

SUBCHAPTER E—EDUCATION

PART 30—ADEQUATE YEARLY PROGRESS

Sec.

- 30.100 What is the purpose of this part?
30.101 What definitions apply to terms in this part?

Subpart A—Defining Adequate Yearly Progress

- 30.102 Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?
30.103 Did the Committee consider a separate Bureau definition of AYP?
30.104 What is the Secretary's definition of AYP?

ALTERNATIVE DEFINITION OF AYP

- 30.105 Can a tribal governing body or school board use another definition of AYP?
30.106 How does a tribal governing body or school board propose an alternative definition of AYP?
30.107 What must a tribal governing body or school board include in its alternative definition of AYP?
30.108 May an alternative definition of AYP use parts of the Secretary's definition?

TECHNICAL ASSISTANCE

- 30.109 Will the Secretary provide assistance in developing an alternative AYP definition?
30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?
30.111 When should the tribal governing body or school board request technical assistance?

APPROVAL OF ALTERNATIVE DEFINITION

- 30.113 How does the Secretary review and approve an alternative definition of AYP?

Subpart B—Assessing Adequate Yearly Progress

- 30.114 Which students must be assessed?
30.115 Which students' performance data must be included for purposes of AYP?
30.116 If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?

Subpart C—Failure To Make Adequate Yearly Progress

- 30.117 What happens if a Bureau-funded school fails to make AYP?
30.118 May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?
30.119 Who is responsible for implementing required remedial actions at a Bureau-funded school identified for school improvement, corrective action or restructuring?
30.120 Are Bureau-funded schools exempt from school choice and supplemental services when identified for school improvement, corrective action, and restructuring?
30.121 What funds are available to assist schools identified for school improvement, corrective action, or restructuring?
30.122 Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?
30.123 What is the Bureau's role in assisting Bureau-funded schools to make AYP?
30.124 Will the Department of Education provide funds for schools that fail to meet AYP?
30.125 What happens if a State refuses to allow a school access to the State assessment?

Subpart D—Responsibilities and Accountability

- 30.126 What is required for the Bureau to meet its reporting responsibilities?
30.150 Information Collection.

AUTHORITY: Public Law 107-110, 115 Stat. 1425.

SOURCE: 70 FR 22200, Apr. 28, 2005, unless otherwise noted.

§ 30.100 What is the purpose of this part?

This part establishes for schools receiving Bureau funding a definition of "Adequate Yearly Progress (AYP)." Nothing in this part:

- (a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;
(b) Affects in any way the sovereign rights of tribes; or
(c) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

Bureau of Indian Affairs, Interior

§ 30.105

§ 30.101 What definitions apply to terms in this part?

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

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

Department means the Department of the Interior.

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

School means a school funded by the Bureau of Indian Affairs.

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

Secretaries means the Secretary of the Interior and the Secretary of Education.

Subpart A—Defining Adequate Yearly Progress

§ 30.102 Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?

Yes, the Act requires the Secretary to develop a definition of AYP through negotiated rulemaking. In developing the Secretary's definition of AYP, the No Child Left Behind Negotiated Rulemaking Committee (Committee) considered a variety of options. In choosing the definition in § 30.104, the Committee in no way intended to diminish the Secretary's trust responsibility for Indian education or any statutory rights in law. Nothing in this part:

(a) Affects in any way the sovereign rights of tribes; or

(b) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

§ 30.103 Did the Committee consider a separate Bureau definition of AYP?

Yes, the Committee considered having the Bureau of Indian Affairs develop a separate Bureau definition of AYP. For a variety of reasons, the Committee reached consensus on the definition in § 30.104. This definition is in no way intended to diminish the

United States' trust responsibility for Indian education nor is it intended to give States authority over Bureau-funded schools.

§ 30.104 What is the Secretary's definition of AYP?

The Secretary defines AYP as follows. The definition meets the requirements in 20 U.S.C. 6311(b).

(a) Effective in the 2005–2006 school year, the academic content and student achievement standards, assessments, and the definition of AYP are those of the State where the school is located, unless an alternative definition of AYP is proposed by the tribal governing body or school board and approved by the Secretary.

(1) If the geographic boundaries of the school include more than one State, the tribal governing body or school board may choose the State definition it desires. Such decision shall be communicated to the Secretary in writing.

(2) This section does not mean that the school is under the jurisdiction of the State for any purpose, rather a reference to the State is solely for the purpose of using the State's assessment, academic content and student achievement standards, and definition of AYP.

(3) The use of the State's definition of AYP does not diminish or alter the Federal Government's trust responsibility for Indian education.

(b) School boards or tribal governing bodies may seek a waiver that may include developing their own definition of AYP, or adopting or modifying an existing definition of AYP that has been accepted by the Department of Education. The Secretary is committed to providing technical assistance to a school, or a group of schools, to develop an alternative definition of AYP.

ALTERNATIVE DEFINITION OF AYP

§ 30.105 May a tribal governing body or school board use another definition of AYP?

Yes. A tribal governing body or school board may waive all or part of the Secretary's definition of academic content and achievement standards, assessments, and AYP. However, unless an alternative definition is approved

§ 30.106

25 CFR Ch. I (4–1–11 Edition)

under § 30.113, the school must use the Secretary's definition of academic content and achievement standards, assessments, and AYP.

§ 30.106 How does a tribal governing body or school board propose an alternative definition of AYP?

If a tribal governing body or school board decides that the definition of AYP in § 30.104 is inappropriate, it may decide to waive all or part of the definition. Within 60 days of the decision to waive, the tribal governing body or school board must submit to the Secretary a proposal for an alternative definition of AYP. The proposal must meet the requirements of 20 U.S.C. 6311(b) and 34 CFR 200.13–200.20, taking into account the unique circumstances and needs of the school or schools and the students served.

§ 30.107 What must a tribal governing body or school board include in its alternative definition of AYP?

(a) An alternative definition of AYP must meet the requirements of 20 U.S.C. 6311(b)(2) of the Act and 34 CFR 200.13–200.20, taking into account the unique circumstances and needs of the school or schools and the students served.

(b) In accordance with 20 U.S.C. 6311(b) of the Act and 34 CFR 200.13–200.20, an alternative definition of AYP must:

- (1) Apply the same high standards of academic achievement to all students;
- (2) Be statistically valid and reliable;
- (3) Result in continuous and substantial academic improvement for all students;
- (4) Measure the progress of all students based on a high-quality assessment system that includes, at a minimum, academic assessments in mathematics and reading or language arts;
- (5) Measure progress separately for reading or language arts and for mathematics;
- (6) Unless disaggregation of data cannot yield statistically reliable information or reveals personally identifiable information, apply the same annual measurable objectives to each of the following:

(i) The achievement of all students; and

(ii) The achievement of economically disadvantaged students, students from major racial or ethnic groups, students with disabilities, and students with limited English proficiency;

(7) Establish a starting point;

(8) Create a timeline to ensure that all students are proficient by the 2013–2014 school year;

(9) Establish annual measurable objectives;

(10) Establish intermediate goals;

(11) Include at least one other academic indicator which, for any school with a 12th grade, must be graduation rate; and

(12) Ensure that at least 95 percent of the students enrolled in each group under § 30.107(b)(6) are assessed.

(c) If a Bureau-funded school's alternative definition of AYP does not use a State's academic content and student achievement standards and academic assessments, the school must include with its alternative definition the academic standards and assessment it proposes to use. These standards and assessments must meet the requirements in 20 U.S.C. 6311(b) and 34 CFR 200.1–200.9.

§ 30.108 May an alternative definition of AYP use parts of the Secretary's definition?

Yes, a tribal governing body or school board may take part of the Secretary's definition and propose to waive the remainder. The proposed alternative definition of AYP must, however, include both the parts of the Secretary's AYP definition the tribal governing body or school board is adopting and those parts the tribal governing body or school board is proposing to change.

TECHNICAL ASSISTANCE

§ 30.109 Will the Secretary provide assistance in developing an alternative AYP definition?

Yes, the Secretary through the Bureau, shall provide technical assistance either directly or through contract to the tribal governing body or the school board in developing an alternative AYP definition. A tribal governing body or school board needing assistance must submit a request to the Director of

OIEP under § 30.110. In providing assistance, the Secretary may consult with the Secretary of Education and may use funds supplied by the Secretary of Education in accordance with 20 U.S.C. 7301.

§ 30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?

(a) The tribal governing body or school board requesting technical assistance to develop an alternative definition of AYP must submit a written request to the Director of OIEP, specifying the form of assistance it requires.

(b) The Director of OIEP must acknowledge receipt of the request for technical assistance within 10 days of receiving the request.

(c) No later than 30 days after receiving the original request, the Director of OIEP will identify a point of contact. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.

§ 30.111 When should the tribal governing body or school board request technical assistance?

In order to maximize the time the tribal governing body or school board has to develop an alternative definition of AYP and to provide full opportunity for technical assistance, the tribal governing body or school board should request technical assistance before formally notifying the Secretary of its intention to waive the Secretary's definition of AYP.

APPROVAL OF ALTERNATIVE DEFINITION

§ 30.113 How does the Secretary review and approve an alternative definition of AYP?

(a) The tribal governing body or school board submits a proposed alternative definition of AYP to the Director, OIEP within 60 days of its decision to waive the Secretary's definition.

(b) Within 60 days of receiving a proposed alternative definition of AYP, OIEP will notify the tribal governing body or the school board of:

(1) Whether the proposed alternative definition is complete; and

(2) If the definition is complete, an estimated timetable for the final decision.

(c) If the proposed alternative definition is incomplete, OIEP will provide the tribal governing body or school board with technical assistance to complete the proposed alternative definition of AYP, including identifying what additional items are necessary.

(d) The Secretaries will review the proposed alternative definition of AYP to determine whether it is consistent with the requirements of 20 U.S.C. 6311(b). This review must take into account the unique circumstances and needs of the schools and students.

(e) The Secretaries shall approve the alternative definition of AYP if it is consistent with the requirements of 20 U.S.C. 6311(b), taking into consideration the unique circumstances and needs of the school or schools and the students served.

(f) If the Secretaries approve the alternative definition of AYP:

(1) The Secretary shall promptly notify the tribal governing body or school board; and

(2) The alternate definition of AYP will become effective at the start of the following school year.

(g) The Secretaries will disapprove the alternative definition of AYP if it is not consistent with the requirements of 20 U.S.C. 6311(b). If the alternative definition is disapproved, the tribal governing body or school board will be notified of the following:

(1) That the definition is disapproved; and

(2) The reasons why the proposed alternative definition does not meet the requirements of 20 U.S.C. 6311(b).

(h) If the Secretaries deny a proposed definition under paragraph (g) of this section, they shall provide technical assistance to overcome the basis for the denial.

Subpart B—Assessing Adequate Yearly Progress

§ 30.114 Which students must be assessed?

All students in grades three through eight and at least once in grades ten

§ 30.115

through twelve who are enrolled in a Bureau-funded school must be assessed.

§ 30.115 Which students’ performance data must be included for purposes of AYP?

The performance data of all students assessed pursuant to § 30.114 must be included for purposes of AYP if the student is enrolled in a Bureau-funded school for a full academic year as defined by the Secretary or by an approved alternative definition of AYP.

§ 30.116 If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?

A school makes AYP if each group of students identified in § 30.107(b)(6) meets or exceeds the annual measurable objectives and participation rate identified in §§ 30.107(b)(9) and 30.107(b)(12) respectively, and the school meets the other academic indicators identified in § 30.107(b)(11). If a school fails to achieve its annual measurable objectives for any group identified in § 30.107(b)(6), there are two other

methods it may use to determine whether it made AYP:

(a) *Method A—“Safe Harbor.”* Under “safe harbor,” the following requirements must be met for each group referenced under § 30.107(b)(6) that does not achieve the school’s annual measurable objectives:

- (1) In each group that does not achieve the school’s annual measurable objectives, the percentage of students who were below the “proficient” level of academic achievement decreased by at least 10 percent from the preceding school year; and
- (2) The students in that group made progress on one or more of the other academic indicators; and
- (3) Not less than 95 percent of the students in that group participated in the assessment.

(b) *Method B—Uniform Averaging Procedure.* A school may use uniform averaging. Under this procedure, the school may average data from the school year with data from one or two school years immediately preceding that school year and determine if the resulting average makes AYP.

Subpart C—Failure To Make Adequate Yearly Progress

§ 30.117 What happens if a Bureau-funded school fails to make AYP?

Number of yrs of failing to make AYP in same academic subject	Status	Action required by entity operating school for the following school year
1st year of failing AYP	No status change	Analyze AYP data and consider consultation with outside experts.
2nd year of failing AYP	School improvement, year one.	Develop a plan or revise an existing plan for school improvement in consultation with parents, school staff and outside experts.
3rd year of failing AYP	School Improvement, year two.	Continue revising or modifying the plan for school improvement in consultation with parents, school staff and outside experts.
4th year of failing AYP	Corrective Action	Implement at least one of the six corrective actions steps found in 20 U.S.C. 6316(b)(7)(C)(iv).
5th year of failing AYP	Planning to Restructure	Prepare a restructuring plan and make arrangements to implement the plan.
6th year of failing AYP	Restructuring	Implement the restructuring plan no later than the beginning of the school year following the year in which it developed the plan.
7th year (and beyond) of failing AYP.	Restructuring	Continue implementation of the restructuring plan until AYP is met for two consecutive years.

§ 30.118 May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?

Yes. The Bureau must give such a school the opportunity to review the data on which the bureau would identify

a school for improvement, and present evidence as set out in 20 U.S.C. 6316(b)(2).

§ 30.119 Who is responsible for implementing required remedial actions at a Bureau-funded school identified for school improvement, corrective action or restructuring?

(a) For a Bureau-operated school, implementation of remedial actions is the responsibility of the Bureau.

(b) For a tribally operated contract school or grant school, implementation of remedial actions is the responsibility of the school board of the school.

§ 30.120 Are Bureau-funded schools exempt from offering school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring?

Yes, Bureau-funded schools are exempt from offering public school choice and supplemental educational services when identified for school improvement, corrective action, and restructuring.

§ 30.121 What funds are available to assist schools identified for school improvement, corrective action, or restructuring?

From fiscal year 2004 to fiscal year 2007, the Bureau will reserve 4 percent of its title I allocation to assist Bureau-funded schools identified for school improvement, corrective action, and restructuring.

(a) The Bureau will allocate at least 95 percent of funds under this section to Bureau-funded schools identified for school improvement, corrective action, and restructuring to carry out those schools' responsibilities under 20 U.S.C. 6316(b). With the approval of the school board the Bureau may directly provide for the remedial activities or arrange for their provision through other entities such as school support teams or educational service agencies.

(b) In allocating funds under this section, the Bureau will give priority to schools that:

- (1) Are the lowest-achieving schools;
- (2) Demonstrate the greatest need for funds; and
- (3) Demonstrate the strongest commitment to ensuring that the funds enable the lowest-achieving schools to meet progress goals in the school improvement plans.

(c) Funds reserved under this section must not decrease total funding under title I, part A of the Act, for any school below the level for the preceding year. To the extent that reserving funds under this section would reduce the title I, part A dollar amount of any school below the amount of title I, part A dollars the school received the previous year, the Secretary is authorized to reduce the title I, part A allocations of those schools receiving an increase in the title I, part A funds over the previous year to create the 4 percent reserve. This section does not authorize a school to receive title I, part A dollars it is not otherwise eligible to receive.

(d) The Bureau will publish in the FEDERAL REGISTER a list of schools receiving funds under this section.

§ 30.122 Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?

Yes, if a Bureau-funded school is identified for school improvement, corrective action, or restructuring, the Bureau must provide technical or other assistance described in 20 U.S.C. 6316(b)(4) and 20 U.S.C. 6316(g)(3).

§ 30.123 What is the Bureau's role in assisting Bureau-funded schools to make AYP?

The Bureau must provide support to all Bureau-funded schools to assist them in achieving AYP. This includes technical assistance and other forms of support.

§ 30.124 Will the Bureau apply for funds that are available to help schools that fail to meet AYP?

Yes, to the extent that Congress appropriates other funds to assist schools not meeting AYP, the Bureau will apply to the Department of Education for these funds.

§ 30.125 What happens if a State refuses to allow a school access to the State assessment?

(a) The Department will work directly with State officials to assist schools in obtaining access to the State's assessment. This can include direct communication with the Governor of the State. A Bureau-funded school may, if necessary, pay a State

§ 30.126

25 CFR Ch. I (4–1–11 Edition)

for access to its assessment tools and scoring services.

(b) If a State does not provide access to the State’s assessment, the Bureau-funded school must submit a waiver for an alternative definition of AYP.

Subpart D—Responsibilities and Accountability

§ 30.126 What is required for the Bureau to meet its reporting responsibilities?

The Bureau has the following reporting responsibilities to the Department of Education, appropriate Committees of Congress, and the public.

(a) In order to provide information about annual progress, the Bureau must obtain from all Bureau-funded schools the results of assessments administered for all tested students, special education students, students with limited English proficiency, and disseminate such results in an annual report.

(b) The Bureau must identify each school that did not meet AYP in accordance with the school’s AYP definition.

(c) Within its annual report to Congress, the Secretary shall include all of the reporting requirements of 20 U.S.C. 6316(g)(5).

§ 30.150 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 30.104(a)(1), 30.104(b), 30.106, 30.107, 30.110, and 30.118. These collections have been approved by OMB under control number 1076–0163.

PART 31—FEDERAL SCHOOLS FOR INDIANS

Sec.
31.0 Definitions.

- 31.2 Use of Federal school facilities.
- 31.3 Non-Indian pupils in Indian schools.
- 31.4 Compulsory attendance.
- 31.6 Coercion prohibited.
- 31.7 Handling of student funds in Federal school facilities.

AUTHORITY: Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted.

§ 31.0 Definitions.

As used in this part:

(a) *School district* means the local unit of school administration as defined by the laws of the State in which it is located.

(b) *Cooperative school* means a school operated under a cooperative agreement between a school district and the Bureau of Indian Affairs in conformance with State and Federal school laws and regulations.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6472, Apr. 27, 1968]

§ 31.2 Use of Federal school facilities.

Federal Indian school facilities may be used for community activities and for adult education activities upon approval by the superintendent or officer in charge.

§ 31.3 Non-Indian pupils in Indian schools.

Indian and non-Indian children who are not eligible for enrollment in Bureau-operated schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) In boarding schools upon payment of tuition fees, which shall not exceed the per capita cost of maintenance in the school attended, when their presence will not exclude Indian pupils eligible under § 31.1.

(b) In day schools in areas where there are no other adequate free school facilities available, tuition fees may be charged for such enrollment at the discretion of the superintendent or other officer in charge provided such fees shall not exceed the tuition fees allowed or charged by the State or county in which such school is located for

Bureau of Indian Affairs, Interior

§ 32.2

the children admitted in the public schools of such State or county.

(34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C. 288, 289, 297)

[29 FR 5828, May 2, 1964]

§ 31.4 Compulsory attendance.

Compulsory school attendance of Indian children is provided for by law.

(60 Stat. 962; 25 U.S.C. 231)

CROSS REFERENCE: For penalties for the failure of Indians to send children to school and for contributing to the delinquency of minors, see § 11.424 of this chapter.

§ 31.6 Coercion prohibited.

There shall be no coercion of children in the matter of transfers from one school to another, but voluntary enrollment should be effected through maintenance of Federal Indian schools or programs which suit the needs and interests of the areas in which they are located.

(Sec. 1, 29 Stat. 348; 25 U.S.C. 287)

§ 31.7 Handling of student funds in Federal school facilities.

The Secretary or his authorized representative may authorize officials and employees of the Bureau of Indian Affairs to accept and to disburse deposits of funds of students and student activity associations in schools operated by the Bureau in accordance with the purposes of such deposits. The following steps shall be taken to safeguard these funds:

(a) A written plan of operation shall be developed by the membership of each student activity group. The plan of operation subject to the approval of authorized officials shall outline procedures and provide for a system of accounting for the student funds commensurate with the age and grade level of the students yet adequate for financial control purposes and shall stipulate the maximum operating capital of activity.

(b) Appropriate safekeeping facilities shall be provided for all student personal and group funds and for the accounting or bookkeeping records.

(c) Employees handling student funds in cumulative amounts in excess of \$100 shall be covered by a comprehensive fi-

delity bond the penal sum of which shall be appropriately related to fund amounts handled.

(d) Student funds accumulated in excess of the amount authorized for operating purposes by the plan of operation shall be deposited in federally insured depositories.

(e) Periodic administrative inspections and financial audit of student fund operations shall be conducted by authorized Bureau personnel.

[26 FR 10637, Nov. 14, 1961]

PART 32—INDIAN EDUCATION POLICIES

Sec.

32.1 Purpose and scope.

32.2 Definitions.

32.3 Mission statement.

32.4 Policies.

32.5 Evaluation of implementation of Pub. L. 95-561.

AUTHORITY: Secs. 1130 and 1133 of Title XI of the Education Amendments of 1978 (92 Stat. 2143, 2321 and 2325, Pub. L. 95-561; 25 U.S.C. 2010 and 2013).

SOURCE: 44 FR 58098, Oct. 9, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 32.1 Purpose and scope.

The purpose of this part is to state the policies to be followed by all schools and education programs under the jurisdiction of the Bureau of Indian Affairs. Contract schools operated by Indian Tribes or Alaska Native entities may develop their independent policies, consistent with contractual obligations, or adhere to these. The adherence to the appropriate policies shall reflect the best interests of the student, the Federal government, the Tribes and Alaska Native entities, and shall be based on educationally sound judgment.

§ 32.2 Definitions.

As used in this part, the term:

(a) *Agency School Board* means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected Tribes or Alaska Native entities except that, in

§ 32.3

25 CFR Ch. I (4–1–11 Edition)

agencies serving a single school, the school board of such school shall fulfill these duties.

(b) *Alaska Native* means an Indian, Eskimo, or Aleut who is a member of an Alaska Native entity.

(c) *Alaska Native Entity* means any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(d) *Alaska Native Village* means any Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 689; 43 U.S.C. 1602 (c)).

(e) *Boarding school*, hereinafter referred to as *residential school*, means a Bureau school offering residential care and support services as well as an academic program.

(f) *Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

(g) *Consultation* means a conferring process with Tribes, Alaska Native entities, and Tribal organizations on a periodic and systematic basis in which the Bureau and Department officials listen to and give effect, to the extent they can, to the views of these entities.

(h) *Contract school* means a school (other than a public school) which is Tribally operated and aided by a financial assistance contract with the Bureau.

(i) *Day school* means a Bureau school offering an academic program and certain support services such as counseling, food, transportation, etc., but excluding residential care.

(j) *Director* means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

(k) *Early childhood education* means comprehensive education activities with continuity of educational approach for children ages 0–8 years and their families, appropriate for their age, development, language and culture which supplement and support usual family responsibilities for child growth and development. They are coordinated with, but do not supplant, existing educational, health, nutritional, social and other necessary services.

(l) *Exceptional Education Programs* mean the provision of services to those children who are identified as handicapped and have been found to meet the criteria of handicapped as defined in Pub. L. 94–142, and programs for gifted and talented students.

(m) *Indian* means a member of an Indian Tribe.

(n) *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 Indian Tribes.

(o) *Indian Tribe* or *Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Local school board*, when used with respect to a Bureau school, means a body chosen in accordance with the laws of the Tribe or Alaska Native entity to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different Tribes or Alaska Native entities the members shall be appointed by the governing bodies of the Tribes and entities affected; and, the number of such members shall be determined by the Director in consultation with the affected Tribes and entities.

(q) *Post-secondary* education means any education program beyond the age of compulsory education, including higher education, career, vocational, and technical.

(r) *Tribal Organization* means an organization composed of or duly representing Tribal governments which may be national or regional in scope and function.

§ 32.3 Mission statement.

Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal Government as affirmed by the

United States Constitution, U.S. Supreme Court decisions, treaties, Federal statutes, and Executive Orders, and as set out in the Congressional declaration in sections 2 and 3 of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the Federal government to provide comprehensive education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub. L. 95-608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government's protection and preservation of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to such Tribes and villages than their young people and the Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children, including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall manifest consideration of the whole person, taking into account the spiritual, mental, physical and cultural aspects of the person within family and Tribal or Alaska Native village contexts.

§ 32.4 Policies.

In carrying out its Education mission, the Assistant Secretary for Indian Affairs through the Director shall:

(a) *Policy making.* (1) Assure that no new policy shall be established nor any existing policy changed or modified without consultation with affected Tribes and Alaska Native Government entities.

(2) Be guided in policy formulation and funding priorities, including the proposing and awarding of contracts and grants, by periodic and systematic consultation with governing bodies of Tribes and Alaska Native entities.

(3) Ensure that Indian Tribes and Alaska Native entities fully exercise self-determination and control in plan-

ning, priority-setting, development, management, operation, staffing and evaluation in all aspects of the education process.

(4) Ensure that each agency or local school board shall be authorized and empowered to function as the policy making body for the school, consistent with the authority granted by the tribes or Alaska Native entity(ies) served by the school(s).

(b) *Student rights.* Ensure the constitutional, statutory, civil and human rights of all Indian and Alaska Native students, and respect the role of Tribal judicial systems where appropriate including, for example, ensuring that students have the right to be free from cruel and unusual punishment and that all disciplinary procedures shall be consistent with appropriate customs and practices of the appropriate Indian Tribe or Alaska Native village.

(c) *Equity funding.* Assure that resources for all education programs are equitably distributed for the benefit of all Indian and Alaska Native students, taking into account special educational needs where they exist, as further described in part 39 of this subchapter.

(d) *Direction of programs.* Ensure that the education function be structured in such a manner that all matters relating to the operation of education programs be administered by or be under the direction of education personnel.

(e) *Respect for family.* Promote, respect and defend the cohesiveness and integrity of the family, and Tribal and Alaska Native community, as they relate to the educational and social prerogatives of the Tribes and Alaska Native entities.

(f) *Religious freedom.* Promote and respect the right to cultural practices and religious freedom for all students, consistent with Tribal and Alaska Native entities' wishes and with the provisions of the American Indian Religious Freedom Act (92 Stat. 469; Pub. L. 95-341; 42 U.S.C. 1996).

(g) *Tribal rights regarding governing bodies and planning.* (1) Develop in consultation with Tribes and Alaska Native entities a plan to include their direct involvement in short and long-range planning of Bureau operated

post-secondary schools through the formation of policy making governing boards.

(2) Encourage and defend the right of the Tribes and Alaska Native entities to govern their own internal affairs in all matters relating to education, and their right to determine the equitable and appropriate composition of governing boards at Bureau off-reservation and post-secondary schools.

(h) *Multilingual education.* Provide for a comprehensive multicultural and multilingual educational program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(i) *Choice of school.* Afford Indian and Alaska Native students the opportunity to attend local day schools and other schools of choice and the option to attend boarding schools when the student and parent or guardian determine it is in the student's best interest and consistent with the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95–608) except that, residential schools shall not be used as substitutes for providing adequate local family social services. Each school shall establish its attendance area in cooperation with neighboring schools.

(j) *Tribal education plans.* Assist Tribes and Alaska Native entities at their request in the development of Departments of Education, education codes, and comprehensive education plans.

(k) *Advocacy and coordination.* (1) Serve as an advocate for Indian Tribes and Alaska Native entities in education matters before the Federal, State and local governments.

(2) Assume an assertive role in coordinating comprehensive support for Indian and Alaska Native students internally and from other agencies in education, mental and physical health, juvenile justice, job training, including apprenticeship programs and other related Federal, State and local programs and services.

(3) Serve as an advocate and carry out responsibilities for Indian and Alaska Native students in public and other non-Bureau operated schools consistent with the wishes of the appropriate Indian Tribes and Alaska Native entities, particularly in regard to Impact Aid (Pub. L. 81–874), Johnson-O'Malley, and all Elementary and Secondary Education Act programs.

(l) *Student assessment.* Establish and maintain a program of research and development to provide accurate and culturally specific assessment instruments to measure student performance in cooperation with Tribes and Alaska Native entities.

(m) *Recruitment of Indians.* Adopt procedures to insure that qualified Indian and Alaska Native educators are recruited for positions appropriate to their cultural background and qualifications.

(n) *Priorities in contracts and grants.* Provide financial support through contracts, grants or other funding mechanisms with first priority given to the Tribes and Alaska Native entities, Tribal organizations, Tribally controlled community colleges, and Indian or Alaska Native professional or technical assistance organizations which have the sanction of the benefitting Tribes and Alaska Native entities.

(o) *Community school concept.* Promote the community school concept by encouraging year around multi-use of educational facilities, equipment and services for Tribal, Alaska Native village, and community development.

(p) *Education close to home.* Provide day and residential educational services as close to an Indian or Alaska Native student's home as possible, except when a student elects to attend a school elsewhere for specialized curricular offerings or services.

(q) *Tribal notification and involvement and program flexibility.* (1) Notify Indian Tribes and Alaska Native entities of proposed, pending or final Federal legislation, appropriations, Solicitor's and Attorney General's opinions and court decisions affecting Indian and Alaska Native education for the purposes of information and consultation, providing them ready access at the local level to all evaluations, data records, reports

and other relevant information, consistent with the provisions of the Privacy and Freedom of Information Acts.

(2) Implement rules, regulations, procedures, practices, and standards to insure flexibility in the exercise of local Tribal or Alaska Native village options, and provide for input in periodic reviews, evaluations, and revisions to meet changing needs and circumstances.

(r) *Career and higher education.* (1) Ensure to the extent possible that all students who choose to pursue career and post-secondary education, including but not limited to, undergraduate and graduate programs, or preparation for skilled trades, receive adequate academic or other preparation, at the schools of their choice, assuring that students are provided adequate support services to enable them to meet their educational goals.

(2) Extend to Tribes and Alaska Native entities the prerogative of determining those critical professions and fields of study in post-secondary education which are of the highest priority to meet their economic and cultural goals.

(s) *Planning, maintenance and use of facilities.* (1) Ensure that the needs of the students and Tribal or Alaska Native community will receive first priority in the planning, design, construction, operation and maintenance of Bureau schools and residential facilities, rather than other considerations, such as ease of maintenance, and that these facilities assure a supportive environment for learning, living and recreation.

(2) Maintain all school and residential facilities to meet appropriate Tribal, State or Federal safety, health and child care standards. If a conflict exists in these standards, the Federal standard shall be followed; in the absence of a Federal standard, the Tribal standard shall be followed. In case of conflict, any such Tribal health or safety standards shall be no greater than any otherwise applicable State standard.

(t) *Alternative, innovative and exemplary programs.* Vigorously encourage and support alternative, innovative and exemplary programs reflecting Tribal or Alaska Native village specific learning styles, including but not lim-

ited to, parent-based early childhood education programs, adult and vocational technical education, library and media services, special education including programs for handicapped, gifted and talented students, summer programs, and career development.

(u) *Training.* Provide support and technical assistance at all levels for the training of duly sanctioned Tribal and Alaska Native education representatives involved in educational decision-making, including pre-service and in-service training for educators.

(v) *Tribally controlled community colleges.* Assist Tribes and Alaska Natives in their planning, designing, construction, operation and maintenance of Tribally controlled community colleges, consistent with all appropriate legislation. (See part 41 of this subchapter.)

(w) *Equal opportunity.* Establish and enforce policies and practices to guarantee equal opportunity and open access to all Indian and Alaska Native students in all matters relating to their education programs consistent with the provisions of the Privacy and Freedom of Information Acts.

(x) *Accountability, evaluation of MIS.* (1) Enforce a strict standard of fiscal, programmatic and contract accountability to the Tribes and Alaska Native entities and assist them in the development of their own standards of accountability and carry out annual evaluations of all Bureau-operated or funded education programs.

(2) Provide and make available a computerized management information system which will provide statistical information such as, but not limited to, student enrollment, curriculum, staff, facilities, student assessments and related educational information.

(y) *Accreditation.* (1) Encourage and assist all Bureau and contract schools to attain appropriate State, regional, Tribal or national accreditation.

(2) Assist and promote the establishment of Indian regional and/or national accrediting associations for all levels of Indian Education.

(z) *Eligibility for services.* Serve Indian and Alaska Native students who are recognized by the Secretary of the Interior as eligible for Federal services, because of their status as Indians or

§ 32.5

25 CFR Ch. I (4-1-11 Edition)

Alaska Natives, whose Indian blood quantum is $\frac{1}{4}$ degree or more. In the absence of other available facilities, children of non-Indian Bureau personnel or other non-eligibles may be served subject to the provisions of 25 U.S.C. 288 and 289.

(aa) *Appropriations.* Aggressively seek sufficient appropriations to carry out all policies herein established subject to the president's budget and the Department's budgetary process.

§ 32.5 Evaluation of implementation of Pub. L. 95-561.

The Director, Office Indian Education Programs will develop guidelines for evaluating all functional and programmatic responsibilities associated with title XI of the Education Amendments of 1978 (Pub. L. 95-561), and in the January 1, 1981 annual report, as provided in section 1136, of Pub. L. 95-561 include a statement of the specific program toward implementing these policies.

PART 33—TRANSFER OF INDIAN EDUCATION FUNCTIONS

Sec.

- 33.1 Definitions.
- 33.2 Policy.
- 33.3 Delegation of authority.
- 33.4 Redelelegation of authority.
- 33.5 Area education functions.
- 33.6 Agency education functions.
- 33.7 Implementing procedures.
- 33.8 Realignment of area and agency offices.
- 33.9 Development of procedures.
- 33.10 Issuance of procedures.

AUTHORITY: Sec. 1126, Pub. L. 95-561, Education Amendments of 1978 (92 Stat. 2143, 2391; 25 U.S.C. 2006).

SOURCE: 44 FR 58103, Oct. 9, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 33.1 Definitions.

(a) *Agency* means that organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

(b) *Early childhood* means education activities serving the 0 to 8 year old child, including pre-natal, child care, kindergarten, homebase, homebound, and special education programs.

(c) *Elementary and secondary education* means those programs serving the child from grade one through grade twelve.

(d) *Operating level* means the organizational level at which direct educational services are performed.

(e) *Personnel directly and substantially involved* means those persons who provide services which affect the operation of Indian education programs, including (but not limited to) school or institution custodial or maintenance personnel, and whose services for Indian education programs require the expenditure of at least 51 percent of the employee's working time.

(f) *Post-secondary* means education programs that are provided for persons past the age for compulsory education to include continuing education, higher education, undergraduate and graduate, career and adult education. As used in this Act, the term Post-Secondary shall include those Bureau of Indian Affairs programs operated at Southwestern Indian Polytechnic Institute, the Institute of American Indian Arts, and Haskell Indian Junior College, and those operated at Tribally controlled community colleges under Pub. L. 95-471.

§ 33.2 Policy.

It is the policy of the Department of the Interior that:

(a) Indian control of Indian affairs in all matters relating to education shall be facilitated.

(b) Authority to perform education functions shall be delegated directly from the Assistant Secretary-Indian Affairs to the Director, Office of Indian Education Programs.

(c) Administrative authority shall be compatible with program authorities; and, both shall be delegated to the operating level to assure efficient and effective delivery of education services to Indian children, youth, and adults.

(d) The Director, Office of Indian Education Programs shall supervise the operation of Indian education program personnel at the Area, Agency, and the three Bureau of Indian Affairs post-secondary institutions.

(e) Indian Education program functions to be performed at the Area office level shall include those dealing with

Bureau of Indian Affairs, Interior

§ 33.7

higher education, Johnson-O'Malley aid to non-Bureau schools, off-reservation boarding schools, those education program operations serving tribes from more than one Agency except those at the three post-secondary institutions, on-reservation education functions located at an Agency where no educational personnel are assigned, education contract operations, and adult education.

§ 33.3 Delegation of authority.

The administrative and programmatic authorities of the Assistant Secretary—Indian Affairs pertaining to Indian education functions shall not be delegated to other than the Director, Office of Indian Education Programs. The Assistant Secretary shall publish delegations of authorities to the Director in the Bureau of Indian Affairs Manual after the effective date of these regulations.

§ 33.4 Redelegation of authority.

The authorities of the Assistant Secretary—Indian Affairs as delegated to the Director, Office of Indian Education Programs may be redelegated by the Director to a Bureau of Indian Affairs Agency Superintendent for Education, to a Bureau Area Education Programs Director, or to a President of a Bureau of Indian Affairs post-secondary education institution.

§ 33.5 Area education functions.

A Bureau Area Education Programs Director shall perform those Bureau of Indian Affairs education functions related to Johnson-O'Malley aid to non-Bureau schools, higher education, Bureau peripheral dormitories, adult education, off-reservation residential schools, on-reservation functions located at an Agency where no education personnel are assigned, education contract operations, and those education program operations serving Tribes from more than one Agency, except those of the Bureau's post-secondary institutions.

§ 33.6 Agency education functions.

A Bureau Agency Superintendent for Education shall perform those education functions related to elementary and secondary education, early child-

hood education, peripheral dormitories which have been supervised prior to Pub. L. 95-561, and exceptional education programs as defined in 25 CFR part 32. This section shall not be construed to remove higher education, adult education and/or Johnson-O'Malley programs currently administered at the Agency level. Further, the Director under the authority of § 33.4 will periodically review Area programs such as higher education, adult education, and Johnson-O'Malley for consideration to assign to Agency level administration.

§ 33.7 Implementing procedures.

(a) The Assistant Secretary—Indian Affairs shall:

(1) Implement the transfer for Indian education functions from the jurisdiction of Agency Superintendents and Area Office Directors to the Director, Office of Indian Education Programs.

(2) Modify existing descriptions of positions for Area Office Directors, Agency Superintendents, and all other personnel directly and substantially involved with the provisions of education services by the Bureau of Indian Affairs.

(b) The Director, Office of Indian Education Programs shall:

(1) For Area, Agency, and Bureau of Indian Affairs postsecondary institutional personnel:

(i) Properly list the duties of each employee required to perform functions redelegated by the Director;

(ii) Define the responsibilities for monitoring and evaluating education programs; and

(iii) Exercise supervision of these employees.

(2) Define responsibilities for employees providing technical and coordinating assistance for support services to the Director, Office of Indian Education Programs and his/her subordinates, including procurement, contracting, personnel, and other administrative support areas.

[44 FR 58103, Oct. 9, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 12702, Mar. 30, 1984]

§ 33.8

§ 33.8 Realignment of area and agency offices.

The Assistant Secretary—Indian Affairs shall implement Bureau of Indian Affairs Area Office and Agency Office reorganizations required to structure these offices consistent with education program activities to be undertaken at those levels.

§ 33.9 Development of procedures.

The Director, Office of Indian Education Programs shall prepare and promulgate procedures to govern the provision of support services by the Bureau of Indian Affairs for the education function. These procedures shall be consistent with existing laws, regulations, Executive Orders, and Departmental policies governing administrative support services. These provisions shall be prepared in consultation with those personnel within the Bureau of Indian Affairs who are responsible to the Commissioner of Indian Affairs for providing support services.

§ 33.10 Issuance of procedures.

The Assistant Secretary—Indian Affairs, directly or through the Commissioner of Indian Affairs, shall issue procedures in the Bureau of Indian Affairs Manual governing the provision of support services to the Bureau's Education Office function.

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart A—General Provisions

Sec.

- 36.1 Purpose, scope, and information collection requirements.
- 36.2 Applicability.
- 36.3 Definitions.

Subpart B—Educational Management

- 36.10 Standard I—Philosophy and goals.
- 36.11 Standard II—Administrative requirements.
- 36.12 Standard III—Program needs assessment.
- 36.13 Standard IV—Curriculum development.

25 CFR Ch. I (4–1–11 Edition)

Subpart C—Minimum Program of Instruction

- 36.20 Standard V—Minimum academic programs/school calendar.
- 36.21 Standard VI—Kindergarten instructional program.
- 36.22 Standard VII—Elementary instructional program.
- 36.23 Standard VIII—Junior high/middle school instructional program.
- 36.24 Standard IX—Secondary instructional program.

Subpart D—Student Instructional Evaluation

- 36.30 Standard X—Grading requirements.
- 36.31 Standard XI—Student promotion requirements.
- 36.32 Standard XII—Graduation requirements for a high school diploma.

Subpart E—Instructional Support

- 36.40 Standard XIII—Library/media program.
- 36.41 Standard XIV—Textbooks.
- 36.42 Standard XV—Counseling services.
- 36.43 Standard XVI—Student activities.

Subpart F—Evaluation of Educational Standards

- 36.50 Standard XVII—School program evaluation and needs assessment.
- 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

Subpart G—Homeliving Programs

- 36.70 What terms do I need to know?
- 36.71 What is the purpose of this part?

STAFFING

- 36.75 What qualifications must homeliving staff possess?
- 36.76 Who is in charge of all homeliving operations?
- 36.77 What are the homeliving staffing requirements?
- 36.78 What are the staffing requirements for homeliving programs offering less than 5 nights service?
- 36.79 What are the homeliving behavioral staff/student ratio requirements?
- 36.80 If a school or dormitory has separated boys' and girls' homeliving programs, may the same behavioral staff be used for each program?
- 36.81 May a homeliving program use support staff or teachers to meet behavioral health staffing requirements?
- 36.82 May behavioral health professional(s) provide services during the academic school day?

- 36.83 How many hours can a student be taken out of the academic setting to receive behavioral health services?
- 36.84 Can a program hire or contract or acquire by other means behavioral health professionals to meet staffing requirements?
- 36.85 Is a nurse required to be available in the evenings?
- 36.86 Are there staff training requirements?

PROGRAM REQUIREMENTS

- 36.90 What recreation, academic tutoring, student safety, and health care services must homeliving programs provide?
- 36.91 What are the program requirements for behavioral health services?
- 36.92 Are there any activities that must be offered by a homeliving program?
- 36.93 Is a homeliving handbook required?
- 36.94 What must a homeliving handbook contain?
- 36.95 What sanitary standards must homeliving programs meet?
- 36.96 May students be required to assist with daily or weekly cleaning?
- 36.97 What basic requirements must a program's health services meet?
- 36.98 Must the homeliving program have an isolation room for ill children?
- 36.99 Are immunizations required for residential program students?
- 36.100 Are there minimum requirements for student attendance checks?
- 36.101 How often must students who have been separated for emergency health or behavioral reasons be supervised?
- 36.102 What student resources must be provided by a homeliving program?
- 36.103 What are the requirements for multi-purpose spaces in homeliving programs?

PRIVACY

- 36.110 Must programs provide space for storing personal effects?

WAIVERS AND ACCOUNTABILITY

- 36.111 Can a tribe, tribal governing body, or local school board waive the homeliving standards?
- 36.112 Can a homeliving program be closed, transferred, consolidated, or substantially curtailed for failure to meet these standards?
- 36.120 What type of reporting is required to ensure accountability?

AUTHORITY: Section 502, 25 U.S.C. 2001; section 5101, 25 U.S.C. 2001; Section 1101, 25 U.S.C. 2002; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 2901, Title I of P.L. 101-477.

SOURCE: 50 FR 36816, Sept. 9, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 36.1 Purpose, scope, and information collection requirements.

(a) The purpose of this rule is to establish minimum academic standards for the basic education of Indian children for Bureau-operated schools and for those Indian-controlled contract schools which adopt these standards and to establish national criteria for dormitory situations for schools operated by the Bureau of Indian Affairs and for Indian-controlled contract schools operating dormitories.

(b) The information collection requirement contained in §36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076-0092. The information is being collected to evaluate waiver request(s) from tribal government(s) and school board(s). The information will be used to ascertain the approval of academic waiver request. The obligation to respond is mandatory under 25 U.S.C. 2001. The information collection requirements contained in §§36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

[50 FR 36816, Sept. 9, 1985, as amended at 70 FR 21951, Apr. 28, 2005]

§ 36.2 Applicability.

The national criteria for dormitory situations established under subpart H will serve as a minimum requirement and shall be mandatory for all Bureau-operated and Indian-controlled contract schools.

[50 FR 36816, Sept. 9, 1985, as amended at 70 FR 21951, Apr. 28, 2005]

§ 36.3 Definitions.

For purposes of this part, the following definitions apply:

Accreditation means a school has received an official decision by the State(s) department(s) of education, or

another recognized agency having official authority, that, in its judgment, the school has met the established standards of quality.

Agency means the current organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

Agency school board as defined in sec. 1139(1), Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency school board.

Agency Superintendent for Education means the Bureau official in charge of education functions at an Agency and to whom the school supervisor(s) and other educators under the Agency's jurisdiction report.

Area Education Programs Administrator means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education.

Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

Authentic assessment means the testing of higher order thinking skills by monitoring performance of tasks requiring analysis, creativity, and application skills in real life situations.

Average daily membership (ADM) means the aggregate days membership of a given school during a given reporting period divided by the number of days school is in session during this period. Only days on which the students are under the guidance and direction of teachers shall be considered as days in session. The reporting period is generally a given regular school term.

Basic academic skills means the abilities acquired by observation, study, or experience in mental and/or physical performance (e.g., proficiency in planning and investigating, operational techniques, comprehension, organiza-

tion, execution, remembrance and application of knowledge to acquire a desired result) basic to the mastery of school work or other activity.

Basic education means those components of education emphasizing literacy in language arts, mathematics, natural and physical sciences, history, and related social sciences.

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

Certification means the general process by which the State or Agency authorized by the State adjudges and stipulates that an individual meets the established standards which are prerequisite to employment for a teacher or administrator in education.

Competency means having the requisite abilities, skills, or a specified level of mastery.

Computer literacy used here means the general range of skills and understanding needed to function effectively in a society increasingly dependent on computer and information technology.

Content area means the usual school subjects of instruction, such as: Language arts, mathematics, science, social studies, fine arts, practical arts, health, and physical education.

Counselor means a staff member, including those in both academic and dormitory situations, who helps the students to understand educational, personal, and occupational strengths and limitations; to relate abilities, emotions, and aptitudes to educational and career opportunities; to utilize abilities in formulating realistic plans; and to achieve satisfying personal and social development.

Course of study means a written guide prepared by administrators, supervisors, consultants, and teachers of a school system or school, as an aid to teaching a given course or an aspect of subject-matter content to a given category of pupil.

Criterion-referenced test means an achievement test designed to measure specific skills within a subject area. Test results indicate which skills a student has or has not learned.

Days means calendar days.

Director means the Director of the Office of Indian Education Programs in the Bureau.

Dormitory means a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school.

Dormitory manager means a staff member who manages the day-to-day, 24-hour operation of one or more dormitories.

Elementary school is defined as any combination of grades K-8 except when any of these grades are included in the junior high or middle school level.

Exceptional child program means a program for students who are eligible to receive education and related services as defined by 25 CFR 39.11(i).

Feeder school means a school whose exiting students are absorbed by a school offering instruction on the next higher grade level.

Formative evaluation is an evaluation of progress during the implementation of a program. Its purpose is to provide immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

Goals means a statement of what the school system is attempting to do to meet the comprehensive educational needs and interests of its pupils, in accordance with its statement of philosophy.

Grade means the portion of a school program which represents the work of one regular school year; identified by a designation such as kindergarten, grade 1 or grade 10.

Grade level is a designation applied to that portion of the curriculum which represents the work of one regular school year.

High school is defined as grades nine through twelve, except when grade nine is included in the junior high or middle school organizational unit.

Higher order thinking skills (or advanced skills) means skills such as reading comprehension, written composition, and mathematical reasoning. They differ from basic or discrete skills such as phonetic decoding and arithmetic operations.

Indian-controlled contract school means a school that is operated by a tribal organization and funded under a contract with the Bureau.

Indian student means a student who is a member of an Indian tribe and is one-quarter ($\frac{1}{4}$) or more degree of Indian blood quantum.

Indian tribe or tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Intense residential guidance means the program for residential students who need special residential services due to one or more of the problems as stated in 25 CFR 39.11(h).

Junior high or middle school is defined as grades seven and eight, but may include grade six when it is not included in the elementary school level and/or grade nine when it is not included in the high school level.

Kindergarten means a group of students or a class that is organized to provide educational experiences for children for the year immediately preceding the first grade.

Librarian means a certificated school employee whose principal responsibilities include selection, acquisition, preparation, cataloging, and circulation of books and other printed materials; planning the use of the library by teachers and students; and instructing students in the use of library books and materials, whether the library is maintained separately or as a part of an instructional materials center.

Local school board when used with respect to a Bureau-operated school means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

§ 36.10

25 CFR Ch. I (4–1–11 Edition)

Objectives means a statement of the general, long-range aims and the specific, short-range aims which indicate what the school is attempting to do to meet the needs of the students in accordance with the philosophy, goals, and policies of the school system.

Paraprofessional means a staff member who works with and is under the supervision of a professional staff member but who does not have full professional status, e.g., teacher aide. The term denotes a level of knowledge and skills possessed by an individual or required of an individual to perform an assignment. The level of skills is usually at a predetermined minimum level.

Parent means a natural parent or guardian or a person legally acting as parent.

Peripheral dormitory is a facility which provides students boarding and lodging during the school year for the purpose of attending a public school.

Regular program student means all students including those determined to be eligible for services as defined under the Exceptional Child Program, 25 CFR 39.11(i).

Residential school means an educational institution in which students are boarded and lodged as well as taught.

Residential Services under Exceptional Child Program means a program providing specialized residential care as determined by 25 CFR 39.11(i).

School means an educational institution, including elementary, junior high or middle, high school, peripheral, cooperative, and contract schools serving students in grades Kindergarten through 12 and as further defined under 25 CFR 39.2(q).

School board means an Agency or local school board.

School day, instructional day, or teaching day is a day on which the school is open and students are under the guidance and direction of teachers in instructional activities where the minimum number of instructional hours are met.

School Supervisor means the official in charge of a school and/or peripheral dormitory who reports to an Agency School Superintendent or an Area Edu-

cation Programs Administrator, as appropriate.

Secretary means the Secretary of the Interior.

Self-contained class means a class having the same teacher or team of teachers for all or most of the daily session.

Standard means the established criterion and/or specified requirement which must be met and maintained.

Summative evaluation means a systematic analysis of the results or products of a program after it is completed. Its purpose is to determine the extent to which the objectives of the program have or have not been achieved. One form of summative evaluation compares results with those of another “control” program using different procedures. Other forms compare results with past results or predetermined target outcomes.

Teacher means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation.

Unit/Unit of instruction means a major subdivision of instruction generally composed of several topics including content and learning experiences developed around a central focus such as a limited scope of subject matter, a central program, one or more related concepts, one or more related skills, or a combination of these. One unit equals one full year of instruction in a subdivision thereof. *Unit* and *credit* shall be used interchangeably.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

Subpart B—Educational Management

§ 36.10 Standard I—Philosophy and goals.

(a) Each school shall develop a written mission statement and philosophy of education that addresses the accumulation of knowledge and development of skills, interests, appreciations, ideals, and attitudes within the school's total educational program. A statement of expected outcomes shall outline what the school is attempting to do to meet the needs and interests of

Bureau of Indian Affairs, Interior

§ 36.11

its students and community in accordance with the school's mission statement and philosophy.

(b) The statement of philosophy and goals shall be developed with the involvement of students, parents, lay citizens, school staff, and tribe(s) and shall be formally adopted by the local school board.

(c) The philosophy and goals shall be reviewed annually and revised as necessary by each school.

(d) A copy of the philosophy and goals shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(e) Informational provisions shall be developed in the form of a manual, handbook, brochure, or other written document(s) of the minimum academic standards of the school's programs and the basic rules and procedures of the school. The staff, students, and parents shall receive the written document or documents and have same explained to all who request explanation. The topics covered in the document(s) shall include but not be limited to the following:

- (1) Statement of philosophy and goals;
- (2) Description of how policies are developed and administered;
- (3) A brief explanation of curricular offerings;
- (4) A copy of student rights handbook;
- (5) Basic practices related to:
 - (i) Grading system;
 - (ii) Graduation requirements, if applicable;
 - (iii) Attendance policies;
 - (iv) Special programs at the school; and
 - (v) Student activities available for students.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

§ 36.11 Standard II—Administrative requirements.

(a) *Staffing.* Each school shall, at a minimum, meet the following requirements:

(1) The overall school ratio of regular program students to regular program teachers in self-contained classrooms shall not exceed the following except

under the conditions set forth in paragraphs (a)(4) (i) and (ii) of this section. Average daily membership (ADM) shall be used in meeting the following ratios.

Level	Ratio
Kindergarten	20:1
1st grade—3rd grade	22:1
4th grade—high school	25:1

(2) Multi-grade classrooms that cross grade-level boundaries (e.g., K-1, 3-4, etc.) shall use the maximum of the lower grade. In grades K-8, grades shall be consolidated to meet the teacher ratios listed above.

(3) The daily teaching load per teacher in departmentalized classes shall not exceed 150 students (ADM) except in activity type classes such as music and physical education.

(4) Schools exceeding these specific staffing ratios for over 30 consecutive days during one school year shall submit a justification for a request for a waiver to the Director, through the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, which may be approved for a period not to exceed one school year and for the following reasons:

- (i) Additional classroom space is not available for establishing another class; or
- (ii) The school, Agency, Area and Office of Indian Education Programs Applicant Supply File has been exhausted and the required teacher position cannot be filled. However, efforts to fill the vacancy shall be continued.

(5) Each school shall provide, in the absence of a regular teacher, a certified substitute teacher who meets the State substitute teacher qualifications. In the event that such a substitute is not available, coverage will be provided by a school employee designated by the school supervisor. A class cannot have as a teacher an employee without teaching credentials for more than 20 school days during any one school year.

(b) *Written school enrollment and attendance policies.* Each school shall have written school enrollment and attendance policies in compliance with and/or consistent with 25 CFR 31, Federal Schools for Indians, the statutes of

§ 36.12

the State, and tribal education ordinances.

(c) *Immunization.* School children shall be immunized in accordance with the regulations and requirements of the state in which they attend school or standards of the Indian Health Service.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994; 70 FR 21951, Apr. 28, 2005]

§ 36.12 Standard III—Program needs assessment.

The policy and procedures of each school and its curricula shall be developed and revised based on an assessment of educational needs. This needs assessment shall be conducted at least every seven (7) years at the same frequency as required in §36.50, School Program Evaluation. This assessment shall include at least the following:

(a) A clear statement of student educational goals and objectives. A student educational goal is defined as a statement of the knowledge, skills, attitudes, or concepts students are expected to exhibit upon completion of a grade level. Student educational objectives are defined as statements of more specific knowledge, skills, attitudes, or concepts students must exhibit in order to achieve the goal.

(b) The collection of appropriate data from which valid determinations, judgments, and decisions can be made with respect to the status of the educational program, e.g.,

(1) Perceptions of the parents, tribes, educators, and the students with regard to the relevance and importance of the goals.

(2) The extent to which educational goals and objectives have been achieved.

(3) The data developed as a result of the evaluation outlined in §36.50 School Program Evaluation.

(c) A statement of educational needs which identifies the difference between the current status of students and the desired goals for the students.

(d) A plan of action to remediate assessed needs.

25 CFR Ch. I (4–1–11 Edition)

§ 36.13 Standard IV—Curriculum development.

(a) Each school shall implement an organized program of curriculum development involving certified and non-certified staff and shall provide the opportunity for involvement by members of the local community.

(b) Curriculum development program activities shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school shall involve staff and provide the opportunity for involvement by the tribal community in planning programs, objectives, and activities which meet student/teacher needs.

Subpart C—Minimum Program of Instruction

§ 36.20 Standard V—Minimum academic programs/school calendar.

(a) If an emergency arises from an uncontrollable circumstance during the school day which results in the dismissal of students by the school administration, the day may be counted as a school day provided that three-fourths of the instructional hours are met.

(b) The educational program shall include multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(1) The school's language arts program shall assess the English and native language abilities of its students and provide instruction that teaches and/or maintains both the English and the primary native language of the school population. Programs shall meet local tribal approval.

(2) The school program shall include aspects of the native culture in all curriculum areas. Content shall meet local tribal approval.

(3) The school program shall assess the learning styles of its students and provide instruction based upon that assessment. The method for assessing learning styles shall be determined at the local level.

(4) The school program shall provide for at least one field trip per child per year to broaden social and academic experiences.

(c) All intraschool programs (e.g., library, instructional labs, physical education, music, etc.) which are directly related to or affect student instruction shall provide services from the beginning of the school term through the final class period at the close of the school term.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994; 70 FR 21951, Apr. 28, 2005]

§ 36.21 Standard VI—Kindergarten instructional program.

(a) The curriculum for kindergarten shall provide children with experiences which emphasize language development, native language where necessary as determined by 25 CFR 39.11(g), and performance of the requirements in paragraph (b) of this section. Such programs shall assist children in developing positive feelings toward themselves and others.

(b) A kindergarten instructional program shall include but not be limited to:

- (1) Language (observing, listening, speaking).
- (2) Exploration of the environment (number, space and time relationships, natural science).
- (3) Psychomotor and socialization development.
- (4) Development of imaginative and creative tendencies.
- (5) Health education inclusive of the requirements contained in the Act of May 20, 1886, 24 Stat. 69.

§ 36.22 Standard VII—Elementary instructional program.

(a) The elementary instruction programs, grades one through six, shall include but need not be limited to:

- (1) Language arts.
- (2) Mathematics.
- (3) Social studies.
- (4) Sciences.
- (5) Fine arts.
- (6) Physical education.

(b) Each school shall integrate the following content areas into its curriculum:

- (1) Career awareness,
- (2) Environmental and safety education,
- (3) Health education (includes requirements contained in 24 Stat. 69),

- (4) Metric education, and
- (5) Computer literacy.

§ 36.23 Standard VIII—Junior high/middle school instructional program.

(a) The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows.

(b) The curriculum shall include the following required instructional content areas at each grade level but need not be limited to:

- (1) *Language arts*. One unit shall be required of each student every year.
- (2) *Social studies*. One unit shall be required of each student every year.
- (3) *Mathematics*. One unit shall be required of each student every year.
- (4) *Science*. One unit shall be required of each student every year.
- (5) *Fine arts and practical arts*. One unit each shall be required of each student in the junior high/middle school instructional program.
- (6) *Computer literacy*. One unit shall be required of each student in the junior high/middle school instructional program.
- (7) *Physical education*. One unit shall be required of each student in the junior high/middle school instructional program.

(c) The following content areas shall be integrated into the curriculum.

- (1) Career exploration and orientation.
- (2) Environmental and safety education.
- (3) Metric education.
- (4) Consumer economics (including personal finances).
- (5) Health education (includes meeting the requirements contained in 24 Stat. 69).
- (d) Languages other than English are encouraged to be offered as a content area beginning at junior high/middle school level.

(e) Student enrollment in any laboratory or vocational exploration class shall be consistent with applicable health and safety standards.

§ 36.24

25 CFR Ch. I (4–1–11 Edition)

§ 36.24 Standard IX—Secondary instructional program.

(a) The secondary instructional program shall reflect the philosophy of the student, tribe, community, and school, and an awareness of the changing world.

(b) The secondary instructional curriculum shall include the following content areas:

- (1) Language arts (communication skills).
- (2) Sciences.
- (3) Mathematics.
- (4) Social studies.
- (5) Fine arts and practical arts.
- (6) Physical education.
- (7) Languages other than English.
- (8) Driver education. (See guidelines available from the applicable State Department of Education.)
- (9) *Vocational education.* Curriculum shall be designed and directly related to actual occupational trends (national, regional, and local) and to introduce and familiarize students with various occupations in technology, industry and business, as well as required special skills and the training requisites. Programs shall be directed toward assisting students in making career choices and developing consumer skills and may include the following:
 - (i) Vocational exploration,
 - (ii) Vocational skill development, and
 - (iii) School/on-the-job cooperative education programs.

(c) The following shall be integrated into the curriculum:

- (1) Consumer economics (including personal finances),
- (2) Metric education,
- (3) Safety education, and
- (4) Health education. (In addition, the program shall meet the requirements contained in 24 Stat. 69.)

(d) The high school program shall provide program coordination with feeder schools, career direction, and preparation for the student entering independent living through employment, post-secondary education, and/or marriage.

(e) Yearly class schedules shall take into account the graduation requirements of each student.

(f) Student enrollment in any laboratory or vocational class shall be con-

sistent with applicable health and safety standards.

(g) Schools are encouraged to provide alternative programs that lead to high school completion for secondary students who do not function successfully in the regular academic setting.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

Subpart D—Student Instructional Evaluation

§ 36.30 Standard X—Grading requirements.

(a) Each school shall implement a uniform grading system which assesses a student's mastery of the prescribed objectives of the courses of study undertaken. The mastery of prescribed course objectives shall be the primary measure of academic attainment for reporting student grades on report cards.

(b) The information derived from student instructional evaluations shall be shared with the student and with the parents and shall be used to give teachers and students direction for subsequent learning activities.

(c) Parent/teacher and parent/teacher/student conferences focused on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and school. Residential schools may meet this standard by documenting the communication of student grades on report cards to parents.

(d) Each school shall issue a report card to parents of students who are under the age of eighteen (18) and to students eighteen (18) years of age and older on a regular basis, but not less than four (4) times yearly. The report card shall include, but not be limited to, the following sections:

- (1) Recommendations and probable promotion status;
- (2) Appropriate signatures and request for return of report cards; and
- (3) Student attendance record.

(e) A summary of each year's final card shall become part of the student's permanent school record.

§ 36.31 Standard XI—Student promotion requirements.

Each school shall establish and implement a promotion policy which shall be submitted to and approved by the local school board and Agency Superintendent for Education or Area Education Programs Administrator, as appropriate. The requirements shall include, but not be limited to, the following:

(a) Each grade level or equivalent shall have a minimum criteria for student promotion based primarily on measurable mastery of the instructional objectives.

(b) Criterion-referenced tests that evaluate student skills shall be utilized for measuring the mastery of instructional objectives. The evaluation results shall form the basis for the promotion of each student.

(c) A student who has not participated, either directly or through approved alternative instructional methods or programs, in a minimum of 160 instructional days per academic term or 80 instructional days per semester without a written excused absence shall not be promoted. A school board or a school committee may review a promotion decision and, if warranted due to compelling and/or extenuating circumstances, rescind in writing such action on a case-by-case basis. Alternative instructional methods shall be submitted in writing for approval by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

§ 36.32 Standard XII—Graduation requirements for a high school diploma.

Graduation requirements contained under this section shall be applied beginning with the graduating class of the 1987-88 school year.

(a) Satisfactory completion of a minimum number of units shall be the measure for the issuance of a high school diploma.

(b) To graduate, a student shall earn 20 units in a four year high school program unless the state in which the school is located exceeds these requirements, in which case the state's requirements shall apply; fifteen (15) units shall be required as follows:

- (1) Language arts—four (4) units.
- (2) Mathematics—three (3) units.
- (3) Social studies—three (3) units.
 - (i) One (1) unit in United States history;
 - (ii) One-half ($\frac{1}{2}$) unit in civics/government;
 - (iii) One-half ($\frac{1}{2}$) unit in tribal history/government;
 - (iv) One-half ($\frac{1}{2}$) unit in Indian studies; and
 - (v) One-half ($\frac{1}{2}$) unit in any other social studies;
- (4) Science—two (2) units.
 - (i) One (1) unit in the general science area.
 - (ii) One (1) unit in laboratory science areas, i.e., chemistry, physics, biology, zoology, laboratory anatomy.
- (5) Physical education—one (1) unit.
- (6) Practical arts—one (1) unit. Credit in any vocational course may also be used to satisfy this required unit.
- (7) Fine arts—one (1) unit. Music, art, dance, drama, theatre, and other fine arts courses may be used to satisfy this required unit. These are minimum requirements; local schools may establish academic or vocational requirements beyond those prescribed by these standards.

(c) A school with an average enrollment of fewer than 75 students may offer subjects in alternate years. If schools use this pattern, alternating pairs of subjects shall be listed and approved by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(d) Credits earned through approved correspondence or extension study may be accepted if such credits are from schools approved or accredited by the state in which they are located or by a college or university which is regionally accredited for such purposes.

(e) Students who successfully complete the requirements of the High School Proficiency Examination in the State in which the school is located shall receive an endorsement so stating on their diplomas.

Subpart E—Instructional Support**§ 36.40 Standard XIII—Library/media program.**

(a) Each school shall provide a library/media program which shall, as a

§ 36.41

25 CFR Ch. I (4-1-11 Edition)

minimum, meet the applicable state and/or regional standards, but shall not be limited to these, and shall include the following:

(1) A written set of instructional and service objectives shall be established that is integrated and consistent with the school's educational goals and philosophy. The librarian or educational media specialist, with students and staff, shall set objectives based on assessed academic and residential needs. The program and services will be evaluated yearly by the principal and the librarian or educational media specialist to determine the degree to which all objectives have been met.

(2) A written policy for the selection of materials and equipment shall be developed by a library committee in collaboration with the librarian and be approved by the school board. The collection of materials shall include as a minimum the following:

(i) A collection of books suitable for the range of student abilities and interests being served in the following ADM ratios.

(A) Elementary K-6, 15 books per student

(B) Middle 7-8, 12 books per student

(C) Secondary 9-12, 10 books per student

It is required that materials pertaining to Indian Tribes and/or Alaskan Natives be integrated within this basic collection.

(ii) Eight (8) to 12 percent of the basic collection must be composed of reference books, currently relevant and in a state of good physical condition, for practical use. Single copies of the principal textbooks used to complement instruction shall be in the collection, but textbooks cannot be counted toward this standard.

(iii) A periodical collection, suitable for the range of student abilities and interests being served, consisting of one (1) periodical for every ten (10) students, shall be maintained. Schools of over 200 will have a base collection of 20 periodicals.

(iv) A professional collection for the school staff shall be developed and maintained by the librarian in cooperation with a faculty committee.

(v) A variety of audio-visual materials, suitable for the range of instruc-

tion being provided, of at least 750 items or five (5) items for each student, whichever is larger, and inclusive of materials located in the classrooms shall be maintained. This category includes some of each of the following: Tactile objects, globes, models, maps, films, film-strips, microforms, slides, audio and video tapes, recordings, transparencies and graphics, and the equipment to use all of these. Multiple items within a specific set of materials will be counted as separate items.

(3) There shall be a library media center serviced by a librarian. Schools with fewer than 200 students are encouraged, wherever feasible, to cooperate in sharing librarian resources. Schools within an Agency and/or Area may cooperatively share the costs and services of a librarian who shall facilitate sharing of the combined available resources among the cooperating schools in accordance with the following ratios:

School Enrollment (ADM)

Up to 100—1/2 time librarian

101-200—1/2 time librarian and 1/2 time library aide or 20 hours of library activity

201-400—1 full-time librarian or 2/3 time librarian provided the school has a full-time library aide

401+—1 full-time librarian and a full-time library aide

(4) All libraries must conduct an annual inventory of available books, materials, and equipment in accordance with the acquisitions and selection policies.

§ 36.41 Standard XIV—Textbooks.

(a) Each school shall establish a textbook review committee composed of teachers, parents, and students, and school board members. Appointment to the textbook review committee shall be subject to school board approval.

(b) The textbook review committee shall establish a procedure and criteria for the annual review of textbooks and other materials used to complement instruction. The criteria shall include, but not be limited to, the following:

(1) The textbook content shall meet the course objectives which are within the adopted school curriculum.

(2) The textbooks shall, as much as possible, reflect cultures accurately.

(3) The textbooks shall be current, in good physical condition, and varied in reading levels.

(c) Each school shall equitably distribute instructional materials to all classrooms. Each school shall inventory all property and equipment annually prior to requisitioning additional materials. Copies of the inventory shall be kept on file by the school staff.

§ 36.42 Standard XV—Counseling services.

Each school shall offer student counseling services concerned with physical, social, emotional, intellectual, and vocational growth for each individual. Counseling services shall be included in a school-wide assessment program.

(a) Each Agency and Area, as appropriate, shall institute and supervise an assessment program for its schools in order to provide for the objective assessment of student academic performance. Required formal tests shall be administered annually to all regular program students in grades 4, 8, and 12. (The testing of special education and gifted/talented students shall be in accordance with respective regulations.) If required by state certification standards, schools may use the state mandated academic achievement tests and accompanying requirements. These formal tests and their subtest contents, as well as the test-related procedures, shall include, but not be limited to, the following:

(1) Each Spring, schools shall conduct testing for grades 4, 8, and 12 using a current version of a standardized academic achievement test based upon the national assessment standards designed to assess higher order thinking skills. All schools shall keep a current record, with the Office of Indian Education Programs, of the test the school administrators each Spring and the testing dates.

(2) Schools shall use some form of performance-based or authentic assessment in addition to standardized achievement testing.

(3) Each school shall report the summative results of its assessment program to its respective Agency or Area, as appropriate, and its school board.

(4) Parents/guardians shall be informed of their children's assessment results and provided with an explanation and interpretation to ensure adequate understanding of the results.

(5) Each school's instructional program shall establish an ongoing student academic assessment program to ensure that defined assessment procedures are in place. The program shall include regular training in basic assessment procedures and routines for all teachers and other staff involved in student assessment.

(6) Each Agency and Area, as appropriate, shall report the results of each school's formal Spring tests to the Office of Indian Education Programs by August 1 of each year. Summative information from performance-based and authentic assessments shall be reported at the same time.

(b) Each counseling program shall provide the following:

(1) Each school having a minimum school ADM of 200 students shall make provisions for the full-time professional services of a counselor, and each school enrolling fewer than 200 students shall make provisions for a part-time professional counselor.

(2) The counselors shall be familiar with the unique tribal, social, and economic characteristics of students.

(3) The counseling program shall contain the following:

(i) A written referral procedure;

(ii) Counseling techniques and documentation procedures to provide for the career, academic, social, and personal needs of the students which are based on the cultural beliefs and values of the students being served;

(iii) Preventative and crisis counseling on both individual and group bases;

(iv) Confidentiality and security of counseling records for each student; and

(v) Design and implementation of orientation programs to facilitate the pupil's transition from elementary to junior high/middle school and from junior high/middle school to high school.

(vi) Each junior or middle school and high school student shall receive academic counseling a minimum of twice yearly during which time the counselor

§ 36.43

shall assist the student in developing a written academic and career plan based on ability, aptitude, and interests. Additionally, counselors will assist high school students in selecting courses which satisfy the school's and the state's graduation requirements and the student's academic and career plan. Further, seniors will be given aid in completing registration and/or financial assistance applications for either vocational or academic post-secondary institutions.

(vii) Each high school counseling program shall be required to have on file for each student a planned academic program of studies which is available from the regular course offerings of the school to meet the student's career objectives and which will show that the student has received counseling.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61766, Dec. 1, 1994]

§ 36.43 Standard XVI—Student activities.

All schools shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Each activity program shall help develop leadership abilities and provide opportunities for student participation but not be limited to activities that include special interest clubs, physical activities, student government, and cultural affairs. The activity program shall be an integral part of the overall educational program.

(a) All student activities shall be required to have qualified sponsors and be approved by the school supervisor, and the school board shall approve the overall activity plan. A qualified sponsor is a professional staff member of the school that is given responsibility to provide guidance or supervision for student activities.

(b) A plan of student activity operations shall be submitted, by each activity at the beginning of each school year, to the school supervisor. The plan will include the purpose, structure, coordination, and planned types of fund-raising activities.

(c) School may participate in interscholastic sports and activities on an informal or formal basis. On an informal basis, the Bureau-operated schools

25 CFR Ch. I (4–1–11 Edition)

will coordinate with other schools in setting up a schedule of sports and games. Schools that participate in state-recognized leagues will abide by those state rules regulating interschool competition.

(d) Until comparable competitive opportunities are provided to all students, regardless of sex, no student shall be barred from participation in interscholastic competition in noncontact sports except on the basis of individual merit.

(e) Residential schools shall plan and provide an intramural program for all students. The program shall include a variety of scholastic and sport activities.

(f) Students shall be involved only in activities which are sanctioned by the school.

(g) All student activities involved only in fund raising are required to establish a school/student activity bank account following school/student banking procedures outlined under 25 CFR 31.7. All student activity accounts shall be audited annually.

(h) The school shall provide for the safety and welfare of students participating in school-sponsored activities.

(i) Each sponsor of a student activity will be given orientation and training covering the responsibilities of a sponsor by the school supervisor.

Subpart F—Evaluation of Educational Standards

§ 36.50 Standard XVII—School program evaluation and needs assessment.

Each school shall complete a formal, formative evaluation at least once every seven (7) years beginning no later than the second complete school year following the effective date of this part. Schools shall follow state and/or regional accreditation, or accreditation requirements equal to the state in which a school is located. Each school shall follow the prescribed evaluation cycle. The primary purpose of this evaluation will be to determine the effects and quality of school programs and to improve the operations and services of the school programs.

Bureau of Indian Affairs, Interior

§ 36.51

(a) Each school's evaluation design or model will provide objective and quantitative analysis of each area to be evaluated. The analysis shall include product and process evaluation methods. The areas to be reviewed will include, but not be limited to, the following:

- (1) School philosophy and objectives.
- (2) Administrative and organizational requirements.
- (3) Program planning and implementation.
- (4) Curriculum development and instruction.
- (5) Primary education.
- (6) Program of studies for elementary, junior high/middle, and high schools.
- (7) Grading requirements.
- (8) Promotion requirements.
- (9) High school graduation requirements.
- (10) Library/media.
- (11) Textbooks and other instructional materials.
- (12) Counseling services.
- (13) Medical and health services.
- (14) Student activities.
- (15) Transportation services.
- (16) Staff certification and performance.
- (17) Facilities (school plant).
- (18) Parent and community concerns.
- (19) School procedures and policies.
- (20) School board operations.

(b) The Director, within six (6) months from the effective date of this part, shall distribute to each school, Agency or Area, as appropriate, a standardized needs assessment and evaluation instrument with guidelines for developing and applying a locally appropriate evaluation model for carrying out the requirements of this standard.

§ 36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area

at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

- (1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of

§ 36.70

25 CFR Ch. I (4–1–11 Edition)

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

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

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

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

Subpart G—Homeliving Programs

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

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

§ 36.70 What terms do I need to know?

The following definitions apply to this subpart:

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

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

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

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

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

Homeliving Manager means the employee responsible for direct super-

vision of the homeliving program staff and students.

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

(1) Enrolled in and are current members of a public school in the community in which they reside; or

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

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

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

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

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

§ 36.71 What is the purpose of this part?

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

STAFFING

§ 36.75 What qualifications must homeliving staff possess?

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

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

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

Bureau of Indian Affairs, Interior

§ 36.81

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

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

§ 36.76 Who is in charge of all homeliving operations?

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

§ 36.77 What are the homeliving staffing requirements?

Homeliving programs must meet the staffing requirements of this section.

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

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

(b) The following staffing ratios apply on weekends:

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

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

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

employees who work a minimum of 20 hours per week.

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

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

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

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

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

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

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

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

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

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

§ 36.82

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

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

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

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

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

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

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

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

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

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

25 CFR Ch. I (4–1–11 Edition)

§ 36.86 Are there staff training requirements?

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

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

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

(2) CPR—Automated External Defibrillator;

(3) Student Checkout Policy;

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

(5) Medication Administration;

(6) Student Rights;

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

(8) Suicide Prevention.

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

(1) De-escalation/Conflict Resolution;

(2) Substance Abuse Issues;

(3) Ethics;

(4) Parenting skills/Child Care;

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

(6) Student Supervision Skills;

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

(8) Basic Counseling Skills; and

(9) Continuity of Operations Plan (COOP).

PROGRAM REQUIREMENTS

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

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

Bureau of Indian Affairs, Interior

§ 36.95

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

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

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

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

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

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

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

(e) Medication in a non-emergency situation.

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

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

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

§ 36.93 Is a homeliving handbook required?

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

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

§ 36.94 What must a homeliving handbook contain?

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

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

§ 36.95 What sanitary standards must homeliving programs meet?

Each homeliving program must meet all of the following standards:

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

§ 36.96

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

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

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

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

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

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

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

25 CFR Ch. I (4-1-11 Edition)

§ 36.99 Are immunizations required for residential program students?

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

§ 36.100 Are there minimum requirements for student attendance checks?

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

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

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

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

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

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

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

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

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

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

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

PRIVACY

§36.110 Must programs provide space for storing personal effects?

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

WAIVERS AND ACCOUNTABILITY

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

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

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

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

(1) Approve the submission; or

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

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

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

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

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

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

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

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

(b) A brief description of programs offered;

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

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

PART 37—GEOGRAPHIC BOUNDARIES

Sec.

37.100 What is the purpose of this part?

37.101 What definitions apply to the terms in this part?

37.102 How is this part organized?

37.103 Information collection.

Subpart A—All Schools

37.110 Who determines geographic attendance areas?

37.111 What role does a tribe have in issues relating to school boundaries?

37.112 Must each school have a geographic attendance boundary?

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

37.120 How does this part affect current geographic attendance boundaries?

§ 37.100

25 CFR Ch. I (4–1–11 Edition)

- 37.121 Who establishes geographic attendance boundaries under this part?
- 37.122 Once geographic attendance boundaries are established, how can they be changed?
- 37.123 How does a Tribe develop proposed geographic attendance boundaries or boundary changes?
- 37.124 How are boundaries established for a new school or dorm?
- 37.125 Can an eligible student living off a reservation attend a school or dorm?

Subpart C—Off-Reservation Boarding Schools

- 37.130 Who establishes boundaries for Off-Reservation Boarding Schools?
- 37.131 Who may attend an ORBS?

AUTHORITY: Public Law 107–110, 115 Stat. 1425.

SOURCE: 70 FR 22204, Apr. 28, 2005, unless otherwise noted.

§ 37.100 What is the purpose of this part?

(a) This part:

(1) Establishes procedures for confirming, establishing, or revising attendance areas for each Bureau-funded school;

(2) Encourages consultation with and coordination between and among all agencies (school boards, tribes, and others) involved with a student's education; and

(3) Defines how tribes may develop policies regarding setting or revising geographic attendance boundaries, attendance, and transportation funding for their area of jurisdiction.

(b) The goals of the procedures in this part are to:

(1) Provide stability for schools;

(2) Assist schools to project and to track current and future student enrollment figures for planning their budget, transportation, and facilities construction needs;

(3) Adjust for geographic changes in enrollment, changes in school capacities, and improvement of day school opportunities; and

(4) Avoid overcrowding or stress on limited resources.

§ 37.101 What definitions apply to the terms in this part?

Act means the No Child Left Behind Act, Public Law 107–110, enacted January 8, 2002. The No Child Left Behind

Act reauthorizes and amends the Elementary and Secondary Education Act (ESEA) and the amended Education Amendments of 1978.

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

Geographic attendance area means a physical land area that is served by a Bureau-funded school.

Geographic attendance boundary means a line of demarcation that clearly delineates and describes the limits of the physical land area that is served by a Bureau-funded school.

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

§ 37.102 How is this part organized?

This part is divided into three subparts. Subpart A applies to all Bureau-funded schools. Subpart B applies only to day schools, on-reservation boarding schools, and peripheral dorms—in other words, to all Bureau-funded schools except off-reservation boarding schools. Subpart C applies only to off-reservation boarding schools (ORBS).

§ 37.103 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 37.122(b), and 37.123(c). These collections have been approved by OMB under control number 1076–0163.

Subpart A—All Schools

§ 37.110 Who determines geographic attendance areas?

The Tribal governing body or the Secretary determines geographic attendance areas.

§ 37.111 What role does a tribe have in issues relating to school boundaries?

A tribal governing body may:

Bureau of Indian Affairs, Interior

§ 37.124

(a) Establish and revise geographical attendance boundaries for all but ORB schools;

(b) Authorize ISEP-eligible students, residing within the tribe's jurisdiction, to receive transportation funding to attend schools outside the geographic attendance area in which the student lives; and

(c) Authorize tribal member students who are ISEP-eligible and are not residing within the tribe's jurisdiction to receive transportation funding to attend schools outside the student's geographic attendance area.

§ 37.112 Must each school have a geographic attendance boundary?

Yes. The Secretary must ensure that each school has a geographic attendance area boundary.

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

§ 37.120 How does this part affect current geographic attendance boundaries?

The currently established geographic attendance boundaries of day schools, on-reservation boarding schools, and peripheral dorms remain in place unless the tribal governing body revises them.

§ 37.121 Who establishes geographic attendance boundaries under this part?

(a) If there is only one day school, on-reservation boarding school, or peripheral dorm within a reservation's boundaries, the Secretary will establish the reservation boundary as the geographic attendance boundary;

(b) When there is more than one day school, on-reservation boarding school, or peripheral dorm within a reservation boundary, the Tribe may choose to establish boundaries for each;

(c) If a Tribe does not establish boundaries under paragraph (b) of this section, the Secretary will do so.

§ 37.122 Once geographic attendance boundaries are established, how can they be changed?

(a) The Secretary can change the geographic attendance boundaries of a

day school, on-reservation boarding school, or peripheral dorm only after:

(1) Notifying the Tribe at least 6 months in advance; and

(2) Giving the Tribe an opportunity to suggest different geographical attendance boundaries.

(b) A tribe may ask the Secretary to change geographical attendance boundaries by writing a letter to the Director of the Office of Indian Education Programs, explaining the tribe's suggested changes. The Secretary must consult with the affected tribes before deciding whether to accept or reject a suggested geographic attendance boundary change.

(1) If the Secretary accepts the Tribe's suggested change, the Secretary must publish the change in the FEDERAL REGISTER.

(2) If the Secretary rejects the Tribe's suggestion, the Secretary will explain in writing to the Tribe why the suggestion either:

(i) Does not meet the needs of Indian students to be served; or

(ii) Does not provide adequate stability to all affected programs.

§ 37.123 How does a Tribe develop proposed geographic attendance boundaries or boundary changes?

(a) The Tribal governing body establishes a process for developing proposed boundaries or boundary changes. This process may include consultation and coordination with all entities involved in student education.

(b) The Tribal governing body may delegate the development of proposed boundaries to the relevant school boards. The boundaries set by the school boards must be approved by the Tribal governing body.

(c) The Tribal governing body must send the proposed boundaries and a copy of its approval to the Secretary.

§ 37.124 How are boundaries established for a new school or dorm?

Geographic attendance boundaries for a new day school, on-reservation boarding school, or peripheral dorm must be established by either:

(a) The tribe; or

(b) If the tribe chooses not to establish boundaries, the Secretary.

§ 37.125 Can an eligible student living off a reservation attend a school or dorm?

Yes. An eligible student living off a reservation can attend a day school, on-reservation boarding school, or peripheral dorm.

Subpart C—Off-Reservation Boarding Schools

§ 37.130 Who establishes boundaries for Off-Reservation Boarding Schools?

The Secretary or the Secretary’s designee, in consultation with the affected Tribes, establishes the boundaries for off-reservation boarding schools (ORBS).

§ 37.131 Who may attend an ORBS?

Any student is eligible to attend an ORBS.

PART 38—EDUCATION PERSONNEL

- Sec.
- 38.1 Scope.
- 38.2 Information collection.
- 38.3 Definitions.
- 38.4 Education positions.
- 38.5 Qualifications for educators.
- 38.6 Basic compensation for educators and education positions.
- 38.7 Appointment of educators.
- 38.8 Nonrenewal of contract.
- 38.9 Discharge of educators.
- 38.10 Conditions of employment of educators.
- 38.11 Length of the regular school term.
- 38.12 Leave system for education personnel.
- 38.13 Status quo employees in education positions.
- 38.14 Voluntary services.
- 38.15 Southwestern Indian Polytechnic Institute.

AUTHORITY: 25 U.S.C. 2011 and 2015, Secs. 1131 and 1135 of the Act of November 1, 1978, 92 Stat. 2322 and 2327; Secs. 511 and 512, Pub. L. 98–511; Secs. 8 and 9, Pub. L. 99–89; Title V of Pub. L. 100–297; Pub. L. 105–337.

SOURCE: 53 FR 37678, Sept. 27, 1988, unless otherwise noted.

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and sec-

ondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

(c) *Other.* Where 25 CFR part 38 and a negotiated labor relations agreement conflict, the negotiated agreement will govern.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunteer assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this part, the term:

Agency means the current organizational unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

Agency school board as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

Agency Superintendent for Education (ASE) means the Bureau official in charge of education functions at an

Bureau of Indian Affairs, Interior

§ 38.3

Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

Area Education Programs Administrator (AEPA) means the Bureau official in charge of an Area Education Office that provides services to off-reservation residential schools, peripheral dormitories or on-reservation BIA funded schools that are not served by an Agency Superintendent for Education. The AEPA may also provide education program services to tribes not having an Agency Superintendent for Education at their agency. The AEPA has no line authority over agency education programs that are under the jurisdiction of an Agency Superintendent for Education.

Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

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

Consult, as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95-561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in §38.7 (a), (b) and (c), and §38.9(e)(3).

Director means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

Discharge means the separation of an employee during the term of the contract.

Education function means the administration and implementation of the Bureau's education programs and activities (including school operations).

Education position, means a position in the Bureau the duties and responsibilities of which:

(a) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(1) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(2) Any activity (other than teaching) that 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; or

(3) 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

(4) 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 Bureau programs. The position of Agency Superintendent for Education is excluded.

Educator, as defined in section 1131(n)(2) of Pub. L. 95-561 means an individual whose services are required, or who is employed, in an education position as defined in §38.3.

Employment contract means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

Involuntary change in position means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

Local school board, as used in this part and defined in section 1139(7) of Pub. L. 95-561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

Probationary period means the extension of the appointed process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed.

School board means an Agency school board or a local school board.

§ 38.4

School supervisor means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

School term is that term which begins usually in the last summer or fall and ends in the Spring. It may be interrupted by one or more vacations.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

- (1) Funds are not available; or
- (2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall be taken to insure that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), Area Education Programs Administrator (AEPA), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the AEPA. Employees who falsify experience and employment history may be subject to disciplinary action or discharge from

25 CFR Ch. I (4-1-11 Edition)

the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local official in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicate an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate an interest in working in any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director shall review annually the Bureau's "Recruitment of Indian Educators Program" and update as necessary. The Director will define individual training plans for trainees and subsequent promotional opportunities for advancement based upon satisfactory job performance in this program.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in part 62 of the Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule or Federal Wage System for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule or Federal Wage System rates that would otherwise be applicable if the position were classified under chapter 51 or subchapter IV of chapter 53 of title 5 of the United States Code (U.S.C.). The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Schedule of compensation rates for teachers and counselors.* The basic compensation for teachers and counselors, including dormitory counselors and homeliving counselors, shall be determined in accordance with rates set by the Defense Department Overseas Teachers Pay and Personnel Practices Act. The schedule used shall be the current published schedule for the school year beginning on or after July 1 of each year.

(d) *Adjusting employee basic compensation rates.* (1) Except for employees occupying positions of teachers and counselors, including dormitory counselors and homeliving counselors, adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated “above satisfactory”; one pay increment; employees whose performance is rated “outstanding”; two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(e) *Special additions to basic compensation.* The Director is authorized to establish the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or,

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(f) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of section 1131(m) of Pub. L. 95-561 or title 5 U.S.C.

(1) *Pay periods.* Educators shall be paid on the basis of a biweekly pay period during the term of the contract. Chapter 55 of title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95-561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Within 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12-month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12-month basis of prorated pay may further elect to be paid in one lump sum at the end of the academic school term for the then remaining amount of rate

§ 38.7

25 CFR Ch. I (4-1-11 Edition)

of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated and payments provided by public school districts in or near the Area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee shall be paid the stipend in equal payments over the period of the extracurricular activity.

[53 FR 37678, Sept. 27, 1988, as amended at 54 FR 46374, Nov. 3, 1989]

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the rea-

sons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to the supervisor identifying the reasons for overturning the action within 10 calendar days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such an appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director

shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure of the Director to act within the 20 calendar day period shall have the effect of approving the school's board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95-561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children attending that school belong, or, in that absence, the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the State are not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert to contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12-month or school-term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95-561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional

for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short-term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short-term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short-term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short-term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short-term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists, short-term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short-term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position, if the qualifications of the individual are lower than required;

(iii) The short-term contract may not exceed the school term and may not be renewed or extended;

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the

emergency appointment at the time the qualified individual is appointed.

(i) *Temporary contracts.* There may be circumstances where a specific position is needed for a period of one year or less. Under these conditions a position may be advertised as a temporary position and be filled under a temporary contract. Such contract requires the same school board approval as a school year contract. If required for the completion of the activities specified in the original announcement, the position, may with school board approval be extended for up to one additional year. Temporary contracts may be terminated at any time and this action is not subject to approval or grievance procedures.

(j) *Waiver of Indian preference.* Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an application or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created). When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(k) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(l) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's or AEPA's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE or AEPA within 25 days. If the board's determinations are not received within the 25 days, the school supervisor or ASE or AEPA shall issue the 60 day notification of renewal or nonrenewal to the individual as required under §38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, or nonrenewed, the appropriate official shall issue the required renewal notice, or nonrenewal, or appeal the determination of the school board to the appropriate official who will make a determination in accordance with the appeal procedure is §38.7(a) of this part. After the probationary period, if the determination is that the contract will not be renewed, the procedures specified in §38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year, the following procedure will apply to those employees who have completed three full continuous school terms of service under consecutive contract appointments and satisfactory performance in the same or comparable education positions.

(a) The employee will be given a written notice of the action and the reasons thereof not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE or AEPA of the determination

within 10 calendar days of that determination. The ASE or AEPA then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE or AEPA would be addressed to the Director for a decision. If the Director or ASE's or AEPA's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the reasons in writing. Failure by the Director or ASE or AEPA to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) Those employees with less than three full continuous school terms of consecutive contract appointments are serving a probationary period. Nonrenewal of his/her contract will be considered a continuation of the examining process. This action cannot be appealed or grieved.

(h) Independent of the procedures outlined in this section, the school supervisor or ASE or AEPA, for applicable positions, shall be required to submit to the ASE or AEPA or appropriate higher authority all nonrenewal actions. Within 60 days, the ASE or AEPA shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the ASE or AEPA makes a decision to overturn the school board determination, the ASE or AEPA shall notify the school board in writing of his/her reasons for doing so.

(i) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(j) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the Agency's procedures in arriving at such a decision. For purposes of this section, "harmful error" means error by the Agency in the application of its procedures which, in the absence or cure of the error, might have caused

the Agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole, the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

(k) Nonrenewal of a contract is not discharge and will not follow the discharge procedures.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and programmatic conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or programmatic restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors, ASE's, and AEPA's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for

the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE or AEPA. The ASE or AEPA may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95-561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond

before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, or AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§ 38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education programs.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term of the intent to renew or not renew their contract. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(k) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another Federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR part 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances. In locations and for positions covered by an exclusive bargaining agreement, the negotiated grievance procedure is the exclusive

§ 38.11

25 CFR Ch. I (4–1–11 Edition)

avenue of redress for all matters within the scope of the negotiated grievance procedure.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless a waiver has been granted under the provisions of 25 CFR 36.61.

§ 38.12 Leave system for education personnel.

(a) *Full-time school-term employees.* Employees on a full-time school-term contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergency leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and

dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) *Leave for full-time, year-long employees.* Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) *Leave for part-time year-long employees.* Employees who are on part-

time year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—64 hours; years 3–5 of employment—80 hours; 6 or more years—104 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 104 hours from year to year. An employee may carry over up to 104 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each biweekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) *Leave for school term employees on a part-time work schedule in excess of 20 hours per week.* (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 20 hours of personal/emergency leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal/emergency leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as

soon as the supervisor reports to work on the official work day.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) *School vacation time.* Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) *Accountable absences for all contract employees.* The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence is not prescheduled or approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in sections 6322 and 6323 of title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees are excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave. A school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) *Leave transferred in.* Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either

the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy "education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees are eligible for consideration for movement to other positions that are defined as "contract education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) If the tribe or school board waives the Indian preference law, the employee loses the early-out retirement eligibility under Pub. L. 96-135, "early-out for non-Indians," if they are entitled to the early-out retirement. A memorandum for the record on BIA letterhead shall be signed by the employee and placed on the permanent side of his/her Official Personnel Folder, along with the tribal resolution, if the tribe/school board has waived the Indian preference law to employ the non-Indian."

(c) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students. Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer, the Bureau school supervisor, and the school board, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the institution, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization, the Bureau school supervisor, and the school board and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

§ 38.15 Southwestern Indian Polytechnic Institute.

(a) The Southwestern Indian Polytechnic Institute has an independent personnel system established under Public Law 105-337, the Administrative Systems Act of 1998, 112 Stat. 3171. The details of this system are in the Indian Affairs Manual (IAM) at Part 20. This manual system may be found in Bureau of Indian Affairs Regional and Agency Offices, Education Line Offices, and the Central Office in Washington, DC.

(b) The personnel system is in the accepted service and addresses the areas of classification, staffing, pay, performance, discipline, and separation. Other areas of personnel such as leave, retirement, life insurance, health benefits, thrift savings, etc., remain under the jurisdiction of the Office of Personnel Management.

[65 FR 58183, Sept. 27, 2000]

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM**Subpart A—General**

Sec.

39.1 What is the purpose of this part?

39.2 What definitions apply to terms in this part?

39.3 Information collection.

Subpart B—Indian School Equalization Formula

- 39.100 What is the Indian School Equalization Formula?
 39.101 Does ISEF assess the actual cost of school operations?

BASE AND SUPPLEMENTAL FUNDING

- 39.102 What is academic base funding?
 39.103 What are the factors used to determine base funding?
 39.104 How must a school's base funding provide for students with disabilities?
 39.105 Are additional funds available for special education?
 39.106 Who is eligible for special education funding?
 39.107 Are schools allotted supplemental funds for special student and/or school costs?

GIFTED AND TALENTED PROGRAMS

- 39.110 Can ISEF funds be distributed for the use of gifted and talented students?
 39.111 What does the term gifted and talented mean?
 39.112 What is the limit on the number of students who are gifted and talented?
 39.113 What are the special accountability requirements for the gifted and talented program?
 39.114 What characteristics may qualify a student as gifted and talented for purposes of supplemental funding?
 39.115 How are eligible gifted and talented students identified and nominated?
 39.116 How does a school determine who receives gifted and talented services?
 39.117 How does a school provide gifted and talented services for a student?
 39.118 How does a student receive gifted and talented services in subsequent years?
 39.119 When must a student leave a gifted and talented program?
 39.120 How are gifted and talented services provided?
 39.121 What is the WSU for gifted and talented students?

LANGUAGE DEVELOPMENT PROGRAMS

- 39.130 Can ISEF funds be used for Language Development Programs?
 39.131 What is a Language Development Program?
 39.132 Can a school integrate Language Development Programs into its regular instructional program?
 39.133 Who decides how Language Development funds can be used?
 39.134 How does a school identify a Limited English Proficient student?
 39.135 What services must be provided to an LEP student?
 39.136 What is the WSU for Language Development programs?

- 39.137 May schools operate a language development program without a specific appropriation from Congress?

SMALL SCHOOL ADJUSTMENT

- 39.140 How does a school qualify for a Small School Adjustment?
 39.141 What is the amount of the Small School Adjustment?
 39.143 What is a small high school?
 39.144 What is the small high school adjustment?
 39.145 Can a school receive both a small school adjustment and a small high school adjustment?
 39.146 Is there an adjustment for small residential programs?

GEOGRAPHIC ISOLATION ADJUSTMENT

- 39.160 Does ISEF provide supplemental funding for extraordinary costs related to a school's geographic isolation?

Subpart C—Administrative Procedures, Student Counts, and Verifications

- 39.200 What is the purpose of the Indian School Equalization Formula?
 39.201 Does ISEF reflect the actual cost of school operations?
 39.202 What are the definitions of terms used in this subpart?
 39.203 When does OIEP calculate a school's allotment?
 39.204 How does OIEP calculate ADM?
 39.205 How does OIEP calculate a school's total WSUs for the school year?
 39.206 How does OIEP calculate the value of one WSU?
 39.207 How does OIEP determine a school's funding for the school year?
 39.208 How are ISEP funds distributed?
 39.209 When may a school count a student for membership purposes?
 39.210 When must a school drop a student from its membership?
 39.211 What other categories of students can a school count for membership purposes?
 39.212 Can a student be counted as enrolled in more than one school?
 39.213 Will the Bureau fund children being home schooled?
 39.214 What is the minimum number of instructional hours required in order to be considered a full-time educational program?
 39.215 Can a school receive funding for any part-time students?

RESIDENTIAL PROGRAMS

- 39.216 How does ISEF fund residential programs?
 39.217 How are students counted for the purpose of funding residential services?
 39.218 Are there different formulas for different levels of residential services?

- 39.219 What happens if a residential program does not maintain residency levels required by this subpart?
- 39.220 What reports must residential programs submit to comply with this rule?
- 39.221 What is a full school month?

PHASE-IN PERIOD

- 39.230 How will the provisions of this subpart be phased in?

Subpart D—Accountability

- 39.401 What is the purpose of this subpart?
- 39.402 What definitions apply to terms used in this subpart?
- 39.403 What certification is required?
- 39.404 What is the certification and verification process?
- 39.405 How will verifications be conducted?
- 39.406 What documentation must the school maintain for additional services it provides?
- 39.407 How long must a school maintain records?
- 39.408 What are the responsibilities of administrative officials?
- 39.409 How does the OIEP Director ensure accountability?
- 39.410 What qualifications must an audit firm meet to be considered for auditing ISEP administration?
- 39.411 How will the auditor report its findings?
- 39.412 What sanctions apply for failure to comply with this subpart?
- 39.413 Can a school appeal the verification of the count?

Subpart E—Contingency Fund

- 39.500 What emergency and contingency funds are available?
- 39.501 What is an emergency or unforeseen contingency?
- 39.502 How does a school apply for contingency funds?
- 39.503 How can a school use contingency funds?
- 39.504 May schools carry over contingency funds to a subsequent fiscal year?
- 39.505 What are the reporting requirements for the use of the contingency fund?

Subpart F—School Board Training Expenses

- 39.600 Are Bureau-operated school board expenses funded by ISEP limited?
- 39.601 Is school board training for Bureau-operated schools considered a school board expense subject to the limitation?
- 39.603 Is school board training required for all Bureau-funded schools?
- 39.604 Is there a separate weight for school board training at Bureau-operated schools?

Subpart G—Student Transportation

- 39.700 What is the purpose of this subpart?
- 39.701 What definitions apply to terms used in this subpart?

ELIGIBILITY FOR FUNDS

- 39.702 Can a school receive funds to transport residential students using commercial transportation?
- 39.703 What ground transportation costs are covered for students traveling by commercial transportation?
- 39.704 Are schools eligible to receive chaperone expenses to transport residential students?
- 39.705 Are schools eligible for transportation funds to transport special education students?
- 39.706 Are peripheral dormitories eligible for day transportation funds?
- 39.707 Which student transportation expenses are currently not eligible for Student Transportation Funding?
- 39.708 Are miles generated by non-ISEP eligible students eligible for transportation funding?

CALCULATING TRANSPORTATION MILES

- 39.710 How does a school calculate annual bus transportation miles for day students?
- 39.711 How does a school calculate annual bus transportation miles for residential students?

REPORTING REQUIREMENTS

- 39.720 Why are there different reporting requirements for transportation data?
- 39.721 What transportation information must off-reservation boarding schools report?
- 39.722 What transportation information must day schools, on-reservation boarding schools and peripheral dormitory schools report?

MISCELLANEOUS PROVISIONS

- 39.730 Which standards must student transportation vehicles meet?
- 39.731 Can transportation time be used as instruction time for day school students?
- 39.732 How does OIEP allocate transportation funds to schools?

Subpart H—Determining the Amount Necessary To Sustain an Academic or Residential Program

- 39.801 What is the formula to determine the amount necessary to sustain a school's academic or residential program?
- 39.802 What is the student unit value in the formula?
- 39.803 What is a weighted student unit in the formula?

§ 39.1

- 39.804 How is the SUIV calculated?
- 39.805 What was the student unit for instruction value (SUIV) for the school year 1999-2000?
- 39.806 How is the SURV calculated?
- 39.807 How will the Student Unit Value be adjusted annually?
- 39.808 What definitions apply to this subpart?
- 39.809 Information collection.

Subpart I—Interim Maintenance and Minor Repair Fund

- 39.900 Establishment and funding of an Interim Maintenance and Minor Repair Fund.
- 39.901 Conditions for distribution.
- 39.902 Allocation.
- 39.903 Use of funds.
- 39.904 Limitations.

Subpart J—Administrative Cost Formula

- 39.1000 Purpose and scope.
- 39.1001 Definitions.
- 39.1002 Allotment of education administrative funds.
- 39.1003 Allotment exception for FY 1991.

Subpart K—Pre-kindergarten Programs

- 39.1100 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.
- 39.1101 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

- 39.1200 Definitions.
- 39.1201 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.
- 39.1202 Distribution of funds.
- 39.1203 Future consideration of contract school operation and maintenance funding.

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

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

Subpart A—General

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

§ 39.1 What is the purpose of this part?

This part provides for the uniform direct funding of Bureau-operated and

25 CFR Ch. I (4-1-11 Edition)

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

§ 39.2 What definitions apply to terms in this part?

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

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

Agency school board means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties.

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

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

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

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

Basic transportation miles means the daily average of all bus miles logged

Bureau of Indian Affairs, Interior

§ 39.2

for round trip home-to-school transportation of day students.

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

Bureau-funded school means

- (1) Bureau school;
- (2) A contract or grant school; or
- (3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

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

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

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

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

Eligible Indian student means a student who:

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

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

Homebound means a student who is educated outside the classroom.

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

ISEP means the Indian School Equalization Program.

Limited English Proficient (LEP) means a child from a language background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

School bus means a passenger vehicle that is:

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

(2) Operated by an operator in the employ of, or under contract to, a Bureau-funded school, who is qualified to operate such a vehicle under Tribal, State or Federal regulations governing the transportation of students.

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

Special education means:

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

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

(ii) Instruction in physical education.

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

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

(1) Travel training; and

(2) Vocational education.

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

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

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

Three-year average means:

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

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

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

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

(2) Learn the skills necessary to move efficiently and safely from place to place within that environment (*e.g.*, in school, in the home, at work, and in the community).

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

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

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

Weighted Student Unit means:

(1) The measure of student membership adjusted by the weights or ratios

used as factors in the Indian School Equalization Formula; and

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

§ 39.3 Information collection.

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

Subpart B—Indian School Equalization Formula

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

§ 39.100 What is the Indian School Equalization Formula?

The Indian School Equalization Formula (ISEF) was established to allocate Indian School Equalization Program (ISEP) funds. OIEP applies ISEF to determine funding allocation for Bureau-funded schools as described in §§39.204 through 39.206.

§ 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools.

BASE AND SUPPLEMENTAL FUNDING

§ 39.102 What is academic base funding?

Academic base funding is the ADM times the weighted student unit.

§ 39.103 What are the factors used to determine base funding?

To determine base funding, schools must use the factors shown in the following table. The school must apply the appropriate factor to each student for funding purposes.

Grade level	Base academic funding factor	Base residential funding factor
Kindergarten	1.15	NA
Grades 1–3	1.38	1.75
Grades 4–6	1.15	1.6
Grades 7–8	1.38	1.6
Grades 9–12	1.5	1.6

§ 39.104 How must a school’s base funding provide for students with disabilities?

(a) Each school must provide for students with disabilities by:

(1) Reserving 15 percent of academic base funding to support special education programs; and

(2) Providing resources through residential base funding to meet the needs of students with disabilities under the National Criteria for Home-Living Situations.

(b) A school may spend all or part of the 15 percent academic base funding reserved under paragraph (a)(1) of this section on school-wide programs to benefit all students (including those without disabilities) only if the school can document that it has met all needs of students with disabilities with such funds, and after having done so, there are unspent funds remaining from such funds.

§ 39.105 Are additional funds available for special education?

(a) Schools may supplement the 15 percent base academic funding reserved under §39.104 for special education with funds available under part B of the Individuals with Disabilities Education Act (IDEA). To obtain part B funds, the school must submit an application to OIEP. IDEA funds are available only if the school demonstrates that funds reserved under §39.104(a) are inadequate to pay for services needed by all eligible ISEF students with disabilities.

(b) The Bureau will facilitate the delivery of IDEA part B funding by:

§ 39.106

- (1) Providing technical assistance to schools in completing the application for the funds; and
- (2) Providing training to Bureau staff to improve the delivery of part B funds.

§ 39.106 Who is eligible for special education funding?

To receive ISEP special education funding, a student must be under 22 years old and must not have received a high school diploma or its equivalent on the first day of eligible attendance. The following minimum age requirements also apply:

- (a) To be counted as a kindergarten student, a child must be at least 5 years old by December 31; and
- (b) To be counted as a first grade student; a child must be at least 6 years old by December 31.

§ 39.107 Are schools allotted supplemental funds for special student and/or school costs?

Yes, schools are allotted supplemental funds for special student and/or school costs. ISEF provides additional funds to schools through add-on weights (called special cost factors). ISEF adds special cost factors as shown in the following table.

Cost Factor	For more information see
Gifted and talented students	§§ 39.110 through 39.121
Students with language development needs.	§§ 39.130 through 39.137
Small school size	§§ 39.140 through 39.156
Geographic isolation of the school.	§ 39.160

GIFTED AND TALENTED PROGRAMS

§ 39.110 Can ISEF funds be distributed for the use of gifted and talented students?

Yes, ISEF funds can be distributed for the provision of services for gifted and talented students.

§ 39.111 What does the term gifted and talented mean?

The term gifted and talented means students, children, or youth who:

- (a) Give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields; and

25 CFR Ch. I (4–1–11 Edition)

- (b) Need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

§ 39.112 What is the limit on the number of students who are gifted and talented?

There is no limit on the number of students that a school can classify as gifted and talented.

§ 39.113 What are the special accountability requirements for the gifted and talented program?

If a school identifies more than 13 percent of its student population as gifted and talented the Bureau will immediately audit the school's gifted and talented program to ensure that all identified students:

- (a) Meet the gifted and talented requirement in the regulations; and
- (b) Are receiving gifted and talented services.

§ 39.114 What characteristics may qualify a student as gifted and talented for purposes of supplemental funding?

To be funded as gifted and talented under this part, a student must be identified as gifted and talented in at least one of the following areas.

(a) *Intellectual Ability* means scoring in the top 5 percent on a statistically valid and reliable measurement tool of intellectual ability.

(b) *Creativity/Divergent Thinking* means scoring in the top 5 percent of performance on a statistically valid and reliable measurement tool of creativity/divergent thinking.

(c) *Academic Aptitude/Achievement* means scoring in the top 15 percent of academic performance in a total subject area score on a statistically valid and reliable measurement tool of academic achievement/aptitude, or a standardized assessment, such as an NRT or CRT.

(d) *Leadership* means the student is recognized as possessing the ability to lead, guide, or influence the actions of others as measured by objective standards that a reasonable person of the community would believe demonstrates that the student possess leadership skills. These standards include evidence from surveys, supportive documentation portfolios,

elected or appointed positions in school, community, clubs and organization, awards documenting leadership capabilities. No school can identify more than 15 percent of its student population as gifted and talented through the leadership category.

(e) *Visual and Performing Arts* means outstanding ability to excel in any imaginative art form; including, but not limited to, drawing, printing, sculpture, jewelry making, music, dance, speech, debate, or drama as documented from surveys, supportive documentation portfolios, awards from judged or juried competitions. No school can identify more than 15 percent of its student population as gifted and talented through the visual and performing arts category.

§ 39.115 How are eligible gifted and talented students identified and nominated?

(a) Screening can be completed annually to identify potentially eligible students. A student may be nominated for gifted and talented designation using the criteria in § 39.114 by any of the following:

- (1) A teacher or other school staff;
- (2) Another student;
- (3) A community member;
- (4) A parent or legal guardian; or
- (5) The student himself or herself.

(b) Students can be nominated based on information regarding the student's abilities from any of the following sources:

- (1) Collections of work;
- (2) Audio/visual tapes;
- (3) School grades;
- (4) Judgment of work by qualified individuals knowledgeable about the student's performances (*e.g.*, artists, musicians, poets, historians, etc.);
- (5) Interviews or observations; or
- (6) Information from other sources.

(c) The school must have written parental consent to collect documentation of gifts and talents under paragraph (b) of this section.

§ 39.116 How does a school determine who receives gifted and talented services?

(a) To determine who receives gifted and talented funding, the school must use qualified professionals to perform a multi-disciplinary assessment. The as-

essment may include the examination of work samples or performance appropriate to the area under consideration. The school must have the parent or guardian's written permission to conduct individual assessments or evaluations. Assessments under this section must meet the following standards:

(1) The assessment must use assessment instruments specified in § 39.114 for each of the five criteria for which the student is nominated;

(2) If the assessment uses a multi-criteria evaluation, that evaluation must be an unbiased evaluation based on student needs and abilities;

(3) Indicators for visual and performing arts and leadership may be determined based on national, regional, or local criteria; and

(4) The assessment may use student portfolios.

(b) A multi-disciplinary team will review the assessment results to determine eligibility for gifted and talented services. The purpose of the team is to determine eligibility and placement to receive gifted and talented services.

(1) Team members may include nominator, classroom teacher, qualified professional who conducted the assessment, local experts as needed, and other appropriate personnel such as the principal and/or a counselor.

(2) A minimum of three team members is required to determine eligibility.

(3) The team will design a specific education plan to provide gifted and talented services related in the areas identified.

§ 39.117 How does a school provide gifted and talented services for a student?

Gifted and talented services are provided through or under the supervision of highly qualified professional teachers. To provide gifted and talented services for a student, a school must take the steps in this section.

(a) The multi-disciplinary team formed under § 39.116(b) will sign a statement of agreement for placement of services based on documentation reviewed.

(b) The student's parent or guardian must give written permission for the student to participate.

§ 39.118

(c) The school must develop a specific education plan that contains:

- (1) The date of placement;
- (2) The date services will begin;
- (3) The criterion from § 39.114 for which the student is receiving services and the student's performance level;
- (4) Measurable goals and objectives; and
- (5) A list of staff responsible for each service that the school is providing.

§ 39.118 How does a student receive gifted and talented services in subsequent years?

For each student receiving gifted and talented services, the school must conduct a yearly evaluation of progress, file timely progress reports, and update the specific education plan.

(a) If a school identifies a student as gifted and talented based on § 39.114 (a), (b), or (c), then the student does not need to reapply for the gifted and talented program. However, the student must be reevaluated at least every 3 years through the 10th grade to verify eligibility for funding.

(b) If a school identifies a student as gifted and talented based on § 39.114 (d) or (e), the student must be reevaluated annually for the gifted and talented program.

§ 39.119 When must a student leave a gifted and talented program?

A student must leave the gifted and talented program when either:

- (a) The student has received all of the available services that can meet the student's needs;
- (b) The student no longer meets the criteria that have qualified him or her for the program; or
- (c) The parent or guardian removes the student from the program.

§ 39.120 How are gifted and talented services provided?

In providing services under this section, the school must:

- (a) Provide a variety of programming services to meet the needs of the students;
- (b) Provide the type and duration of services identified in the Individual Education Plan established for each student; and

25 CFR Ch. I (4-1-11 Edition)

(c) Maintain individual student files to provide documentation of process and services; and

(d) Maintain confidentiality of student records under the Family Educational Rights and Privacy Act (FERPA).

§ 39.121 What is the WSU for gifted and talented students?

The WSU for a gifted and talented student is the base academic weight (see § 39.103) subtracted from 2.0. The following table shows the gifted and talented weights obtained using this procedure.

Grade level	Gifted and talented WSU
Kindergarten	0.85
Grades 1 to 3	0.62
Grades 4 to 6	0.85
Grades 7 to 8	0.62
Grades 9 to 12	0.50

LANGUAGE DEVELOPMENT PROGRAMS

§ 39.130 Can ISEF funds be used for Language Development Programs?

Yes, schools can use ISEF funds to implement Language Development programs that demonstrate the positive effects of Native language programs on students' academic success and English proficiency. Funds can be distributed to a total aggregate instructional weight of 0.13 for each eligible student.

§ 39.131 What is a Language Development Program?

A Language Development program is one that serves students who either:

- (a) Are not proficient in spoken or written English;
- (b) Are not proficient in any language;
- (c) Are learning their Native language for the purpose of maintenance or language restoration and enhancement;
- (d) Are being instructed in their Native language; or
- (e) Are learning non-language subjects in their Native language.

§ 39.132 Can a school integrate Language Development programs into its regular instructional program?

A school may offer Language Development programs to students as part of

Bureau of Indian Affairs, Interior

§ 39.144

its regular academic program. Language Development does not have to be offered as a stand-alone program.

§ 39.133 Who decides how Language Development funds can be used?

Tribal governing bodies or local school boards decide how their funds for Language Development programs will be used in the instructional program to meet the needs of their students.

§ 39.134 How does a school identify a Limited English Proficient student?

A student is identified as limited English proficient (LEP) by using a nationally recognized scientifically research-based test.

§ 39.135 What services must be provided to an LEP student?

A school must provide services that assist each LEP student to:

- (a) Become proficient in English and, to the extent possible, proficient in their Native language; and
- (b) Meet the same challenging academic content and student academic achievement standards that all students are expected to meet under 20 U.S.C. 6311(b)(1).

§ 39.136 What is the WSU for Language Development programs?

Language Development programs are funded at 0.13 WSUs per student.

§ 39.137 May schools operate a language development program without a specific appropriation from Congress?

Yes, a school may operate a language development program without a specific appropriation from Congress, but any funds used for such a program must come from existing ISEP funds. When Congress specifically appropriates funds for Indian or Native languages, the factor to support the language development program will be no more than 0.25 WSU.

SMALL SCHOOL ADJUSTMENT

§ 39.140 How does a school qualify for a Small School Adjustment?

A school will receive a small school adjustment if either:

- (a) Its average daily membership (ADM) is less than 100 students; or
- (b) It serves lower grades and has a diploma-awarding high school component with an average instructional daily membership of less than 100 students.

§ 39.141 What is the amount of the Small School Adjustment?

(a) A school with a 3-year ADM of 50 or fewer students will receive an adjustment equivalent to an additional 12.5 base WSU; or

(b) A school with a 3-year ADM of 51 to 99 students will use the following formula to determine the number of WSU for its adjustment. With X being the ADM, the formula is as follows:

$$\text{WSU adjustment} = ((100 - X)/200) * X$$

§ 39.143 What is a small high school?

For purposes of this part, a small high school:

- (a) Is accredited under 25 U.S.C. 2001(b);
- (b) Is staffed with highly qualified teachers;
- (c) Operates any combination of grades 9 through 12;
- (d) Offers high school diplomas; and
- (e) Has an ADM of fewer than 100 students.

§ 39.144 What is the small high school adjustment?

(a) The small high school adjustment is a WSU adjustment given to a small high school that meets both of the following criteria:

- (1) It has a 3-year average daily membership (ADM) of less than 100 students; and
- (2) It operates as part of a school that during the 2003-04 school year also included lower grades.

(b) The following table shows the WSU adjustment given to small high schools. In the table, "X" stands for the ADM.

§ 39.145

25 CFR Ch. I (4–1–11 Edition)

ADM of high school component	Amount of small high school adjustment	School receives a component small school adjustment under § 39.141
50 or fewer students	6.25 base WSU	Yes.
51 to 99 students	determined using the following formula: $WSU = ((100-X)/200)*X/2$	Yes.
50 or fewer students	12.5 base WSU	No.
51 to 99 students	determined using the following formula: $WSU = ((100-X)/200)*X$	No.

§ 39.145 Can a school receive both a small school adjustment and a small high school adjustment?

A school that meets the criteria in § 39.140 can receive both a small school adjustment and a small high school adjustment. The following table shows the total amount of adjustments for eligible schools by average daily membership (ADM) category.

ADM—entire school	ADM—high school component	Small school adjustment	Small high school adjustment	Total adjustment
1–50	NA	12.5	NA	12.5
1–50	1–50	12.5	6.25	18.75
51–99	1–50	² 12.5–0.5	6.25	18.75–6.75
51–99	51–99	¹ 12.5–0.5	² 6.25–0.25	18.75–0.7
99	1–50	0.5	12.5	12.5
99	51–99	0.5	² 12.5–0.5	12.5–0.5

¹ The amount of the adjustment is within this range. The exact figure depends upon the results obtained using the formula in § 39.141.
² The amount of the adjustment is within this range. The exact figure depends upon the results obtained using the formula in § 39.144.

§ 39.146 Is there an adjustment for small residential programs?

In order to compensate for the additional costs of operating a small residential program, OIEP will add to the total WSUs of each qualifying school as shown in the following table:

Type of residential program	Number of WSUs added
Residential student count of 50 or fewer ISEP-eligible students.	12.5.
Residential student count of between 51 and 99 ISEP-eligible students.	Determined by the formula $((100-X)/200)X$, where X equals the residential student count.

GEOGRAPHIC ISOLATION ADJUSTMENT

§ 39.160 Does ISEF provide supplemental funding for extraordinary costs related to a school’s geographic isolation?

Yes. Havasupai Elementary School, for as long as it remains in its present location, will be awarded an additional cost factor of 12.5 WSU.

Subpart C—Administrative Procedures, Student Counts, and Verifications

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

§ 39.200 What is the purpose of the Indian School Equalization Formula?

OIEP uses the Indian School Equalization Formula (ISEF) to distribute Indian School Equalization Program (ISEP) appropriations equitably to Bureau-funded schools.

§ 39.201 Does ISEF reflect the actual cost of school operations?

ISEF does not attempt to assess the actual cost of school operations either at the local school level or in the aggregate nationally. ISEF is a relative distribution of available funds at the local school level by comparison with all other Bureau-funded schools.

§ 39.202 What are the definitions of terms used in this subpart?

Homebound means a student who is educated outside the classroom.

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

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

Three-year average means:

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

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

§ 39.203 When does OIEP calculate a school's allotment?

OIEP calculates a school's allotment no later than July 1. Schools must submit final ADM enrollment figures no later than June 15.

§ 39.204 How does OIEP calculate ADM?

OIEP calculates ADM by:

(a) Adding the total enrollment figures from periodic reports received from each Bureau-funded school; and

(b) Dividing the total enrollment for each school by the number of days in the school's reporting period.

§ 39.205 How does OIEP calculate a school's total WSUs for the school year?

(a) OIEP will add the weights obtained from the calculations in paragraphs (a)(1), (a)(2), and (a)(3) of this section to obtain the total weighted student units (WSUs) for each school.

(1) Each year's ADM is multiplied by the applicable weighted student unit for each grade level;

(2) Calculate any supplemental WSUs generated by the students; and

(3) Calculate any supplemental WSUs generated by the schools.

(b) The total WSU for the school year is the sum of paragraphs (a)(1), (a)(2), and (a)(3) of this section.

§ 39.206 How does OIEP calculate the value of one WSU?

(a) To calculate the appropriated dollar value of one WSU, OIEP divides the systemwide average number of WSUs

for the previous 3 years into the current year's appropriation.

(b) To calculate the average WSU for a 3-year period:

(1) *Step 1.* Add together each year's total WSU (calculated under paragraph (b) of this section); and

(2) *Step 2.* Divide the sum obtained in step 1 by 3.

§ 39.207 How does OIEP determine a school's funding for the school year?

To determine a school's funding for the school year, OIEP uses the following seven-step process:

(a) *Step 1.* Multiply the appropriate base academic and/or residential weight from §39.103 by the number of students in each grade level category.

(b) *Step 2.* Multiply the number of students eligible for supplemental program funding under §39.107 by the weights for the program.

(c) *Step 3.* Calculate the school-based supplemental weights under §39.107.

(d) *Step 4.* Add together the sums obtained in steps 1 through 3 to obtain each school's total WSU.

(e) *Step 5.* Add together the total WSUs for all Bureau-funded schools.

(f) *Step 6.* Calculate the value of a WSU by dividing the current school year's funds by the average total WSUs as calculated under step 5 for the previous 3 years.

(g) *Step 7.* Multiply each school's WSU total by the base value of one WSU to determine funding for that school.

§ 39.208 How are ISEP funds distributed?

(a) On July 1, schools will receive 80 percent of their funds as determined in §39.207.

(b) On December 1, the balance will be distributed to all schools after verification of the school count and any adjustments made through the appeals process for the third year.

§ 39.209 When may a school count a student for membership purposes?

If a student is enrolled, is in attendance during any of the first 10 days of school, and receives at least 5 days' instruction, the student is deemed to be

§ 39.210

enrolled all 10 days and shall be counted for ADM purposes. The first 10 days of school, for purposes of this section, are determined by the calendar that the school submits to OIEP.

(a) For ISEP purposes, a school can add a student to the membership when he or she has been enrolled and has received a full day of instruction from the school.

(b) Except as provided in § 39.210, to be counted for ADM, a student dropped under § 39.209 must:

- (1) Be re-enrolled; and
- (2) Receive a full day of instruction from the school.

§ 39.210 When must a school drop a student from its membership?

If a student is absent for 10 consecutive school days, the school must drop that student from the membership for ISEP purposes of that school on the 11th day.

§ 39.211 What other categories of students can a school count for membership purposes?

A school can count other categories of students for membership purposes as shown in the following table.

Type of student	Circumstances under which student can be included in the school's membership
(a) Homebound	(1) The student is temporarily confined to the home for some or all of the school day for medical, family emergency, or other reasons required by law or regulation; (2) The student is being provided by the school with at least 5 documented contact hours each week of academic services by certified educational personnel; and (3) Appropriate documentations is on file at the school.
(b) Located in an institutional setting outside of the school.	The school is either: (1) Paying for the student to receive educational services from the facility; or (2) Providing educational services by certified school staff for at least 5 documented contact hours each week.
(c) Taking college courses during the school day.	The student is both: (1) Concurrently enrolled in, and receiving credits for both the school's courses and college courses; and (2) In physical attendance at the school at least 3 documented contact hours per day.

25 CFR Ch. I (4-1-11 Edition)

Type of student	Circumstances under which student can be included in the school's membership
(d) Taking distance learning courses.	The student is both: (1) Receiving high school credit for grades; and (2) In physical attendance at the school at least 3 documented contact hours per day.
(e) Taking internet courses.	The student is both: (1) Receiving high school credit for grades; and (2) Taking the courses at the school site under a teacher's supervision.

§ 39.212 Can a student be counted as enrolled in more than one school?

Yes, if a student attends more than one school during an academic year, each school may count the student as enrolled once the student meets the criteria in 39.209.

§ 39.213 Will the Bureau fund children being home schooled?

No, the Bureau will not fund any child that is being home schooled.

§ 39.214 What is the minimum number of instructional hours required in order to be considered a full-time educational program?

A full time program provides the following number of instructional/student hours to the corresponding grade level:

Grade	Hours
K	720
1-3	810
4-8	900
9-12	970

§ 39.215 Can a school receive funding for any part-time students?

(a) A school can receive funding for the following part-time students:

- (1) Kindergarten students enrolled in a 2-hour program; and
- (2) Grade 7-12 students enrolled in at least half but less than a full instructional day.

(b) The school must count students classified as part-time at 50 percent of their basic instructional WSU value.

RESIDENTIAL PROGRAMS

§ 39.216 How does ISEF fund residential programs?

Residential programs are funded on a WSU basis using a formula that takes into account the number of nights of

Bureau of Indian Affairs, Interior

§ 39.401

service per week. Funding for residential programs is based on the average of the 3 previous years' residential WSUs.

§ 39.217 How are students counted for the purpose of funding residential services?

For a student to be considered in residence for purposes of this subpart, the school must be able to document that the student was:

- (a) In residence at least one night during the first full week of October;
- (b) In residence at least one night during the week preceding the first full week in October;
- (c) In residence at least one night during the week following the first full week in October; and
- (d) Present for both the after school count and the midnight count at least one night during each week specified in this section.

§ 39.218 Are there different formulas for different levels of residential services?

(a) Residential services are funded as shown in the following table:

If a residential program operates . . .	Each student is funded at the level of . . .
(1) 4 nights per week or less	Total WSU × 4/7.
(2) 5, 6 or 7 nights per week	Total WSU × 7/7.

- (b) In order to qualify for residential services funding under paragraph (a)(2) of this section, a school must document that at least 10 percent of residents are present on 3 of the 4 weekends during the count period.
- (c) At least 50 percent of the residency levels established during the count period must be maintained every month for the remainder of the school year.
- (d) A school may obtain waivers from the requirements of this section if there are health or safety justifications.

§ 39.219 What happens if a residential program does not maintain residency levels required by this subpart?

Each school must maintain its declared nights of service per week as certified in its submitted school calendar. For each month that a school

does not maintain 25 percent of the residency shown in its submitted calendar, the school will lose one-tenth of its current year allocation.

§ 39.220 What reports must residential programs submit to comply with this subpart?

Residential programs must report their monthly counts to the Director on the last school day of the month. To be counted, a student must have been in residence at least 10 nights during each full school month.

§ 39.221 What is a full school month?

A full school month is each 30-day period following the first day that residential services are provided to students based on the school residential calendar.

PHASE-IN PERIOD

§ 39.230 How will the provisions of this subpart be phased in?

The calculation of the three-year rolling average of ADM for each school and for the entire Bureau-funded school system will be phased-in as shown in the following table.

Time period	How OIEP must calculate ADM
(a) First school year after May 31, 2005.	Use the prior 3 years' count period to create membership for funding purposes
(b) Second school year after May 31, 2005.	(1) The academic program will use the previous year's ADM school year and the 2 prior years' count periods; and (2) The residential program will use the previous year's count period and the 2 prior years' count weeks
(c) Each succeeding school year after May 31, 2005.	Add one year of ADM or count period and drop one year of prior count weeks until both systems are operating on a 3-year rolling average using the previous 3 years' count after period or ADM, respectively.

Subpart D—Accountability

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

§ 39.401 What is the purpose of this subpart?

The purpose of this subpart is to ensure accountability of administrative officials by creating procedures that are systematic and can be verified by a random independent outside auditing

§ 39.402

procedures. These procedures will ensure the equitable distribution of funds among schools.

§ 39.402 What definitions apply to terms used in this subpart?

Administrative officials means any persons responsible for managing and operating a school, including the school supervisor, the chief school administrator, tribal officials, Education Line Officers, and the Director, OIEP.

Director means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs.

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

§ 39.403 What certification is required?

(a) Each school must maintain an individual file on each student receiving basic educational and supplemental services. The file must contain written documentation of the following:

(1) Each student's eligibility and attendance records;

(2) A complete listing of all supplemental services provided, including all necessary documentation required by statute and regulations (*e.g.*, a current and complete Individual Education Plan for each student receiving supplemental services); and

(3) Documentation of expenditures and program delivery for student transportation to and from school provided by commercial carriers.

(b) The School must maintain the following files in a central location:

(1) The school's ADM and supplemental program counts and residential count;

(2) Transportation related documentation, such as school bus mileage, bus routes;

(3) A list of students transported to and from school;

(4) An electronic student count program or database;

(5) Class record books;

(6) Supplemental program class record books;

(7) For residential programs, residential student attendance documentation;

(8) Evidence of teacher certification; and

(9) The school's accreditation certificate.

(c) The Director must maintain a record of required certifications for ELOs, specialists, and school superintendents in a central location.

§ 39.404 What is the certification and verification process?

(a) Each school must:

(1) Certify that the files required by § 39.403 are complete and accurate; and

(2) Compile a student roster that includes a complete list of all students by grade, days of attendance, and supplemental services.

(b) The chief school administrator and the president of the school board are responsible for certifying the school's ADM and residential count is true and accurate to the best of their knowledge or belief and is supported by appropriate documentation.

(c) OIEP's education line officer (ELO) will annually review the following to verify that the information is true and accurate and is supported by program documentation:

(1) The eligibility of every student;

(2) The school's ADM and supplemental program counts and residential count;

(3) Evidence of accreditation;

(4) Documentation for all provided basic and supplemental services, including all necessary documentation required by statute and regulations (*e.g.*, a current and complete Individual Education Plan for each student receiving supplemental services); and

(5) Documentation required by subpart G of this part for student transportation to and from school provided by commercial carriers.

§ 39.405 How will verifications be conducted?

The eligibility of every student shall be verified. The ELO will take a random sampling of five days with a minimum of one day per grading period to verify the information in § 39.404(c). The ELO will verify the count for the count period and verify residency during the remainder of the year.

§ 39.406 What documentation must the school maintain for additional services it provides?

Every school must maintain a file on each student receiving additional services. (Additional services include homebound services, institutional services, distance courses, Internet courses or college services.) The school must certify, and its records must show, that:

- (a) Each homebound or institutionalized student is receiving 5 contact hours each week by certified educational personnel;
- (b) Each student taking college, distance or internet courses is in physical attendance at the school for at least 3 certified contact hours per day.

§ 39.407 How long must a school maintain records?

The responsible administrative official for each school must maintain records relating to ISEP, supplemental services, and transportation-related expenditures. The official must maintain these records in appropriate retrievable storage for at least the four years prior to the current school year, unless Federal records retention schedules require a longer period.

§ 39.408 What are the responsibilities of administrative officials?

Administrative officials have the following responsibilities:

- (a) Applying the appropriate standards in this part for classifying and counting ISEP eligible Indian students at the school for formula funding purposes;
- (b) Accounting for and reporting student transportation expenditures;
- (c) Providing training and supervision to ensure that appropriate standards are adhered to in counting students and accounting for student transportation expenditures;
- (d) Submitting all reports and data on a timely basis; and
- (e) Taking appropriate disciplinary action for failure to comply with requirements of this part.

§ 39.409 How does the OIEP Director ensure accountability?

- (a) The Director of OIEP must ensure accountability in student counts and

student transportation by doing all of the following:

- (1) Conducting annual independent and random field audits of the processes and reports of at least one school per OIEP line office to ascertain the accuracy of Bureau line officers' reviews;
- (2) Hearing and making decisions on appeals from school officials;
- (3) Reviewing reports to ensure that standards and policies are applied consistently, education line officers treat schools fairly and equitably, and the Bureau takes appropriate administrative action for failure to follow this part; and
- (4) Reporting the results of the findings and determinations under this section to the appropriate tribal governing body.

(b) The purpose of the audit required by paragraph (a)(1) of this section is to ensure that the procedures outlined in these regulations are implemented. To conduct the audit required by paragraph (a)(1) of this section, OIEP will select an independent audit firm that will:

- (1) Select a statistically valid audit sample of recent student counts and student transportation reports; and
- (2) Analyze these reports to determine adherence to the requirements of this part and accuracy in reporting.

§ 39.410 What qualifications must an audit firm meet to be considered for auditing ISEP administration?

To be considered for auditing ISEP administration under this subpart, an independent audit firm must:

- (a) Be a licensed Certified Public Accountant Firm that meets all requirements for conducting audits under the Federal Single Audit Act;
- (b) Not be under investigation or sanction for violation of professional audit standards or ethics;
- (c) Certify that it has conducted a conflict of interests check and that no conflict exists; and
- (d) Be selected through a competitive bidding process.

§ 39.411 How will the auditor report its findings?

- (a) The auditor selected under § 39.410 must:

§ 39.412

(1) Provide an initial draft report of its findings to the governing board or responsible Federal official for the school(s) involved; and

(2) Solicit, consider, and incorporate a response to the findings, where submitted, in the final audit report.

(b) The auditor must submit a final report to the Assistant Secretary—Indian Affairs and all tribes served by each school involved. The report must include all documented exceptions to the requirements of this part, including those exceptions that:

(1) The auditor regards as negligible;

(2) The auditor regards as significant, or as evidence of incompetence on the part of responsible officials, and that must be resolved in a manner similar to significant audit exceptions in a fiscal audit; or

(3) Involve fraud and abuse.

(c) The auditor must immediately report exceptions involving fraud and abuse directly to the Department of the Interior Inspector General's office.

§ 39.412 What sanctions apply for failure to comply with this subpart?

(a) The employer of a responsible administrative official must take appropriate personnel action if the official:

(1) Submits false or fraudulent ISEP-related counts;

(2) Submits willfully inaccurate counts of student participation in weighted program areas; or

(3) Certifies or verifies submissions described in paragraphs (a)(1) or (a)(2) of this section.

(b) Unless prohibited by law, the employer must report:

(1) Notice of final Federal personnel action to the tribal governing body and tribal school board; and

(2) Notice of final tribal or school board personnel action to the Director of OIEP.

§ 39.413 Can a school appeal the verification of the count?

Yes, a school may appeal to the Director any administrative action disallowing any academic, transportation, supplemental program or residential count. In this appeal, the school may provide evidence to indicate the student's eligibility, membership or residency or adequacy of a program for all

25 CFR Ch. I (4–1–11 Edition)

or a portion of school year. The school must follow the applicable appeals process in 25 CFR part 2 or 25 CFR part 900, subpart L.

Subpart E—Contingency Fund

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

§ 39.500 What emergency and contingency funds are available?

The Secretary:

(a) Must reserve 1 percent of funds from the allotment formula to meet emergencies and unforeseen contingencies affecting educational programs;

(b) Can carry over to the next fiscal year a maximum of 1 percent the current year funds; and

(c) May distribute all funds in excess of 1 percent equally to all schools or distribute excess as a part of ISEP.

§ 39.501 What is an emergency or unforeseen contingency?

An emergency or unforeseen contingency is an event that meets all of the following criteria:

(a) It could not be planned for;

(b) It is not the result of mismanagement, malfeasance, or willful neglect;

(c) It is not covered by an insurance policy in force at the time of the event;

(d) The Assistant Secretary determines that Bureau cannot reimburse the emergency from the facilities emergency repair fund; and

(e) It could not have been prevented by prudent action by officials responsible for the educational program.

§ 39.502 How does a school apply for contingency funds?

To apply for contingency funds, a school must send a request to the ELO. The ELO must send the request to the Director for consideration within 48 hours of receipt. The Director will consider the severity of the event and will attempt to respond to the request as soon as possible, but in any event within 30 days.

§ 39.503 How can a school use contingency funds?

Contingency funds can be used only for education services and programs,

Bureau of Indian Affairs, Interior

§ 39.702

including repair of educational facilities.

§ 39.504 May schools carry over contingency funds to a subsequent fiscal year?

Bureau-operated schools may carry over funds to the next fiscal year.

§ 39.505 What are the reporting requirements for the use of the contingency fund?

(a) At the end of each fiscal year, Bureau/OIEP shall send an annual report to Congress detailing how the Contingency Funds were used during the previous fiscal year.

(b) By October 1 of each year, the Bureau must send a letter to each school and each tribe operating a school listing the allotments from the Contingency Fund.

Subpart F—School Board Training Expenses

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

§ 39.600 Are Bureau-operated school board expenses funded by ISEP limited?

Yes. Bureau-operated schools are limited to \$8,000 or one percent (1%) of ISEP allotted funds (not to exceed \$15,000).

§ 39.601 Is school board training for Bureau-operated schools considered a school board expense subject to the limitation?

No, school board training for Bureau-operated schools is not considered a school board expense subject to the limitation in § 39.600.

§ 39.603 Is school board training required for all Bureau-funded schools?

Yes. Any new member of a local school board or an agency school board must complete 40 hours of training within one year of appointment, provided that such training is recommended, but is not required, for a tribal governing body that serves in the capacity of a school board.

§ 39.604 Is there a separate weight for school board training at Bureau-operated schools?

Yes. There is an ISEP weight not to exceed 1.2 WSUs to cover school board training and expenses at Bureau-operated schools.

Subpart G—Student Transportation

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

§ 39.700 What is the purpose of this subpart?

(a) This subpart covers how transportation mileage and funds for schools are calculated under the ISEP transportation program. The program funds transportation of students from home to school and return.

(b) To use this part effectively, a school should:

(1) Determine its eligibility for funds using the provisions of §§ 39.702 through 39.708;

(2) Calculate its transportation miles using the provisions of §§ 39.710 and 39.711; and

(3) Submit the required reports as required by §§ 39.721 and 39.722.

§ 39.701 What definitions apply to terms used in this subpart?

ISEP means the Indian School Equalization Program.

Transportation mileage count week means the last full week in September.

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

ELIGIBILITY FOR FUNDS

§ 39.702 Can a school receive funds to transport residential students using commercial transportation?

A school transporting students by commercial bus, train, airplane, or other commercial modes of transportation will be funded at the cost of the commercial ticket for:

(a) The trip from home to school in the Fall;

(b) The round-trip return home at Christmas; and

§ 39.703

25 CFR Ch. I (4-1-11 Edition)

(c) The return trip home at the end of the school year.

§ 39.703 What ground transportation costs are covered for students traveling by commercial transportation?

This section applies only if a school transports residential students by commercial bus, train or airplane from home to school. The school may receive funds for the ground miles that the school has to drive to deliver the students or their luggage from the bus, train, or plane terminal to the school.

§ 39.704 Are schools eligible to receive chaperone expenses to transport residential students?

Yes. Schools may receive funds for actual chaperone expenses, excluding salaries, during the transportation of students to and from home at the beginning and end of the school year and at Christmas.

§ 39.705 Are schools eligible for transportation funds to transport special education students?

Yes. A school that transports a special education student from home to a treatment center and back to home on a daily basis as required by the student's Individual Education Plan may count those miles for day student funding.

§ 39.706 Are peripheral dormitories eligible for day transportation funds?

Yes. If the peripheral dormitory is required to transport dormitory students to the public school, the dormitory may count those miles driven transporting students to the public school for day transportation funding.

§ 39.707 Which student transportation expenses are currently not eligible for Student Transportation Funding?

(a) The following transportation expenses are currently not eligible for transportation funding, however the data will be collected under the provisions in this subpart:

- (1) Fuel and maintenance runs;
- (2) Transportation home for medical or other emergencies;

(3) Transportation from school to treatment or special services programs;

(4) Transportation to after-school programs; and

(5) Transportation for day and boarding school students to attend instructional programs less than full-time at locations other than the school reporting the mileage.

(b) Examples of after-school programs covered by paragraph (a)(4) of this section include:

- (1) Athletics;
- (2) Band;
- (3) Detention;
- (4) Tutoring, study hall and special classes; and
- (5) Extra-curricular activities such as arts and crafts.

§ 39.708 Are miles generated by non-ISEP eligible students eligible for transportation funding?

No. Only miles generated by ISEP-eligible students enrolled in and attending a school are eligible for student transportation funding.

CALCULATING TRANSPORTATION MILES

§ 39.710 How does a school calculate annual bus transportation miles for day students?

To calculate the total annual bus transportation miles for day students, a school must use the appropriate formula from this section. In the formulas, Tu = Miles driven on Tuesday of the transportation mileage count week, W = Miles driven on Wednesday of the transportation mileage count week, and Th = Miles driven on Thursday of the transportation mileage count week.

(a) For ISEP-eligible day students whose route is entirely over improved roads, calculate miles using the following formula:

$$\frac{Tu + W + Th}{3} * 180$$

(b) For ISEP-eligible day students whose route is partly over unimproved roads, calculate miles using the following three steps.

- (1) *Step 1.* Apply the following formula to miles driven over improved roads only:

$$\frac{\text{Tu} + \text{W} + \text{Th}}{3} * 180$$

(2) *Step 2.* Apply the following formula to miles driven over unimproved roads only:

$$\frac{\text{Tu} + \text{W} + \text{Th}}{3} * 1.2 * 180$$

(3) *Step 3.* Add together the sums from steps 1 and 2 to obtain the total annual transportation miles.

§ 39.711 How does a school calculate annual bus transportation miles for residential students?

To calculate the total annual transportation miles for residential students, a school must use the procedures in paragraph (b) of this section.

(a) The school can receive funds for the following trips:

- (1) Transportation to the school at the start of the school year;
- (2) Round trip home at Christmas; and
- (3) Return trip to home at the end of the school year.

(b) To calculate the actual miles driven to transport students from home to school at the start of the school year, add together the miles driven for all buses used to transport students from their homes to the school. If a school transports students over unimproved roads, the school must separate the number of miles driven for each bus into improved miles and unimproved miles. The number of miles driven is the sum of:

- (1) The number of miles driven on improved roads; and
- (2) The number of miles driven on unimproved roads multiplied by 1.2.

(c) The annual miles driven for each school is the sum of the mileage from paragraphs (b)(1) and (b)(2) of this section multiplied by 4.

REPORTING REQUIREMENTS

§ 39.720 Why are there different reporting requirements for transportation data?

In order to construct an actual cost data base, residential and day schools must report data required by §§ 39.721 and 39.722.

§ 39.721 What transportation information must off-reservation boarding schools report?

(a) Each off-reservation boarding school that provides transportation must report annually the information required by this section. The report must:

- (1) Be submitted to OIEP by August 1 and cover the preceding school year;
- (2) Include a Charter/Commercial and Air Transportation Form signed and certified as complete and accurate by the School Principal and the appropriate ELO; and
- (3) Include the information required by paragraph (b) of this section.

(b) Each annual transportation report must include the following information:

- (1) Fixed vehicle costs, including: the number and type of buses, passenger size, and local GSA rental rate and duration of GSA contract;
- (2) Variable vehicle costs;
- (3) Mileage traveled to transport students to and from school on school days, to sites of special services, and to extra-curricular activities;
- (4) Medical trips;
- (5) Maintenance and Service costs; and
- (6) Driver costs;
- (7) All expenses referred to in § 39.707.

§ 39.722 What transportation information must day schools, on-reservation boarding schools and peripheral dormitory schools report?

(a) By August 1 of each year, all schools and peripheral dorms that provide transportation must submit a report that covers the preceding year. This report must include:

- (1) Fixed vehicle costs and other costs, including: the number and type of buses, passenger size, and local GSA rental rate and duration of GSA contract;
- (2) Variable vehicle costs;
- (3) Mileage traveled to transport students to and from school on school days, to sites of special services, and to extra-curricular activities;
- (4) Mileage driven for student medical trips;
- (5) Costs of vehicle maintenance and service cost, including cost of miles

§ 39.730

driven to obtain maintenance and service;

- (6) Driver costs; and
- (7) All expenses referred to in §39.707.

(b) In addition, all day schools and on-reservation boarding schools must include in their report a Day Student Transportation Form signed and certified as complete and accurate by the School Principal and the appropriate ELO.

MISCELLANEOUS PROVISIONS

§ 39.730 Which standards must student transportation vehicles meet?

All vehicles used by schools to transport students must meet or exceed all appropriate Federal motor vehicle safety standards and State or Tribal motor vehicle safety standards. The Bureau will not fund transportation mileage and costs incurred transporting students in vehicles that do not meet these standards.

§ 39.731 Can transportation time be used as instruction time for day school students?

No. Transportation time cannot be used as instruction time for day school students in meeting the minimum required hours for academic funding.

§ 39.732 How does OIEP allocate transportation funds to schools?

OIEP allocates transportation funds based on the types of transportation programs that the school provides. To allocate transportation funds OIEP:

- (a) Multiplies the one-way commercial costs for all schools by four to identify the total commercial costs for all schools;
- (b) Subtracts the commercial cost total from the appropriated transportation funds and allocates the balance of the transportation funds to each school with a per-mile rate;
- (c) Divides the balance of funds by the sum of the annual day miles and the annual residential miles to identify a per-mile rate;
- (d) For day transportation, multiplies the per-mile rate times the annual day miles for each school; and
- (e) For residential transportation, multiplies the per mile rate times the annual transportation miles for each school.

25 CFR Ch. I (4–1–11 Edition)

Subpart H—Determining the Amount Necessary To Sustain an Academic or Residential Program

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

§ 39.801 What is the formula to determine the amount necessary to sustain a school’s academic or residential program?

(a) The Secretary’s formula to determine the minimum annual amount necessary to sustain a Bureau-funded school’s academic or residential program is as follows:

$$\text{Student Unit Value} \times \text{Weighted Student Unit} = \text{Annual Minimum Amount per student.}$$

(b) Sections 39.802 through 39.807 explain the derivation of the formula in paragraph (a) of this section.

(c) If the annual minimum amount calculated under this section and §§ 39.802 through 39.807 is not fully funded, OIEP will pro rate funds distributed to schools using the Indian School Equalization Formula.

§ 39.802 What is the student unit value in the formula?

The student unit value is the dollar value applied to each student in an academic or residential program. There are two types of student unit values: the student unit instructional value (SUIV) and the student unit residential value (SURV).

- (a) The student unit instructional value (SUIV) applies to a student enrolled in an instructional program. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical non-residential program.
- (b) The student unit residential value (SURV) applies to a residential student. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical residential program.

§ 39.803 What is a weighted student unit in the formula?

A weighted student unit is an adjusted ratio using factors in the Indian

Bureau of Indian Affairs, Interior

§ 39.807

School Equalization Formula to establish educational priorities and to provide for the unique needs of specific students, such as:

- (a) Students in grades kindergarten through 3 or grades 7 through 12;
- (b) Special education students;
- (c) Gifted and talented students;
- (d) Distance education students;
- (e) Vocational and industrial education students;
- (f) Native Language Instruction students;
- (g) Small schools;
- (h) Personnel costs;
- (i) Alternative schooling; and
- (j) Early Childhood Education programs.

§ 39.804 How is the SUIV calculated?

The SUIV is calculated by the following 5-step process:

- (a) *Step 1.* Use the adjusted national average current expenditures (ANACE) of public and private schools determined by data from the U.S. Depart-

ment of Education-National Center of Education Statistics (NCES) for the last school year for which data is available.

- (b) *Step 2.* Subtract the average specific Federal share per student (title I part A and IDEA part B) of the total revenue for Bureau-funded elementary and secondary schools for the last school year for which data is available as reported by NCES (15%).

- (c) *Step 3.* Subtract the administrative cost grant/agency area technical services revenue per student as a percentage of the total revenue (current expenditures) of Bureau-funded schools from the last year data is available.

- (d) *Step 4.* Subtract the day transportation revenue per student as a percentage of the total revenue (current revenue) Bureau-funded schools for the last school year for which data is available.

- (e) *Step 5.* Add Johnson O'Malley funding. (See the table, in § 39.805)

§ 39.805 What was the student unit for instruction value (SUIV) for the school year 1999-2000?

The process described in § 39.804 is illustrated in the table below, using figures for the 1999-2000 school year:

Step 1	\$8,030	ANACE.
Step 2	-1205	Average specific Federal share of total revenue for Bureau-funded schools.
Step 3	-993	Cost grant/technical services revenue as a percentage total revenue.
Step 4	-658	Transportation revenue as a percentage of the total revenue.
Step 5	85	Johnson O'Malley funding.
Total	\$5,259	SUIV.

§ 39.806 How is the SURV calculated?

- (a) The SURV is the adjusted national average current expenditures for residential schools (ANACER) of public and private residential schools. This average is determined using data from the Association of Boarding Schools.

- (b) Applying the procedure in paragraph (a) of this section, the SURV for school year 1999-2000 was \$11,000.

§ 39.807 How will the Student Unit Value be adjusted annually?

- (a) The student unit instructional value (SUIV) and the student unit residential value (SURV) will be adjusted annually to derive the current year Student Unit Value (SUV) by dividing

the calculated SUIV and the SURV into two parts and adjusting each one as shown in this section.

- (1) The first part consists of 85 percent of the calculated SUIV and the SURV. OIEP will adjust this portion using the personnel cost of living increase of the Department of Defense schools for each year.

- (2) The second part consists of 15 percent the calculated SUIV and the SURV. OIEP will adjust this portion using the Consumer Price Index-Urban of the Department of Labor.

- (b) If the student unit value amount is not fully funded, the schools will receive their pro rata share using the Indian School Equalization Formula.

§ 39.808

§ 39.808 What definitions apply to this subpart?

Adjusted National Average Current Expenditure [ANACE] means the actual current expenditures for pupils in fall enrollment in public elementary and secondary schools for the last school year for which data is available. These expenditures are adjusted annually to reflect current year expenditures of federally financed schools' cost of day and residential programs.

Current expenditures means expenses related to classroom instruction, classroom supplies, administration, support services-students and other support services and operations. Current expenditures do not include facility operations and maintenance, buildings and improvements, furniture, equipment, vehicles, student activities and debt retirement.

§ 39.809 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 39.410 and 39.502. These collections have been approved by OMB under control numbers 1076-0122, 1076-0134, and 1076-0163.

Subpart I—Interim Maintenance and Minor Repair Fund

SOURCE: 44 FR 61864, Oct. 26, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982. Redesignated at 70 FR 33702, June 9, 2005.

§ 39.900 Establishment and funding of an Interim Maintenance and Minor Repair Fund.

There is established in the Division of Facilities Management a separate temporary fund entitled the Interim Maintenance and Minor Repair Fund. The Assistant Secretary shall cause the distribution of an amount of \$1 million, under the FY 1980 Appropriation

25 CFR Ch. I (4-1-11 Edition)

for the Bureau, from budget activity 3500, "General Management and Facilities Operation", to the direct use of schools, and shall create an appropriate account or subaccount for the Interim Maintenance and Minor Repair Fund and credit these funds thereto.

§ 39.901 Conditions for distribution.

Funds from the Interim Maintenance and Minor Repair Fund shall be distributed to Bureau operated and funded schools and shall be separately earmarked in local school financial plans solely for expenditure at the discretion of the school supervisor for cost of school facility maintenance and minor repair. These funds shall be used to meet immediate minor repair and maintenance needs.

§ 39.902 Allocation.

(a) Interim Maintenance and Minor Repair funds shall be allocated to all Bureau operated and contract schools based on the number of square feet of floor space used for that school's educational program, for student residence and for support facilities. Staff quarters shall be specifically excluded from the computation.

(b) Square footage figures used in determining school allocations shall be taken from the facilities inventory maintained by the Division of Facilities Engineering.

(c) In those cases, such as contract schools, where square footage figures are not now available, it shall be the responsibility of the Bureau's Division of Facilities Engineering to correct the information.

(d) Schools in Alaska shall receive a 25% cost adjustment increase in the computation of their allocation.

§ 39.903 Use of funds.

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

§ 39.904 Limitations.

Nothing in this provision shall be interpreted as relieving the Bureau branch of Facilities Management or its field offices of any responsibility for continuing to provide maintenance and repair service to schools through existing procedures.

Bureau of Indian Affairs, Interior

§ 39.1100

Subpart J—Administrative Cost Formula

SOURCE: 56 FR 35795, July 26, 1991, unless otherwise noted. Redesignated at 70 FR 33702, June 9, 2005.

§ 39.1000 Purpose and scope.

The purpose of this subpart is to provide funds at the agency and area education offices for FY 1991 and future years for administration of all Bureau of Indian Affairs education functions, including but not limited to school operations, continuing education, early childhood education, post-secondary education and Johnson-O'Malley Programs.

§ 39.1001 Definitions.

(a) *Agency Education Office* means a field office of the Office of Indian Education Programs providing administrative direction and supervision to one or more Bureau-operated schools as well as being responsible for all other education functions serving tribes within that agency's jurisdiction.

(b) *Area Education Office* means a field office of the Office of Indian Education Programs responsible for all education functions serving tribes not serviced by an agency education office and in some cases providing administrative direction to one or more off-reservation boarding schools not under an agency education office.

§ 39.1002 Allotment of education administrative funds.

The total annual budget for agencies/ areas shall be allotted to the Director and through him/her to agency and area education offices. This total budget shall be distributed to the various agency and area education offices as follows:

(a) Each agency or area education office as defined above shall receive a base amount of \$50,000 for basic administrative costs; and

(b) Each agency or area education office as defined above shall receive an amount under these funds equal to two percent of the total higher education, Johnson-O'Malley and adult education funds administered by each office, except that the Navajo Agencies are restricted to a maximum of \$50,000 for ad-

ministering the Johnson-O'Malley and higher education programs; and

(c) Eighty percent of the remaining funds shall be distributed proportionately based on the number of schools operated under the jurisdiction of each agency or area education office, with Bureau-operated schools counting as 1 and contract/grant schools counting as 0.6; and

(d) The remaining twenty percent shall be distributed proportionately based on the total weighted student units generated by all schools under the jurisdiction of each agency or area education office.

§ 39.1003 Allotment exception for FY 1991.

For FY 1991 only, the Director may reserve an amount equal to no more than one half of the funds received in FY 1990 by those offices to be closed in FY 1991 to cover severance pay costs, lump sum leave payments and relocation costs for those individuals affected by the closures. Any balance uncommitted by March 31, 1991, shall be distributed in accordance with the formula in § 39.122.

Subpart K—Pre-kindergarten Programs

SOURCE: 44 FR 61864, Oct. 26, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982. Redesignated at 70 FR 33702, June 9, 2005.

§ 39.1100 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.

Those schools having pre-kindergarten programs funded fully or in part from Bureau education funds in fiscal year 1979 shall be funded from Bureau education funds by the Director in fiscal year 1980 and fiscal year 1981 at their fiscal year 1979 Bureau education funding levels. The fiscal year 1979 pre-kindergarten Bureau funding amount for each Bureau funded school shall be deducted from the school's fiscal year 1979 Bureau Education Budget amount

§ 39.1101

prior to application of the phase-in provision.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982. Redesignated and amended at 70 FR 33702, June 9, 2005]

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

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

SOURCE: 44 FR 61864, Oct. 26, 1979, unless otherwise noted. Redesignated at 70 FR 33702, June 9, 2005.

§ 39.1200 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

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

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of \$2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500, "General Management and Facilities Operations", to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 39.1202 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

[44 FR 61864, Oct. 26, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982. Redesignated and amended at 70 FR 33702, June 9, 2005]

§ 39.1203 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

PART 40—ADMINISTRATION OF EDUCATIONAL LOANS, GRANTS AND OTHER ASSISTANCE FOR HIGHER EDUCATION

Sec.

- 40.1 Appropriations for loans or grants.
- 40.2 Working scholarships.
- 40.3 Applications.
- 40.4 Security.
- 40.5 Repayments.

AUTHORITY: Sec. 11, 48 Stat. 986; 25 U.S.C. 471.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 40.1 Appropriations for loans or grants.

Funds appropriated by Congress for the education of Indians may be used

Bureau of Indian Affairs, Interior

§ 41.2

for making educational loans and grants to aid students of one-fourth or more degree of Indian blood attending accredited institutions of higher education or other accredited schools offering vocational and technical training who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. Such educational loans and grants may be made also to students of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such loans or grants would have a direct effect upon Bureau programs within the reservation. After students meeting these eligibility requirements are taken care of, Indian students who do not meet the residency requirements but are otherwise eligible may be considered.

[33 FR 9708, July 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 40.2 Working scholarships.

Working scholarships may be granted to Indians who wish to earn their board and room by part-time work at Federal boarding schools that are located near a college, trade, or vocational school.

§ 40.3 Applications.

Applications for educational loans, grants, and working scholarships shall be submitted through the superintendent or officer in charge of the agency at which the applicant is enrolled in the manner prescribed by the Commissioner.

§ 40.4 Security.

If a borrower or cosigner has security to offer for an educational loan it must be given in an amount adequate to protect the loan.

§ 40.5 Repayments.

Repayment schedules for educational loans may provide not to exceed two years for repayment for each year in school.

PART 41—GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

Subpart A—Tribally Controlled Community Colleges

- Sec.
- 41.1 Purpose.
 - 41.2 Scope.
 - 41.3 Definitions.
 - 41.4 Eligible recipients.
 - 41.5 Eligible activities.
 - 41.6 HHS participation.
 - 41.7 Feasibility studies.
 - 41.8 Grants.
 - 41.9 Reports.
 - 41.10 Technical assistance.
 - 41.11 General provisions.
 - 41.12 Annual budget.
 - 41.13 Criminal penalties.

Subpart B—Navajo Community College

- 41.20 Policy.
- 41.21 Scope.
- 41.22 Definitions.
- 41.23 Eligible activities.
- 41.24 Grants.
- 41.25 Reports.
- 41.26 Technical assistance.
- 41.27 General provisions.
- 41.28 Criminal penalties.

AUTHORITY: Secs. 114 and 203(a), Pub. L. 95-471, 25 U.S.C. 1815, 25 U.S.C. 640c-1(c).

SOURCE: 44 FR 67042, Nov. 21, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—Tribally Controlled Community Colleges

§ 41.1 Purpose.

The policy of the Department of the Interior is to support and encourage the establishment, operation, and improvement of tribally controlled community colleges to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end under the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

§ 41.2 Scope.

The regulations in this subpart are applicable to the provision of financial

§ 41.3

25 CFR Ch. I (4–1–11 Edition)

and technical assistance to Community Colleges under title I of the Act. They do not apply to the provision of assistance to Navajo Community College. Subpart B of this part applies to assistance to Navajo Community College under title II of the Act.

§ 41.3 Definitions.

As used in this subpart A:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which a community college normally subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by a community college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior, or his/her duly authorized representative.

(e) *Community College* means an institution of higher education which (1) is formally controlled or operated and managed by the governing body of an Indian Tribe or by the governing bodies of two or more Indian Tribes, or (2) is established or is otherwise sanctioned or chartered by resolution, ordinance, or other official action (which is still in full force and effect) of such governing body or bodies. However, for purposes of this definition, only one such institution shall be recognized with respect to any one Tribe. A Community College that meets the requirements of this definition with respect to more than one Tribe must meet such requirements with respect to at least one Tribe that has no other currently formally controlled, operated and managed, established, sanctioned, or chartered Community College.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE*, means the number of Indian students (1) en-

rolled full-time for an entire academic term at a community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at a community college (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term, divided by twelve (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as $FTE = FT + PTCR/12$ where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian Tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Institution of higher education* as defined in Pub. L. 95–471 (incorporating in part 1201 of the Higher Education Act of 1965), means an educational institution in any State which

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

Bureau of Indian Affairs, Interior

§ 41.5

(3) Is a public or other nonprofit institution, and

(4) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

(A) Is an institution with respect to which the Commissioner of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (3), and (4). Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

(k) *National Indian Organization* means any organization of Indians, found by the Director of Education to be nationally based, representing a substantial Indian constituency, and expert in the field of Indian education. Notice of such findings shall be published in the FEDERAL REGISTER with an opportunity for comment from the public and no such finding shall be effective earlier than 30 days after publication.

(l) *Operating expenses of education programs* means the obligations and expenditures of a community college for post-secondary activities, including administration, instruction, attendance, health and other student services, operation, maintenance and repair of

plant, fixed charges, and other related expenses, but not including expenditures for the acquisition or construction of academic facilities. (The term *academic facilities* means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs of an institution of higher education or as dormitories or student services buildings, and maintenance, storage, support, or utility facilities essential to operation of the foregoing facilities.)

(m) *Part-time* means registered for less than twelve (12) credit hours for an academic term; *full-time* means registered for twelve (12) or more credit hours for an academic term.

(n) *Unused portion of received funds* means the amount of financial assistance provided under this subpart to a Community College for an academic year which has not been obligated or expended by the Community College by July 1 of that academic year.

§ 41.4 Eligible recipients.

Financial assistance under this subpart shall be available only to a Community College which:

(a) Is governed by a board of directors, regents, or trustees, a majority of whom are Indians;

(b) Demonstrates its adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians, and has formally adopted, in writing, such goals, philosophy, or plan of operation, which may be in the form of a constitution, bylaws, or policy statement of the Community College;

(c) If in operation for more than one year, has students a majority of whom are Indian; and

(d) Upon completion of a feasibility study, receives a positive determination, and;

(e) Is not in violation of § 41.11 of this subpart.

§ 41.5 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating expenses of education

§ 41.6

25 CFR Ch. I (4–1–11 Edition)

programs of Community Colleges. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.6 HHS participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Secretary for Education, Department of Health and Human Services, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

[44 FR 67042, Nov. 21, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 41.7 Feasibility studies.

(a) Grants under § 41.8 of this subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

- (1) Financial feasibility based upon potential enrollment;
- (2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;
- (3) Tribal, linguistics, or cultural differences;
- (4) Isolation;
- (5) Presence of alternate education sources;
- (6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College (or both) may present additional evidence or arguments to justify feasibility. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling either confirming, modifying, or reversing the original determination. The ruling, which shall be final for the Department, shall be mailed or otherwise delivered to the appealing Tribe and the Community College within one week of its issuance. In any case where the original negative determination is not reversed, the Assistant Secretary's ruling shall specify the grounds for the decision and state the manner in which the determination related to each of the factors specified.

Bureau of Indian Affairs, Interior

§ 41.8

(f) A negative determination shall not prevent a Tribe from requesting another feasibility study, but no more than one feasibility study shall be requested for any given Community College per year.

§ 41.8 Grants.

(a) Each Community College which has received a positive feasibility study determination under § 41.7 of this subpart shall be entitled to apply for financial assistance under this subpart.

(b) Except with respect to applications for grants for the 1979-1980 academic year, each Community College shall make an application to the Director of Education before January 31, of the year preceding the academic year for which financial assistance is requested. Each application must contain the following information:

(1) The name and address of the Community College and the names of the members of the governing board and the number of its members who are Indian;

(2) A statement that the Community College has received a positive feasibility determination and the date thereof;

(3) A written statement of the goals, philosophy, or proposed plan of operation sufficient to demonstrate that its education program or proposed program is designed to meet the needs of Indians;

(4) In the case of a Community College which has been in operation for more than one year, a statement of the total number of FTE Indian students and the total number of all FTE students;

(5) If the Community College has not yet begun operations, a statement of expected enrollment, including the total number of FTE students and the number of FTE Indian students;

(6) The name and address of the Indian Tribe or Tribes which control or operate and manage, or have established, sanctioned, or chartered the Community College, and a statement as to which of those Tribes have not done so with respect to any other Community College;

(7) A curriculum, which may be in the form of a college catalog or like publication;

(8) A proposed budget, showing total expected operating expenses of education programs and expected revenues from all sources for the academic year to which the information applies;

(9) An assurance that the Community College will not deny admission to any Indian student because that student is not a member of a specific tribe or because such student is a member of a specific tribe, and will comply with the requirements set forth in § 41.11 of this subpart together with any request and justification for a specific waiver of any requirement of 25 CFR part 276 which the Community College believes to be inappropriate;

(10) Certification by the chief executive officer of the Community College that the information on the application is complete and correct and that the application has been filed with the governing body or bodies of the Tribe or Tribes which control or have sanctioned or chartered it.

(c)(1) Within thirty (30) days of receiving an application required under paragraph (b) of this section, the Director of Education shall review the application submitted by the Community College and any comments with respect thereto filed by the Tribe(s) or by any national Indian organization(s) whose assistance has been requested by the Community College, and make a grant award in an amount determined under paragraph (d) of this section to the Community College if the application qualifies the Community College to receive a grant.

(2) In the case of any Community College whose application is not approved, the Director shall promptly send a notice of such action to the Community College. Such notice shall include a statement of the specific reasons for not approving the application and a statement advising the College of its right within thirty (30) days to amend or supplement the application on file to rectify the defect.

(3) Final disapproval of a grant application by the Director after the thirty day period referred to in paragraph (c)(2) of this section, or a failure of the Director of Education to approve an application within thirty (30) days of its receipt may be appealed by a Community College in the same manner as

§41.8

25 CFR Ch. I (4-1-11 Edition)

provided in paragraphs (d) and (f) of §41.7.

(4) A Grant award under an approved application shall be evidenced by a grant agreement, signed by the Director of Education, incorporating the application and the provisions required by §41.11.

(d)(1) In fiscal year 1980, each Community College which qualifies for a grant will receive a grant for academic year 1979-80; thereafter each Community College which qualifies for a grant shall receive a grant for the academic year commencing after the date of ap-

proval of its application. Except as provided in paragraph (d)(3) of this section grants shall be in an amount equal to \$4,000 multiplied by the number of FTE Indian students in attendance at such college during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the Community College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4,000 \times \frac{FTE_{TERM1} + FTE_{TERM2} + \dots + FTE_{TERMN}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with §41.3(g) of this subpart and N is the number of academic terms in the academic year.

(2) For the first Federal fiscal year for which funds are appropriated for grants under this subpart, not less than eight (8) nor more than fifteen (15) grants shall be approved; priority in awarding such grants shall be given to Community Colleges which are operating on October 17, 1978, and which have a history of service to the Indian people. (If more than fifteen (15) Community Colleges meeting these two (2) conditions submit applications for the first fiscal year, a further priority for awarding grants among them shall be given to those who appear to be in the best position to fulfill the purpose of the Act and to those whose continued existence would be threatened if they did not receive such a grant).

(3) All grants under this section shall be subject to the availability of appropriations and the amount thereof shall be ratably reduced for all Community Colleges if the sums appropriated for any fiscal year for financial assistance under this subpart are not sufficient to pay the full amounts to which the eligible Community Colleges are otherwise entitled under paragraph (d)(1) of this section.

(e) The Director of Education shall authorize payments to each such Community College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section on or before October 1st of such College's academic year (except for 1979-80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding academic year. On or before January 1st (or such other date that is the first day of the fifth month) of such College's academic year, payments shall be made in the form of advance installments to each Community College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section, calculated on the basis of registrations at the conclusion of sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of each such academic year the balance

of the grant amount to which each College is entitled under paragraph (d) of this section shall be paid to such College. In the event that additional sums are appropriated to which such Community Colleges are entitled under section 110(a) of the Act and paragraph (d) of this section, these amounts shall be included in such final payments.

(f) If with respect to any academic year the amounts of financial assistance hereunder have been ratably reduced as provided in paragraph (d)(3) of this section and additional funds have not been appropriated to pay the full amount of such reductions on or before June 1st of such year, the Director of Education shall notify each Community College of such fact in writing, and each Community College shall report in writing to the Director of Education on or before July 1st of such year the amount of unused portion of received funds. The total of such reported unused portions of received funds shall be reallocated by the Director of Education in proportion to the amount of financial assistance to which each Community College is entitled under paragraph (d) but which has not been provided due to the ratable reductions provided for therein, (except that no Community College shall receive more than the total annual cost of the education programs provided by such College) and payments shall be made reflecting such reallocations on or before August 1st of such academic year.

(g) If the Director of Education determines that a Community College has received, through mistake or fraud, payments of financial assistance under this subpart to which it was not entitled, the Director shall promptly notify the college, which may appeal the Director's determination under the procedures set forth in §41.7, and adjust the amount of payments to the college under this subpart for the same or subsequent academic years to compensate for such overpayments or otherwise attempt to recover such overpayments.

(h) Eligibility for grants under this subpart shall not, by itself, bar a Community College from qualifying for or receiving financial assistance under any other Federal program for which it may qualify.

§41.9 Reports.

Each Community College receiving financial assistance under this subpart shall provide to the Director of Education on or before December 1st of each year a report which shall include an accounting of the amounts and purposes for which such financial assistance was expended during the preceding academic year; the annual cost of education programs of the Community College from all sources for such academic year; and a final report of the performance based upon the criteria set forth in the Community College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. Each Community College shall in addition report to the Director of Education its FTE Indian student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§41.10 Technical assistance.

The Director of Education shall furnish technical assistance either directly or through contract to any Community College requesting it. Such assistance shall be initiated within thirty (30) days of a Community College's request in writing. In any case, where the type and source of technical assistance is specified in the request, the Director, to the extent possible or feasible, shall provide the type of technical assistance through the source so specified. Technical assistance may include, but is not limited to, consulting services for the development of programs, plans, and feasibility studies and accounting, and other technical advice. In awarding of contracts for technical assistance, preference shall be given to an organization designated by the Community College to be assisted. Denials of requests for technical assistance under this section shall be made in writing and sent to the applicant within thirty (30) days of the request, together with a statement of the reason for denial. An appeal under this section may be undertaken in the same manner as in the case of negative determinations of feasibility under §41.7 of his subpart.

§ 41.11

25 CFR Ch. I (4-1-11 Edition)

§ 41.11 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to Community Colleges:

(a) Services or assistance provided to Indians by Community Colleges aided under this subpart shall be provided in a fair and uniform manner, and admission to any such Community College shall not be denied to any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, any Community College receiving financial assistance under this subpart shall comply with part 276 of this title, subject to any express waiver of specific inappropriate provisions of part 276 that may be granted by the Assistant Secretary after request and justification by the Community College.

(c) A Community College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days after the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying, or reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 41.12 Annual budget.

Appropriations under title I of the Tribally Controlled Community College Assistance Act of 1978 shall be separately identified in the Bureau of Indian Affairs Budget Justification. Funds appropriated for grants under this subpart shall not be commingled with other funds expended by the Bureau of Indian Affairs.

§ 41.13 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of Federal financial assistance or any other payment of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

Subpart B—Navajo Community College

§ 41.20 Policy.

It is the policy of this Department to support and encourage the establishment, operation, and improvement of tribally controlled community colleges in order to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end for the Navajo Community College under the Navajo Community College Act, as amended (25 U.S.C. 640a-c).

§ 41.21 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Navajo Community College pursuant to the Navajo Community College Act of December 15, 1971 (Pub. L. 92-189, 85 Stat. 646, 25 U.S.C. 640a-c) as amended by the Navajo Community College Assistance Act of 1978, title II of the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 1329, 25 U.S.C. 640c). Regulations applicable to Tribally Controlled Community Colleges other than Navajo Community College are found in subpart A of this part 41.

§ 41.22 Definitions.

As used in this subpart:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which the college normally subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by the college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Navajo Community College Act of December 15, 1971 (Pub. L. 92-189, 85 Stat. 646) as amended by the Navajo Community College Assistance Act of 1978, (Pub. L. 95-471, title II, 92 Stat. 1329, 25 U.S.C. 640a *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior or his/her duly authorized representative.

(e) *College* means the institution known as Navajo Community College established by the Navajo Tribe.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE* means the number of Indian students (1) enrolled full-time for an entire academic term at the College, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at the College (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term divided by (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as $FTE=FT+PTCR/12$ where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or Regional or Village Corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Operating and Maintenance Expenses of Education Programs* means the obligation and expenditures by the College for post-secondary education activities including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, and fixed charges, and other related expenses, but not including obligations or expenditures for the acquisition or construction of academic facilities (as defined in § 41.3(1) of subpart A).

§ 41.23 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating and maintenance expenses of education programs of the College. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.24 Grants.

(a) Navajo Community College is entitled to annual grants for operation and maintenance of the College in amounts based upon the number of Full-Time Equivalent Indian students in attendance.

(b) Annually, in the manner and within the deadline established by the Director of Education, the Navajo Community College shall submit an application in the form of a statement of its FTE enrollment (total and Indian) for the next academic year. The statement shall include a description of the College's curriculum, which may be in the form of a College catalog or like publication, and a proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the

§41.24

25 CFR Ch. I (4-1-11 Edition)

academic year for which the information applies. The statement shall be certified by the chief executive officer of the College and shall certify that a copy of that statement has been submitted to the Navajo Tribe.

(c) Annual budget request for the College shall be separately identified in the Bureau of Indian Affairs Budget Justifications. Funds appropriated for grants under this subpart shall not be commingled with other funds appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(d) Within thirty (30) days of submission of the statement required under paragraph (b) of this section, the Director of Education shall make a grant award to the College in an amount de-

termined under paragraph (e) of this section. The grant award shall be evidenced by a grant agreement signed by the Director of Education, incorporating the grant application and including the provisions required by §41.27 of this subpart.

(e) The College shall be eligible to receive a grant for the fiscal year beginning October 1, 1979, and for each succeeding year, in an amount equal to \$4,000 multiplied by the number of FTE Indian students in attendance at the College during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4,000 \times \frac{FTE_{TERM1} + FTE_{TERM2} + \dots + FTE_{TERMN}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with §41.22(g) of this subpart and N is the number of academic terms in the academic year. The amount and payment of such grants shall be subject to the availability of annual appropriations.

(f) The Director of Education shall authorize payments to the College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section on or before October 1st of such academic year (except 1979-80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA, whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding year. On or before January 1st (or such other date that is the first day of the fifth month) of such academic year, pay-

ment shall be made in the form of such advance installments to the College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section, calculated on the basis of registrations as in effect at the conclusion of the sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of such academic year, the balance of the grant amount to which the College is entitled under paragraph (e) of this section shall be paid to the College. In the event that additional sums are appropriated for the benefit of the College, these sums shall be included in the final payment.

(g) Overpayments of grants under this subpart may be recovered in the manner provided by §41.8(g) of subpart A.

(h) Payments to the Navajo Community College under this subpart shall not disqualify the College from applying for or receiving grants or contracts

under any other Federal programs for which it may qualify.

§ 41.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 41.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this subpart and accounting, and other technical advice and assistance.

§ 41.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this subpart shall be provided in a fair and uniform manner, and admission to the

College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, the College shall comply with part 276 of this title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 41.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

PART 42—STUDENT RIGHTS

Sec.

42.1 What general principles apply to this part?

42.2 What rights do individual students have?

§ 42.1

- 42.3 How should a school address alleged violations of school policies?
- 42.4 What are alternative dispute resolution processes?
- 42.5 When can a school use ADR processes to address an alleged violation?
- 42.6 When does due process require a formal disciplinary hearing?
- 42.7 What does due process in a formal disciplinary proceeding include?
- 42.8 What are a student's due process rights in a formal disciplinary proceeding?
- 42.9 What are victims' rights in formal disciplinary proceedings?
- 42.10 How must the school communicate individual student rights to students, parents or guardians, and staff?
- 42.11 Information collection.

AUTHORITY: 5 U.S.C. 301, Pub. L. 107-110, 115 Stat. 1425.

SOURCE: 70 FR 22218, Apr. 28, 2005, unless otherwise noted.

§ 42.1 What general principles apply to this part?

(a) This part applies to every Bureau-funded school. The regulations in this part govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded schools. To comply with this part, each school must:

(1) Respect the constitutional, statutory, civil and human rights of individual students; and

(2) Respect the role of Tribal judicial systems where appropriate.

(b) All student rights, due process procedures, and educational practices should, where appropriate or possible, afford students consideration of and rights equal to the student's traditional Native customs and practices.

§ 42.2 What rights do individual students have?

Individual students at Bureau-funded schools have, and must be accorded, at least the following rights:

(a) The right to an education that may take into consideration Native American or Alaska Native values;

(b) The right to an education that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals; and

(c) The right to due process in instances of disciplinary actions.

25 CFR Ch. I (4-1-11 Edition)

§ 42.3 How should a school address alleged violations of school policies?

(a) In addressing alleged violations of school policies, each school must consider, to the extent appropriate, the reintegration of the student into the school community.

(b) The school may address a student violation using alternative dispute resolution (ADR) processes or the formal disciplinary process.

(1) When appropriate, the school should first attempt to use the ADR processes described in § 42.4 that may allow resolution of the alleged violation without recourse to punitive action.

(2) Where ADR processes do not resolve matters or cannot be used, the school must address the alleged violation through a formal disciplinary proceeding under § 42.7 consistent with the due process rights described in § 42.7.

§ 42.4 What are alternative dispute resolution processes?

Alternative dispute resolution (ADR) processes are formal or informal processes that may allow resolution of the violation without recourse to punitive action.

(a) ADR processes may:

(1) Include peer adjudication, mediation, and conciliation; and

(2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: cadr@ios.doi.gov; or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street NW., MS 5258, Washington, DC 20240.

§ 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

Bureau of Indian Affairs, Interior

§ 42.9

(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the Act requires immediate expulsion (“zero tolerance” laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105-17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.8.

§ 42.6 When does due process require a formal disciplinary hearing?

Unless local school policies and procedures provide for less, a formal disciplinary hearing is required before a suspension in excess of 10 days or expulsion.

§ 42.7 What does due process in a formal disciplinary proceeding include?

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts related to the alleged violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student’s record that the school will consider in rendering a disciplinary decision.

(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the Act requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student’s parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

§ 42.8 What are a student’s due process rights in a formal disciplinary proceeding?

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student’s parents or guardians (or their designee);

(b) The right to be represented by counsel (legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student’s behalf and to confront and examine all witnesses;

(d) The right to the record of the disciplinary action, including written findings of fact and conclusions;

(e) The right to administrative review and appeal under school policy;

(f) The right not to be compelled to testify against himself or herself; and

(g) The right to have an allegation of misconduct and related information expunged from the student’s school record if the student is found not guilty of the charges.

§ 42.9 What are victims’ rights in formal disciplinary proceedings?

In formal disciplinary proceedings, each school must consider victims’ rights when appropriate.

(a) The victim’s rights may include a right to:

(1) Participate in disciplinary proceedings either in writing or in person;

§ 42.10

(2) Provide a statement concerning the impact of the incident on the victim; and

(3) Have the outcome explained to the victim and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the victim is the actual victim, not his or her parents or guardians.

§ 42.10 How must the school communicate individual student rights to students, parents or guardians, and staff?

Each school must:

(a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;

(b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;

(c) Provide all students and their parents or guardians a current and updated copy of student rights and responsibilities every school year upon enrollment; and

(d) Require students, school staff, and to the extent possible, parents and guardians, to confirm in writing that they have received a copy and understand the student rights and responsibilities.

§ 42.11 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part in §§ 42.6, 42.7, and 42.9 contains collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

25 CFR Ch. I (4-1-11 Edition)

PART 43—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Sec.

43.1 Purpose and scope.

43.2 Definitions.

43.3 Student rights.

43.4 Annual notification of rights.

43.5 Access to records.

43.6 Limitations on access.

43.7 Access rights.

43.8 Destruction of records.

43.9 Procedures for granting access.

43.10 Right to challenge.

43.11 Informal proceedings.

43.12 Right to a hearing.

43.13 Right of appeal.

43.14 Consent.

43.15 Content of consent.

43.16 Copy to be provided to parents or eligible students.

43.17 Release of information for health or safety emergencies.

43.18 Record of access.

43.19 Transfer of information by third parties.

43.20 Directory information.

43.21 Standards for collection and maintenance of student records.

43.22 Assuring integrity of records.

43.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

SOURCE: 43 FR 52024, Nov. 8, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 43.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 43.2 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) *Educational institution* means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) *Eligible student* means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an *eligible student*, the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) *Parent* means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term *parent* also includes a *surrogate* as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) *Student records* means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in § 43.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

§ 43.3 Student rights.

The regulations in this part do not prevent educational institutions from giving noneligible students rights similar to those given to parents and eligible students. Educational institutions may do so at their discretion.

§ 43.4 Annual notification of rights.

(a) Each educational institution to which this part applies and which maintains records on students shall inform parents or eligible students of the rights given them by this part.

(b) In meeting the requirement in paragraph (a) of this section the educational institution shall give notice to parents and eligible students at least annually of the following:

(1) The types of education records and information contained in them which are directly related to students and maintained by the institution.

(2) The name and position of the official responsible for maintaining each type of record, the persons who have access to those records, and the purpose for which they have access.

(3) The policies of the institution for reviewing and expunging those records.

(4) The procedures established by the institution under § 43.5.

(5) The procedures for challenging the content of education records including those in § 43.10.

(6) The cost, if any, which will be charged to the parent or eligible student for reproducing copies of records under § 43.5.

(7) The categories of information which the institution has designated as "directory information" under § 43.20.

(c) The notice given to a parent or eligible student under this section shall be in a language considered by the institution to be understandable by the parent or eligible student.

§ 43.5 Access to records.

Educational institutions shall give parents of students or eligible students, who are or have been in attendance at the institutions, access to student records, except as stated in § 43.6.

§ 43.6 Limitations on access.

Educational institutions are not required to make available to students the following materials:

§ 43.7

(a) Financial records of the parents of the student or any information contained in those records.

(b) Confidential letters and statements of recommendations, which were placed in any student's record prior to January 1, 1975, and which are not used for purposes other than those for which they were specifically intended.

(c) Those records listed in § 43.2(e) which are exempt from the definition of *student records*.

§ 43.7 Access rights.

The right of access specified in § 43.5 shall include:

(a) The right to obtain a list of the types of student records which are maintained by the institution.

(b) The right to inspect and review the content of those records.

(c) The right to obtain copies of those records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records.

(e) The right to an opportunity for a hearing to challenge the content of records.

(f) If any material or document in the record of a student includes information on more than one student, the right to inspect and review only that portion of such material or document as relates to that particular student or to be informed of the specific information contained in such part of such materials.

§ 43.8 Destruction of records.

This part does not prevent educational institutions from destroying any records, if not otherwise prevented by law. However, access shall be granted under § 43.5 before destroying student records where the parent or eligible student has requested access. Only records which are no longer relevant or necessary may be destroyed, subject to § 43.23(c).

§ 43.9 Procedures for granting access.

Each educational institution shall establish appropriate procedures for granting a request by parents for access to the records of their children, or

25 CFR Ch. I (4-1-11 Edition)

by eligible students for access to their own records within a reasonable period of time. In no case shall access be withheld more than forty-five (45) days after the request has been made.

§ 43.10 Right to challenge.

Each educational institution shall give parents of students and eligible students, who are or have been in attendance at the institution, an opportunity to challenge the content of the student's records to:

(a) Insure that the records are not inaccurate, misleading, or otherwise violating the privacy or other rights of students.

(b) Provide an opportunity for correcting or deleting any inaccurate, misleading, or otherwise inappropriate data in the record.

(c) Insert into such records a written comment by the parents or eligible students pertaining to the content of such records.

§ 43.11 Informal proceedings.

Educational institutions may attempt to resolve differences with the parent of a student or the eligible student regarding the content of the student's records through informal meetings and discussions with the parent or eligible student.

§ 43.12 Right to a hearing.

Upon the request of the educational institution, the parent, or eligible student, a hearing shall be conducted under the procedures adopted and published by the institution. Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing.

(b) The hearing shall be informal and a verbatim record of proceedings will not be required. Interpreters will be utilized when necessary.

(c) The hearing shall be conducted by an institutional official or other party who does not have a direct interest in the outcome of the hearing.

(d) The parents or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues raised under § 43.10.

Bureau of Indian Affairs, Interior

§ 43.17

(e) Within a reasonable period of time after the hearing ends, the hearing official shall make his recommendation in writing to the head of the educational institution. Within 20 days after receipt of the recommendation, the head of the institution shall issue his decision in writing to the parent or eligible student.

§ 43.13 Right of appeal.

If any parent or eligible student is adversely affected by the decision of the head of the institution, that party shall have appeal rights as given in 25 CFR part 2. However, each official decision shall be issued within 30 days from receipt of the appeal.

§ 43.14 Consent.

Educational institutions shall not permit access to or the release of student records or personally identifiable information contained in them, other than directory information of students, without the written consent of the parents or of an eligible student, to any party other than the following:

(a) Local school officials, including teachers within the educational institution, who have been determined by the institution to have legitimate educational interests in the records.

(b) Officials of other schools or school systems at which a student is interested in enrolling. The student or parent must be notified of such release except in cases involving Bureau of Indian Affairs schools. All Bureau of Indian Affairs schools are considered to be components of one school system whether operated under contract or otherwise.

(c) Persons having official involvement with a student's application for or grant of financial aid.

(d) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954, as amended.

(e) Accreditation agencies in order to carry out their accrediting functions.

(f) U.S. Office of Education officials and other governmental education officials when deemed necessary by the institution to carry out their official functions.

(g) An education testing center or similar institution as a part of its vali-

dation research which has been authorized by the school.

(h) In an emergency, any person to whom the information is necessary in the discretion of the school's administration in order to protect the student's health and safety, subject to § 43.17.

(i) Indian groups, contractors, grantees, professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs.

(j) Pursuant to the order of a court of competent jurisdiction; however, the parent or eligible student must be notified of such order in advance of compliance therewith by the educational institution.

§ 43.15 Content of consent.

The consent of a parent or eligible student requested under this part for the release of student records shall be in writing, signed and dated by the person giving the consent. The consent shall include:

(a) A specification of the records to be released.

(b) The reasons for release.

(c) The names of the parties to whom the records will be released.

§ 43.16 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of student records, a copy of the records to be released shall be provided on request to:

(a) The student's parents or the eligible student.

(b) The student who is not an eligible student, if desired by the parents.

§ 43.17 Release of information for health or safety emergencies.

(a) Educational institutions may release information from student records to appropriate persons in an emergency if the information is necessary to protect the health or safety of a student or other person. The factors to be used in determining whether records may be released under this section include the following:

§ 43.18

(1) The seriousness of the threat to the health or safety of the student or other persons.

(2) The need for those records to meet the emergency.

(3) Whether the persons to whom the records are released are in a position to deal with the emergency.

(4) The extent to which time is of the essence in dealing with the emergency.

§ 43.18 Record of access.

(a) Each educational institution shall maintain a record kept with the student records of each student, which will indicate all parties other than those specified in § 43.14 which have requested or obtained access to those records and which will indicate specifically the legitimate interest that each party had in obtaining this information.

(b) A record of access shall be available only to:

(1) Parents or eligible students.

(2) The school official and his or her assistants who are responsible for the custody of such records.

(3) Persons or organizations authorized in and under the conditions of § 43.14.

§ 43.19 Transfer of information by third parties.

(a) Educational institutions shall not release personal information on a student except on the condition that the party to which the information is being transferred will not permit any other party to have access to the information without the written consent of the parents or of the eligible students.

(b) With any information released to a party under paragraph (a) of this section, educational institutions shall include a written statement which informs the party of the requirement in paragraph (a) of this section.

§ 43.20 Directory information.

(a) Any educational institution making public directory information shall make a reasonable effort to individually notify the parent or eligible student of the categories of information which it has designated as directory information. The institution shall allow a reasonable period of time after notice has been given for a parent or eligible

25 CFR Ch. I (4-1-11 Edition)

student to inform the institution that any or all of the information designated should not be released without the prior consent of the parent or eligible student.

(b) Directory information may include the following: A student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, tribe, agency, area, name of parent, sex, and classification (grade). No other information may be included. Educational institutions have the right to limit the content of directory information.

§ 43.21 Standards for collection and maintenance of student records.

(a) Records shall contain only information about an individual which is relevant and necessary to accomplish a purpose of the Bureau required to be accomplished by statute or Executive order of the President.

(b) Student records which are used in making any determination about any student shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the student in making the determination.

(c) Information which may be used in determining a student's rights, benefits, and privileges under Federal programs shall be collected directly from the student or his parents, to the greatest extent practicable. In deciding whether collection of information from a parent or eligible student, as opposed to a third-party source is practicable, the following factors among others may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party.

(2) Whether the cost of collecting the information from the parent or student is unreasonable, when compared with the cost of collecting it from a third party.

(3) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse

determination to the student concerned.

(4) Whether the information, if supplied by the parent or student, would have to be verified by a third party.

(5) Whether provisions can be made for verification by the parent of student of information collected from third parties.

(d) Each individual parent or eligible student who is asked to supply information about himself which will be added to a system of student records shall be notified of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information. At a minimum, the notice to the parent or eligible student must state:

(1) The authority (whether granted by statute or Executive Order of the President) which authorizes requesting the information and whether disclosure of such information is mandatory or voluntary.

(2) The principle purpose or purposes for which the information is intended to be used.

(3) The routine uses which may be made of the information.

(4) The effects, if any, of not providing all or any part of the requested information.

(e) When information is collected on a standard form, the notice to the parent or eligible student shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever, is most practical.

(f) When information is collected by an interviewer, the interviewer shall provide the parent or eligible student with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(g) A parent or eligible student may be asked to acknowledge, in writing, that he has been given the notice required by this section.

(h) No student records may be maintained describing how any individual exercises rights guaranteed by the first amendment to the Constitution unless:

(1) Expressly authorized by statute or by the individual about whom the student record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 43.22 Assuring integrity of records.

(a) Student records shall be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form, student records shall be maintained, at a minimum, subject to the following safeguards, or safeguards giving comparable protection:

(1) Areas in which the student records are maintained or regularly used shall be posted with an appropriate warning, stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 43.23 and state that employees may be subject to a criminal penalty for the unauthorized disclosure of student records.

(2) During working hours, the area in which the student records are maintained or regularly used shall be occupied by authorized personnel, or access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms

§ 43.23

other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 43.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to protect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted under § 43.14 or made to the parent of the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

25 CFR Ch. I (4-1-11 Edition)

PART 44—GRANTS UNDER THE TRIBALLY CONTROLLED SCHOOLS ACT

Sec.

- 44.101 What directives apply to a grantee under this part?
- 44.102 Does this part affect existing tribal rights?
- 44.103 Who is eligible for a grant?
- 44.104 How can a grant be terminated?
- 44.105 How does a tribal governing body retrocede a program to the Secretary?
- 44.106 How can the Secretary revoke an eligibility determination?
- 44.107 Under what circumstances may the Secretary reassume a program?
- 44.108 How must the Secretary make grant payments?
- 44.109 What happens if the grant recipient is overpaid?
- 44.110 What Indian Self-Determination Act provisions apply to grants under the Tribally Controlled Schools Act?
- 44.111 Does the Federal Tort Claims Act apply to grantees?
- 44.112 Information Collection

AUTHORITY: Public Law 107-110, Title 10, Part D, the Native American Education Improvement Act, 115 Stat. 2007; Part B, Section 1138, Regional Meetings and Negotiated Rulemaking, 115 Stat. 2057.

SOURCE: 70 FR 22219, Apr. 28, 2005, unless otherwise noted.

§ 44.101 What directives apply to a grantee under this part?

In making a grant under this part the Secretary will use only:

- (a) The Tribally Controlled Schools Act;
- (b) The regulations in this part; and
- (c) Guidelines, manuals, and policy directives agreed to by the grantee.

§ 44.102 Does this part affect existing tribal rights?

This part does not:

- (a) Affect in any way the sovereign immunity from suit enjoyed by Indian tribes;
- (b) Terminate or change the trust responsibility of the United States to any Indian tribe or individual Indian;
- (c) Require an Indian tribe to apply for a grant; or
- (d) Impede awards by any other Federal agency to any Indian tribe or tribal organization to administer any Indian program under any other law.

§ 44.103 Who is eligible for a grant?

The Secretary can make grants to Indian tribes and tribal organizations that operate:

- (a) A school under the provisions of 25 U.S.C. 450 *et seq.*;
- (b) A tribally controlled school (including a charter school, community-generated school or other type of school) approved by tribal governing body; or
- (c) A Bureau-funded school approved by tribal governing body.

§ 44.104 How can a grant be terminated?

A grant can be terminated only by one of the following methods:

- (a) Retrocession;
- (b) Revocation of eligibility by the Secretary; or
- (c) Reassumption by the Secretary.

§ 44.105 How does a tribal governing body retrocede a program to the Secretary?

(a) To retrocede a program, the tribal governing body must:

- (1) Notify the Bureau in writing, by formal action of the tribal governing body; and
- (2) Consult with the Bureau to establish a mutually agreeable effective date. If no date is agreed upon, the retrocession is effective 120 days after the tribal governing body notifies the Bureau.

(b) The Bureau must accept any request for retrocession that meets the criteria in paragraph (a) of this section.

(c) After the tribal governing body retrocedes a program:

- (1) The tribal governing body decides whether the school becomes Bureau-operated or contracted under 25 U.S.C. 450 *et seq.*; and
- (2) If the tribal governing body decides that the school is to be Bureau-operated, the Bureau must provide education-related services in at least the same quantity and quality as those that were previously provided.

§ 44.106 How can the Secretary revoke an eligibility determination?

(a) In order to revoke eligibility, the Secretary must:

(1) Provide the tribe or tribal organization with a written notice;

(2) Furnish the tribe or tribal organization with technical assistance to take remedial action; and

(3) Provide an appeal process.

(b) The Secretary cannot revoke an eligibility determination if the tribe or tribal organization is in compliance with 25 U.S.C. 2505(c).

(c) The Secretary can take corrective action if the school fails to be accredited by January 8, 2005.

(d) In order to revoke eligibility for a grant, the Secretary must send the tribe or tribal organization a written notice that:

(1) States the specific deficiencies that are the basis of the revocation or reassumption; and

(2) Explains what actions the tribe or tribal organization must take to remedy the deficiencies.

(e) The tribe or tribal organization may appeal a notice of revocation or reassumption by requesting a hearing under 25 CFR part 900, subpart L or P.

(f) After revoking eligibility, the Secretary will either contract the program under 25 U.S.C. 450 *et seq.* or operate the program directly.

§ 44.107 Under what circumstances may the Secretary reassume a program?

The Secretary may only reassume a program in compliance with 25 U.S.C. 450m and 25 CFR part 900, subpart P. The tribe or school board shall have a right to appeal the reassumption pursuant to 25 CFR part 900, subpart L.

§ 44.108 How must the Secretary make grant payments?

(a) The Secretary makes two annual grant payments.

(1) The first payment, consisting of 80 per cent of the amount that the grantee was entitled to receive during the previous academic year, must be made no later than July 1 of each year; and

(2) The second payment, consisting of the remainder to which the grantee is entitled for the academic year, must be made no later than December 1 of each year.

§ 44.109

(b) For funds that become available for obligation on October 1, the Secretary must make payments no later than December 1.

(c) If the Secretary does not make grant payments by the deadlines stated in this section, the Secretary must pay interest under the Prompt Payment Act. If the Secretary does not pay this interest, the grantee may pursue the remedies provided under the Prompt Payment Act.

§ 44.109 What happens if the grant recipient is overpaid?

(a) If the Secretary has mistakenly overpaid the grant recipient, then the Secretary will notify the grant recipient of the overpayment. The grant recipient must return the overpayment within 30 days after the final determination that overpayment occurred.

(b) When the grant recipient returns the money to the Secretary, the Secretary will distribute the money equally to all schools in the system.

§ 44.110 What Indian Self-Determination Act provisions apply to grants under the Tribally Controlled Schools Act?

(a) The following provisions of 25 CFR part 900 apply to grants under the Tribally Controlled Schools Act.

(1) Subpart F; Standards for Tribal or Tribal Organization Management Systems, §900.45.

(2) Subpart H; Lease of Tribally-owned Buildings by the Secretary.

(3) Subpart I; Property Donation Procedures.

(4) Subpart N; Post-award Contract Disputes.

(5) Subpart P; Retrocession and Re-assumption Procedures.

(b) To resolve any disputes arising from the Secretary's administration of the requirements of this part, the procedures in subpart N of part 900 apply if the dispute involves any of the following:

(1) Any exception or problem cited in an audit;

(2) Any dispute regarding the grant authorized;

(3) Any dispute involving an administrative cost grant;

(4) Any dispute regarding new construction or facility improvement or repair; or

25 CFR Ch. I (4-1-11 Edition)

(5) Any dispute regarding the Secretary's denial or failure to act on a request for facilities funds.

§ 44.111 Does the Federal Tort Claims Act apply to grantees?

Yes, the Federal Tort Claims Act applies to grantees.

§ 44.112 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part in §44.105 contains collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

PART 46—ADULT EDUCATION PROGRAM

Subpart A—General Provisions

Sec.

46.1 Purpose and scope.

46.2 Definitions.

46.3 Information collection.

46.10 Eligible activities.

46.20 Program requirements.

46.30 Records and reporting requirements.

Subpart B [Reserved]

AUTHORITY: 43 U.S.C. 1457; 25 U.S.C. 2, 9, 13.

SOURCE: 62 FR 44081, Aug. 19, 1997, unless otherwise noted.

Subpart A—General Provisions

§ 46.1 Purpose and scope.

The purpose of the Adult Education Program is to:

(a) Improve educational opportunities for Indian adults who lack the level of literacy skills necessary for effective citizenship and productive employment;

(b) Expand and improve existing programs for delivering adult education services, including delivery of these services to educationally disadvantaged Indian adults; and

Bureau of Indian Affairs, Interior

§ 46.3

(c) Encourage the establishment of adult education programs that will:

(1) Enable Indian adults to acquire adult basic educational skills necessary for literate functioning;

(2) Provide Indian adults with sufficient basic education to enable them to benefit from job training and retraining programs and to obtain and retain productive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) Enable Indian adults, who so desire, to continue their education to at least the level of completion of adult secondary education.

§ 46.2 Definitions.

As used in this part:

Adult means an individual who has attained the age of sixteen or is beyond the age of compulsory school attendance under State or tribal law and not currently enrolled in a formal secondary or post-secondary educational program.

Adult Basic Education (ABE) means instruction designed for an adult who:

(1) Has minimal competence in reading, writing, and computation;

(2) Cannot speak, read, or write the English language sufficiently to allow employment commensurate with the adult's real ability;

(3) Is not sufficiently competent to meet the educational requirements of an adult consumer; or

(4) In grade level measurements that would be designated as grades 0 through 8.

Adult Education means services or instruction below the college level for adults who:

(1) Lack sufficient mastery of basic educational skills to enable them to function effectively in society, or

(2) Do not have a certificate of graduation from a school providing secondary education and have not achieved a GED.

Adult Education Office means the BIA or tribal office administering funds appropriated to the BIA, under the TPA, for Adult Education programs.

Adult Secondary Education means instruction designed for an adult who:

(1) Is literate and can function in everyday life, but is not proficient as a competitive consumer or employee; or

(2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education and in grade level measurements that would be designated as grades 9 through 12.

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

Bureau means the Bureau of Indian Affairs.

Department of Education (ED) means the U.S. Department of Education.

Director means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

Indian means a person who is a member of, or is at least a one-fourth degree Indian blood descendent of a member of, an Indian tribe, and is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians;

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 668) that is Federally recognized by the United States Government through the Secretary of the Interior for the special programs and services provided by the Secretary to Indians because of their status as Indians.

Tribal Priority Allocation (TPA) means the BIA's budget formulation process that allows direct tribal government involvement in the setting of relative priorities for local operating programs.

Secretary means the Secretary of the Department of the Interior.

Service area means the geographic area served by the local Adult Education Program.

§ 46.3 Information collection.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1076-0120. This information is being collected to assess the need for adult education programs. The information collection is used to manage program resources and

§ 46.10

25 CFR Ch. I (4–1–11 Edition)

for fiscal accountability and appropriate direct services documentation. Response to this request is necessary to obtain or retain a benefit. Public reporting burden for this form is estimated to average 4 hours per response including time for reviewing instructions, gathering, maintaining data, completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the BIA Information Collection Clearance Officer, 1849 C Street NW., Washington, DC 20240.

[67 FR 13570, Mar. 25, 2002]

§ 46.10 Eligible activities.

(a) Subject to availability of funds, funds appropriated for the BIA's Adult Education Program may be used to support local projects or programs designed to:

(1) Enable Indian adults to acquire basic educational skills, including literacy;

(2) Enable Indian adults to continue their education through the secondary school level;

(3) Establish career education projects intended to improve employment opportunities;

(4) Provide educational services or instruction for elderly, disabled, or incarcerated Indian adults;

(5) Prepare individuals to benefit from occupational training; and

(6) Teach employment-related skills.

(b) Funds should not be used to support programs designed solely to prepare Indian adults to enter a specific occupation or cluster of closely related occupations.

(c) The Adult Education Program must be implemented in accordance with a plan established by the tribe(s) affected by the program. The tribe(s) may determine to set standards in addition to those established in this part.

§ 46.20 Program requirements.

(a) The Adult Education Office will implement the program or project that is designed to address the needs of the Indian adults in the service area. To determine the needs of Indian adults in the area, the Adult Education Office must consider:

(1) Elementary/secondary school dropout or absentee rates;

(2) Average grade level completed;

(3) Unemployment rates; and

(4) Other appropriate measures.

(b) The Adult Education Office, to ensure efforts that no duplication of services exists, will identify other services in the area, including those offered by Federal, State and Tribal entities, that are designed to meet the same needs as those to be addressed by the project, and the number of Indian adults who receive those services.

(c) The Adult Education Office must establish and maintain an evaluation plan.

(1) The plan must be designed to measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved; and

(2) The plan must provide procedures for periodic assessment of the progress of the project and, if necessary, modification of the project as a result of that assessment.

(d) Subject to the availability of funds, the project is to be supported under the funding level established for Adult Education in the formulation of the budget under the TPA process.

§ 46.30 Records and reporting requirements.

(a) The Adult Education Office will annually submit a report on the previous project year's activities to the Director, Office of Indian Education Programs. The report must include the following information:

(1) The type of eligible activity, under § 46.10, conducted under the project(s);

(2) The number of participants acquiring the GED, high school diploma, and other certificates of performance; and

(3) A narrative summary of the activities conducted under the project.

(b) Each Adult Education Office must:

(1) Submit any records and information that the Director requires in connection with the administration of the program; and

(2) Comply with any requirements that the Director may impose to ensure the accuracy of the reports required by this part.

Subpart B [Reserved]

PART 47—UNIFORM DIRECT FUNDING AND SUPPORT FOR BUREAU-OPERATED SCHOOLS

Sec.

- 47.1 What is the purpose of this part?
 47.2 What definitions apply to terms in this part?
 47.3 How does a Bureau-operated school find out how much funding it will receive?
 47.4 When does OIEP provide funding?
 47.5 What is the school supervisor responsible for?
 47.6 Who has access to local education financial records?
 47.7 What are the expenditure limitations for Bureau-operated schools?
 47.8 Who develops the local educational financial plans?
 47.9 What are the minimum requirements for the local educational financial plan?
 47.10 How is the local educational financial plan developed?
 47.11 Can these funds be used as matching funds for other Federal programs?
 47.12 Information collection.

AUTHORITY: Pub. L. 107–110, 115 Stat. 1425.

SOURCE: 70 FR 22221, Apr. 28, 2005, unless otherwise noted.

§ 47.1 What is the purpose of this part?

This part contains the requirements for developing local educational financial plans that Bureau-operated schools need in order to receive direct funding from the Bureau of Indian Affairs under section 1127 of the Act.

§ 47.2 What definitions apply to terms in this part?

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

Budget means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories.

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

Consultation means soliciting and recording the opinions of Bureau-operated school boards regarding each element of the local educational financial

plan and incorporating these opinions to the greatest degree feasible in the development of the local educational financial plan at each stage.

Director means the Director, Office of Indian Education Programs.

Local educational financial plan means the plan that:

(1) Programs dollars for educational services for a particular Bureau-operated school; and

(2) Has been ratified in an action of record by the local school board or determined by the superintendent under the appeals process in 25 CFR part 2.

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

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

§ 47.3 How does a Bureau-operated school find out how much funding it will receive?

The Office of Indian Education Programs (OIEP) will notify each Bureau-operated school in writing of the annual funding amount it will receive as follows:

(a) No later than July 1 OIEP will let the Bureau-operated school know the amount that is 80 percent of its funding; and

(b) No later than September 30 OIEP will let the Bureau-operated school know the amount of the remaining 20 percent.

§ 47.4 When does OIEP provide funding?

By July 1 of each year OIEP will make available for obligation 80 percent of the funds for the fiscal year that begins on the following October 1.

§ 47.5 What is the school supervisor responsible for?

Each Bureau-operated school's school supervisor has the responsibilities in this section. The school supervisor must do all of the following:

(a) Ensure that the Bureau-operated school spends funds in accordance with the local educational financial plan, as ratified or amended by the school board;

§ 47.6

25 CFR Ch. I (4–1–11 Edition)

(b) Sign all documents required to obligate or pay funds or to record receipt of goods and services;

(c) Report at least quarterly to the local school board on the amounts spent, obligated, and currently remaining in funds budgeted for each program in the local educational financial plan;

(d) Recommend changes in budget amounts to carry out the local educational financial plan, and incorporate these changes in the budget as ratified by the local school board, subject to provisions for appeal and overturn; and

(e) Maintain expenditure records in accordance with financial planning system procedures.

§ 47.6 Who has access to local education financial records?

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives have access for audit and explanation purposes to any of the local school's accounts, documents, papers, and records which are related to the Bureau-operated schools' operation.

§ 47.7 What are the expenditure limitations for Bureau-operated schools?

Each Bureau-operated school must spend all allotted funds in accordance with applicable Federal regulations and local education financial plans. If a Bureau-operated school and OIEP region or Agency support services staff disagree over expenditures, the Bureau-operated school must appeal to the Director for a decision.

§ 47.8 Who develops the local educational financial plans?

The local Bureau-operated school supervisor develops the local educational financial plan in active consultation with the local school board, based on the tentative allotment received.

§ 47.9 What are the minimum requirements for the local educational financial plan?

(a) The local educational financial plan must include:

(1) Separate funds for each group receiving a discrete program of services is to be provided, including each pro-

gram funded through the Indian School Equalization Program;

(2) A budget showing the costs projected for each program; and

(3) A certification provision meeting the requirements of paragraph (b) of this section.

(b) The certification required by paragraph (a)(3) of this section must provide for:

(1) Certification by the chairman of the school board that the plan has been ratified in an action of record by the board; and

(2) Certification by the Education Line Officer that he or she has approved the plan as shown in an action overturning the school board's rejection or amendment of the plan.

§ 47.10 How is the local educational financial plan developed?

(a) The following deadlines apply to development of the local educational financial plan:

(1) Within 15 days after receiving the tentative allotment, the school supervisor must consult with the local school board on the local educational financial plan.

(2) Within 30 days of receiving the tentative allotment, the school board must review the local educational financial plan and, by a quorum vote, ratify, reject, or amend, the plan.

(3) Within one week of the school board action under paragraph (a)(2) of this section, the supervisor must either:

(i) Send the plan to the education line officer (ELO), along with the official documentation of the school board action; or

(ii) Appeal the school board's decision to the ELO.

(4) The ELO will review the local educational financial plan for compliance with laws and regulations and may refer the plan to the Solicitor's Office for legal review. If the ELO notes any problem with the plan, he or she must:

(i) Notify the local board and local supervisor of the problem within two weeks of receiving the plan;

(ii) Make arrangements to assist the local school supervisor and board to correct the problem; and

Bureau of Indian Affairs, Interior

§ 47.12

(iii) Refer the problem to the Director of the Office of Indian Education if it cannot be solved locally.

(b) When consulting with the school board under paragraph (a)(1) of this section, the school supervisor must:

(1) Discuss the present program of the Bureau-operated school and any proposed changes he or she wishes to recommend;

(2) Give the school board members every opportunity to express their own ideas and views on the supervisor recommendations; and

(3) After the discussions required by paragraphs (b)(1) and (b)(2) of this section, present a draft plan to the school board with recommendations concerning each of the elements.

(c) If the school board does not act within the deadline in paragraph (a)(2) of this section, the supervisor must send the plan to the ELO for ratification. The school board may later amend the plan by a quorum vote; the supervisor must transmit this amendment in accordance with paragraph (a)(3) of this section.

§ 47.11 Can these funds be used as matching funds for other Federal programs?

A Bureau-operated school may use funds that it receives under this part as matching funds for other Federal programs.

§ 47.12 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part contains collections of information subject to the PRA in §§ 47.5, 47.7, 47.9, and 47.10. These collections have been approved by OMB under control number 1076-1063.