 1985, 99 Stat. 383, related to annual reports to Congressional committees and audits, prior to the general amendment of this chapter by Pub. L. 103-382.

A prior section 2016a, Pub. L. 100-297, title VI, §6210, Apr. 28, 1988, 102 Stat. 427, directed Assistant Secretary of the Interior for Bureau of Indian Affairs to submit to appropriate committees of Congress, the President, and the Secretary by September 30 of every other year a report on education of Indian children, prior to repeal by Pub. L. 100-427, §27, Sept. 9, 1988, 102 Stat. 1614.

### § 2017. Regulations

#### (a) Promulgation

##### (1) In general

The Secretary may promulgate only such regulations—

(A) as are necessary to ensure compliance with the specific provisions of this chapter; and

(B) as the Secretary is authorized to promulgate pursuant to section 2510 of this title.<sup>1</sup>

##### (2) Publication

In promulgating the regulations, the Secretary shall—

(A) publish proposed regulations in the Federal Register; and

(B) provide a period of not less than 120 days for public comment and consultation on the regulations.

##### (3) Citation

The regulations shall contain, immediately following each regulatory section, a citation to any statutory provision providing authority to promulgate such regulatory section.

#### (b) Miscellaneous

The provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this Act and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.

(Pub. L. 95-561, title XI, §1137, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2056.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

#### PRIOR PROVISIONS

A prior section 2017, Pub. L. 95-561, title XI, §1137, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108

Stat. 4011; amended Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 105-362, title VIII, §801(c)(4), Nov. 10, 1998, 112 Stat. 3288, related to biennial report, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2015 of this title.

Another prior section 2017, Pub. L. 95-561, title XI, §1137, Nov. 1, 1978, 92 Stat. 2327, related to constitutional and civil rights of Indian children attending Bureau schools, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2018. Regional meetings and negotiated rulemaking

#### (a) Regional meetings

Prior to publishing any proposed regulations under subsection (b)(1) of this section, and prior to establishing the negotiated rulemaking committee under subsection (b)(3) of this section, the Secretary shall convene regional meetings to consult with personnel of the Office of Indian Education Programs, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by Bureau-funded schools to provide guidance to the Secretary on the content of regulations authorized to be promulgated under this chapter and the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

#### (b) Negotiated rulemaking

##### (1) In general

Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary shall promulgate regulations authorized under subsection (a) of this section and under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], in accordance with the negotiated rulemaking procedures provided for under subchapter III of chapter 5 of title 5, and shall publish final regulations in the Federal Register.

##### (2) Notification to Congress

If draft regulations implementing this chapter and the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] are not promulgated in final form within 18 months after January 8, 2002, the Secretary shall notify the appropriate committees of Congress of which draft regulations were not promulgated in final form by the deadline and the reason such final regulations were not promulgated.

##### (3) Rulemaking committee

The Secretary shall establish a negotiated rulemaking committee to carry out this subsection. In establishing such committee, the Secretary shall—

(A) apply the procedures provided for under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States;

(B) ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by Bureau-funded schools;

(C) select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally operated schools;

(D) ensure, to the maximum extent possible, that the tribal representative member-

<sup>1</sup> So in original. Probably should be section "2509".

ship on the committee reflects the proportionate share of students from tribes served by the Bureau-funded school system; and

(E) comply with the Federal Advisory Committee Act (5 U.S.C. App.).

**(4) Special rule**

The Secretary shall carry out this section using the general administrative funds of the Department of the Interior. In accordance with subchapter III of chapter 5 of title 5 and section 7(d) of the Federal Advisory Committee Act, payment of costs associated with negotiated rulemaking shall include the reasonable expenses of committee members.

**(c) Application of section**

**(1) Supremacy of provisions**

The provisions of this section shall supersede any conflicting regulations in effect on the day before the date of enactment of this chapter, and the Secretary may repeal any regulation that is inconsistent with the provisions of this chapter.

**(2) Modifications**

The Secretary may modify regulations promulgated under this section or the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.], only in accordance with this section.

(Pub. L. 95-561, title XI, §1138, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2057.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (a), (b)(1), (2), and (c)(2), is part B (§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(3)(E), (4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of enactment of this chapter, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 107-110, which amended this chapter generally and was approved Jan. 8, 2002.

PRIOR PROVISIONS

A prior section 2018, Pub. L. 95-561, title XI, §1138, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011, related to rights of Indian students, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2016 of this title.

Another prior section 2018, Pub. L. 95-561, title XI, §1138, Nov. 1, 1978, 92 Stat. 2327; Pub. L. 98-511, title V, §510, Oct. 19, 1984, 98 Stat. 2397, related to regulations implementing administrative provisions, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2019. Early childhood development program**

**(a) In general**

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.

**(b) Amount of grants**

**(1) In general**

The total amount of the grants provided under subsection (a) of this section with re-

spect 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 (g) of this section for such fiscal year (less amounts provided under subsection (f) of this section) 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) of this section;

(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) Limitation**

No grant may be provided under subsection (a) of this section—

(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) Application**

**(1) In general**

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

**(2) Contents**

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

**(d) Requirement of programs funded**

The early childhood development programs that are funded by grants provided under subsection (a) of this section—

(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) family literacy services;
- (E) educational testing; and
- (F) 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) Coordination of family literacy programs**

Family literacy programs operated under this section and other family literacy programs operated by the Bureau of Indian Affairs shall be coordinated with family literacy programs for Indian children under part B of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6361 et seq.] in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving Indians.

**(f) Administrative costs**

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

**(g) Authorization of appropriations**

There are authorized to be appropriated to carry out this section such sums as may be necessary.

(Pub. L. 95-561, title XI, § 1139, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2058.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (e), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Part B of title I of the Act is classified generally to part B (§ 6361 et seq.) of subchapter I of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2019, Pub. L. 95-561, title XI, § 1139, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4011, related to promulgation of regulations, prior to repeal by Pub. L. 105-362, title VIII, § 801(c)(5), Nov. 10, 1998, 112 Stat. 3288. See section 2017 of this title.

Another prior section 2019, Pub. L. 95-561, title XI, § 1139, Nov. 1, 1978, 92 Stat. 2328; Pub. L. 100-297, title V, § 5117, Apr. 28, 1988, 102 Stat. 382; Pub. L. 100-427, § 1(c)(1), (2), Sept. 9, 1988, 102 Stat. 1603; Pub. L. 101-301, § 5(a), May 24, 1990, 104 Stat. 207, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2020. Tribal departments or divisions of education**

**(a) In general**

Subject to the availability of appropriations, the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

**(b) Applications**

For a tribe to be eligible to receive a grant under this section, the governing body of the

tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

**(c) Diversity**

The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

**(d) Use**

Tribes that receive grants under this section shall use the funds made available through the grants—

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

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

(3) to 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.

**(e) Priorities**

In making grants under this section, the Secretary shall give priority to any application that—

(1) includes—

(A) assurances that the applicant serves three or more separate Bureau-funded schools; and

(B) assurances from 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;

(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

(3) provides a plan and schedule that—

(A) provides for—

(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office associated with the tribe, to the extent the assets and functions relate to education; and

(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to 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.

**(f) Time period of grant**

Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

**(g) Terms, conditions, or requirements**

A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 450h(a) of this title that are in effect on the date that the tribal governing body submits the application for the grant under subsection (b) of this section. 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.

**(h) Authorization of appropriations**

There are authorized to be appropriated to carry out this section \$2,000,000.

(Pub. L. 95-561, title XI, §1140, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2059.)

PRIOR PROVISIONS

A prior section 2020, Pub. L. 95-561, title XI, §1140, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4011, related to voluntary services, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2012 of this title.

Another prior section 2020, Pub. L. 95-561, title XI, §1140, as added Pub. L. 98-511, title V, §511, Oct. 19, 1984, 98 Stat. 2397; amended Pub. L. 99-89, §8, Aug. 15, 1985, 99 Stat. 383, related to voluntary services, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2021. Definitions**

For the purposes of this chapter, unless otherwise specified:

**(1) Agency school board**

The term “agency school board” means a body—

- (A) the members of which are appointed by all of the school boards of the schools located within an agency, including schools operated under contract or grant; and
- (B) the number of such members is determined by the Secretary, in consultation with the affected tribes;

except that, in agencies serving a single school, the school board of such school shall fulfill these duties, and in agencies having schools or a school operated under contract or grant, one such member at least shall be from such a school.

**(2) Bureau**

The term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior.

**(3) Bureau-funded school**

The term “Bureau-funded school” means—

- (A) a Bureau school;
- (B) a contract or grant school; or
- (C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

**(4) Bureau school**

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) Complementary educational facilities**

The term “complementary educational facilities” means educational program functional spaces such as libraries, gymnasiums, and cafeterias.

**(6) Contract or grant school**

The term “contract or grant school” means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 450f, 450h(a), or 458d of this title, or under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

**(7) Director**

The term “Director” means the Director of the Office of Indian Education Programs.

**(8) Education line officer**

The term “education line officer” means a member of the education personnel under the supervision of the Director of the Office, whether located in a central, area, or agency office.

**(9) Family literacy services**

The term “family literacy services” has the meaning given that term in section 7801<sup>1</sup> of title 20.

**(10) Financial plan**

The term “financial plan” means a plan of services provided by each Bureau school.

**(11) Indian organization**

The term “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized tribes.

**(12) Inherently Federal functions**

The term “inherently Federal functions” means functions and responsibilities which, under section 2006(c) of this title, are non-contractable, including—

- (A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;
- (B) the administration of Federal personnel laws for Federal employees;
- (C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;
- (D) the conducting of administrative hearings and deciding of administrative appeals;
- (E) the determination of the Secretary’s views and recommendations concerning ad-

<sup>1</sup> See References in Text note below.

ministrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;

(F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

(G) reporting to Congress and the President;

(H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and

(I) the nondelegable statutory duties of the Secretary relating to trust resources.

#### **(13) Local educational agency**

The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, or independent or other school district located within a State, and includes any State agency that directly operates and maintains facilities for providing free public education.

#### **(14) Local school board**

The term "local school board", when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that, for a school serving a substantial number of students from different tribes—

(A) the members of the body shall be appointed by the tribal governing bodies of the tribes affected; and

(B) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

#### **(15) Office**

The term "Office" means the Office of Indian Education Programs within the Bureau.

#### **(16) Regulation**

##### **(A) In general**

The term "regulation" means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this Act.

##### **(B) Rule of construction**

Nothing in subparagraph (A) or any other provision of this chapter shall be construed to prohibit the Secretary from issuing guidance, internal directives, or other documents similar to the documents found in the Indian Affairs Manual of the Bureau of Indian Affairs.

#### **(17) Secretary**

The term "Secretary" means the Secretary of the Interior.

#### **(18) Supervisor**

The term "supervisor" means the individual in the position of ultimate authority at a Bureau school.

#### **(19) Tribal governing body**

The term "tribal governing body" means, with respect to any school, the tribal govern-

ing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

#### **(20) Tribe**

The term "tribe" means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Regional Corporation or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 95-561, title XI, § 1141, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2061.)

#### REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in pars. (3)(C) and (6), is part B (§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

Section 7801 of title 20, referred to in par. (9), was in the original "section 8101 of the Elementary and Secondary Education Act of 1965", meaning section 8101 of Pub. L. 89-10, which was translated as if it referred to section 9101 of that Act to reflect the probable intent of Congress, because section 8101 was repealed by Pub. L. 107-110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986, and section 9101, as added by Pub. L. 107-110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1956, defines "family literacy services".

This Act, referred to in par. (16)(A), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in par. (16)(B), was in the original "this title", meaning title XI (§1101 et seq.) of Pub. L. 95-561, as amended, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in par. (20), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

#### PRIOR PROVISIONS

A prior section 2021, Pub. L. 95-561, title XI, § 1141, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2012 of this title.

Another prior section 2021, Pub. L. 95-561, title XI, § 1140A, formerly § 1141, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398; renumbered § 1140A and amended Pub. L. 99-89, § 9(a)(1), (b), Aug. 15, 1985, 99 Stat. 383, related to proration of pay, prior to the general amendment of this chapter by Pub. L. 103-382.

A prior section 2022, Pub. L. 95-561, title XI, § 1142, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 4012, related to extracurricular activities, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2012 of this title.

Another prior section 2022 and prior sections 2022a and 2022b were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2022, Pub. L. 95-561, title XI, § 1140B, formerly § 1142, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984,

98 Stat. 2398; renumbered §1140B, and amended Pub. L. 99-89, §9(a)(1), (c), Aug. 15, 1985, 99 Stat. 383, related to extracurricular activities.

Section 2022a, Pub. L. 95-561, title XI, §1141, as added Pub. L. 100-297, title V, §5116(2), Apr. 28, 1988, 102 Stat. 381, related to early childhood development program.

Section 2022b, Pub. L. 95-561, title XI, §1142, as added Pub. L. 100-297, title V, §5119, Apr. 28, 1988, 102 Stat. 383, related to tribal departments of education.

A prior section 2023, Pub. L. 95-561, title XI, §1143, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4012; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1607(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335, related to early childhood development program, prior to the general amendment of this chapter by Pub. L. 107-110. See section 2019 of this title.

Another prior section 2023, Pub. L. 95-561, title XI, §1143, as added Pub. L. 98-511, title V, §512, Oct. 19, 1984, 98 Stat. 2398, related to employee housing, rental rates, and waiver of rentals during non-session periods and non-pay status, prior to repeal by Pub. L. 99-89, §9(a)(2), Aug. 15, 1985, 99 Stat. 383.

Prior sections 2024 to 2026 were omitted in the general amendment of this chapter by Pub. L. 107-110.

Section 2024, Pub. L. 95-561, title XI, §1144, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4013; amended Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828, related to tribal departments of education. See section 2020 of this title.

Section 2025, Pub. L. 95-561, title XI, §1145, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015, related to payments to grantees.

Section 2026, Pub. L. 95-561, title XI, §1146, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4015; amended Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-335, defined terms. See section 2021 of this title.

## CHAPTER 23—DEVELOPMENT OF TRIBAL MINERAL RESOURCES

Sec.	
2101.	Definitions.
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2104.	Secretary's review of prior Minerals Agreements.
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2108.	Tribal right to develop mineral resources.

### § 2101. Definitions

For the purposes of this chapter, the term—

(1) "Indian" means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;

(2) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; and

(3) "Secretary" means the Secretary of the Interior.

(Pub. L. 97-382, §2, Dec. 22, 1982, 96 Stat. 1938.)

#### SHORT TITLE

Section 1 of Pub. L. 97-382 provided: "That this Act [enacting this chapter] may be cited as the 'Indian Mineral Development Act of 1982'."

### § 2102. Minerals Agreements

#### (a) Authorization for tribes; approval by Secretary

Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Minerals Agreement") providing for the exploration for, or extraction, processing, or other development of, oil, gas, uranium, coal, geothermal, or other energy or nonenergy mineral resources (hereinafter referred to as "mineral resources") in which such Indian tribe owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such mineral resources.

#### (b) Inclusion of individual holdings; approval by parties and Secretary

Any Indian owning a beneficial or restricted interest in mineral resources may include such resources in a tribal Minerals Agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

(Pub. L. 97-382, §3, Dec. 22, 1982, 96 Stat. 1938.)

### § 2103. Secretary's determination on Minerals Agreements

#### (a) Time; enforcement

The Secretary shall approve or disapprove any Minerals Agreement submitted to him for approval within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 4332(2)(C) of title 42 or any other requirement of Federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28.

#### (b) Factors for consideration; extent of required study

In approving or disapproving a Minerals Agreement, the Secretary shall determine if it is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social, and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement: *Provided*, That the Secretary shall not be required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a Minerals Agreement apart from that which may be required under section 4332(2)(C) of title 42.

#### (c) Prior notice of proposed finding; privileged information

Not later than thirty days prior to formal approval or disapproval of any Minerals Agreement, the Secretary shall provide written findings forming the basis of his intent to approve or disapprove such agreement to the affected Indian tribe. Notwithstanding any other law, such