

## § 38.15

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 Purpose and scope.
- 39.2 Definitions.
- 39.3 General provisions.

### Subpart B—The Indian School Equalization Formula

- 39.10 Establishment of the formula.
- 39.11 Definitions.
- 39.12 Instructional funding.
- 39.13 Residential funding.
- 39.14 Entitlement for small schools.
- 39.15 Alaskan school cost supplements.
- 39.16 Computation of school entitlements.
- 39.17 Comparability with public schools.
- 39.18 Recomputations of current year entitlements.
- 39.19 Phase-in provisions.
- 39.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

## 25 CFR Ch. I (4–1–03 Edition)

- 39.21 Future considerations for weighted programs.
- 39.22 Authorization of new program development, and termination of programs.
- 39.23 Review of contract schools supplemental funds.

### Subpart C—Formula Funding Administrative Procedures

- 39.30 Definitions.
- 39.31 Conditions of eligibility for funding.
- 39.32 Annual computation of average daily membership.
- 39.33 Special education unduplicated count provision.
- 39.34 Substitution of a count week.
- 39.35 Computation of average daily membership (ADM) for tentative allotments.
- 39.36 Declining enrollment provision.
- 39.37 Auditing of student counts.
- 39.38 Failure to provide timely and accurate student counts.
- 39.39 Delays in submission of ADM counts.

### Subpart D—Direct Allotment of Formula Entitlements

- 39.50 Definitions.
- 39.51 Notice of allotments.
- 39.52 Initial allotments.
- 39.53 Obligation of funds.
- 39.54 Apportionment of entitlements to schools.
- 39.55 Responsible local fiscal agent.
- 39.56 Financial records.
- 39.57 Access to and retention of local educational financial records.
- 39.58 Expenditure limitations for Bureau operated schools.

### Subpart E—Local Educational Financial Plan

- 39.60 Definitions.
- 39.61 Development of local educational financial plans.
- 39.62 Minimum requirements.
- 39.63 Procedures for development of the plan.
- 39.64 Procedures for financial plan appeals.

### Subpart F—Contingency Funds

- 39.70 Definitions.
- 39.71 Establishment of the School Disaster Contingency Fund.
- 39.72 Continuing and cumulative provisions.
- 39.73 Purposes.
- 39.74 Application procedures.
- 39.75 Disbursement procedures.
- 39.76 Prohibitions of expenditures.
- 39.77 Transfer of funds from Facilities Engineering for other contingencies.
- 39.78 Establishment of a formula implementation set-aside fund.
- 39.79 Prohibition.

## Bureau of Indian Affairs, Interior

## § 39.2

### Subpart G—School Board Training

- 39.90 Establishment of a school board training fund.
- 39.91 Other technical assistance and training.
- 39.92 Training activities.
- 39.93 Allowable expenditures.
- 39.94 Limitations on expenditures.
- 39.95 Reporting of expenditures.
- 39.96 Provision for annual adjustment.
- 39.97 Training for agency school board.

### Subpart H—Student Transportation

- 39.100 Definitions.
- 39.101 Purpose and scope.
- 39.102 Allocation of transportation funds.
- 39.103 Annual transportation formula adjustment.

### Subpart I—Interim Maintenance and Minor Repair Fund

- 39.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.
- 39.111 Conditions for distribution.
- 39.112 Allocation.
- 39.113 Use of funds.
- 39.114 Limitations.

### Subpart J—Administrative Cost Formula

- 39.120 Purpose and scope.
- 39.121 Definitions.
- 39.122 Allotment of education administrative funds.
- 39.123 Allotment exception for FY 1991.

### Subpart K—Pre-kindergarten Programs

- 39.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.
- 39.131 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

- 39.140 Definitions.
- 39.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.
- 39.142 Distribution of funds.
- 39.143 Future consideration of contract school operation and maintenance funding.

AUTHORITY: 25 U.S.C. 13; 25 U.S.C. 2008.

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

### Subpart A—General

#### § 39.1 Purpose and scope.

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

#### § 39.2 Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) *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.

(b) *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.

(c) *Agency Superintendent of Education* or *Superintendent* means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) *Area Director for Education* means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

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

(f) *Average daily membership* or *ADM* means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those

eligible students shall be counted as members who are:

(1) Listed on the current roll of the school counting them during the count week;

(2) Not listed as enrolled in any other school during the same period; and

(3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

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

(h) *Decision of record* means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

(i) *Director* means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) *Eligible student* means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) *Entitlement* means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) *Advice of allotment* means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) *Allotment* means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) *Indian* means a person who is a member of an Indian tribe.

(o) *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. 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.

(p) *Program* means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following accounting programs are those established by this part:

- (1) Instructional costs;
- (2) Boarding costs;
- (3) Dormitory costs;
- (4) Bilingual instruction costs;
- (5) Exceptional child education costs;
- (6) Intense residential guidance costs;
- (7) Student transportation fund costs;
- (8) School maintenance and repair fund costs;
- (9) School board training fund costs;
- (10) Pre-kindergarten costs; and
- (11) Previously private contract school operation and maintenance costs.

(q) *School* means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term *school*, unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) *Local School Board*, (usually referred to as *school board*) including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded school, in accordance with the laws of the tribe to be served or, in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that 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.

## Bureau of Indian Affairs, Interior

## § 39.11

(s) *Supervisor or local school supervisor* means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) *Tribally operated contract school or contract school* means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) *Weighted student unit (WSU)* means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 39.10 below. The term weighted student unit also describes the measure by which supplements to the weighted student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

### § 39.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 39 is without exception subject to the availability of funds.

### Subpart B—The Indian School Equalization Formula

#### § 39.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF). Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in subpart C of this part. From the application of ratios or weights as provided in these rules a

weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

#### § 39.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 39.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) *Base or base unit* means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

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

(c) *Grade or Grade Level*, followed in most cases by *K* or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is *non-graded* or *individualized*, or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as *in*

§ 39.11

25 CFR Ch. I (4-1-03 Edition)

*the grade level* to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) *Grades 1-3* means a weighted program for a student who is present during the count week (see §39.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) *Grades 4-8 and grades 9-12* means a weighted program for a student who is present during the count week (see §39.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) *Kindergarten* means a weighted program for a student who is present during the count week (see §39.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as *half-time kindergarten* students.

(g) *Intense Bilingual* means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non native speakers of English, under resources of the ISEP.

(h) *Intensive residential guidance* means the weighted program for a residential student that needs special residential services due to one or more of

the problems identified below, and that appropriate documentation is in that student's file as follows:

(1) Presenting problem:

(i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.

(ii) Expulsion from previous school under due process.

(iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.

(iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.

(2) Documentation required:

(i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;

(iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or

(iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.

(i) *Exceptional Child Program* means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by part B of the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*; 45 CFR part 121a<sup>1</sup>) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR part 84) and who have the following diagnosed impairments:

(1) *Deaf* means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

<sup>1</sup>45 CFR 121a was redesignated as 34 CFR 300 at 45 FR 77368, Nov. 21, 1980.

(2) *Hard of hearing* means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of *deaf* in this section.

(3) *Mentally retarded* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(4) *Severely multi-handicapped* means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.

(5) *Orthopedically impaired* means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(6) *Other health impaired* means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1) through (12) of this section.

(7) *Emotionally disturbed* means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small group instruction, supervision, and group counseling:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(8) *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.

(9) *Speech impaired* means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.

(10) *Visually handicapped* means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes partially seeing, but not fully blind, children.

(11) *Severely emotionally disturbed* means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

§ 39.12

25 CFR Ch. I (4-1-03 Edition)

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(12) *Severely and profoundly retarded* means a degree of mental retardation (as defined in paragraph (i)(3) of this section) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.

(13) *Students requiring home/hospital based instruction* means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.

(14) *Multihandicapped* means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.

(15) *Blind* means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20%.

(j) *Resident* means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

[44 FR 61864, Oct. 26, 1979, as amended at 67 FR 52830, Aug. 13, 2002]

§ 39.12 Instructional funding.

(a) Schools are to use the following sources to fund their special Education programs:

(1) 15 percent of the Indian Student Equalization Program (ISEP) funds generated by their ADM; and

(2) Funds under Part B of the Individuals with Disabilities Education Act (IDEA), if the 15 percent of ISEP funds is inadequate to fund the services needed by all eligible ISEP students with disabilities.

(b) All ISEP special education funds must be spent before the need for Part B of IDEA funds can be demonstrated. Part B funds are designed to provide for special education needs not funded by ISEP. By demonstrating that 15 percent of the ISEP base instructional funds were spent on special education, there is support for the need for Part B funds.

(c) To receive ISEP special education funding a student must be:

(1) At least 5 years old by December 31 to be counted as a kindergarten student;

(2) At least 6 years old by December 31 to be counted as a first grade student; and

(3) Under 22 years of age and not have received a high school diploma or its equivalent on the first day of full attendance during the ISEP student count week.

(d) A school may spend ISEP funds on school-wide programs to benefit all students (including those without disabilities) only if all of the following conditions are met:

(1) The school sets aside 15 percent of the basic instructional allotment to meet the needs of students with disabilities;

(2) The school can document that it has met all needs of students with disabilities and addressed all components of IDEA; and

(3) There are unspent funds after the conditions in paragraphs (d)(1) and (d)(2) of this section are met.

(e) Public Law 100-297 establishes a weighted unit for each ISEP-eligible full-time student that is gifted and talented. The weighted unit for gifted and talented is 2.0 weighted student units minus the basic instructional program weight by grade level. The weights for

**Bureau of Indian Affairs, Interior**

**§ 39.16**

eligible gifted and talented students must be computed according to the following revised weighted student unit factors:

Grade level	Add-on weight
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

(f) This paragraph applies to disabled students who are eligible for ISEP and were not counted during the ISEP Student Count Week. Schools must fund services for these students using the 15 percent of the ISEP funds based upon the school ADM for those students counted during the ISEP Student Count Week. See paragraph (a)(2) of this section for further guidance.

(g) To compute the funding for individual elementary and secondary children, schools must use the weighted student unit factors in paragraphs (g)(1) and (g)(2) of this section.

(1) The factors for basic programs are contained in the following table:

Basic programs	Base weights
Kindergarten .....	1.15
Grades 1 to 3 .....	1.38
Grades 4 to 6 .....	1.15
Grades 7 to 8 .....	1.38
Grades 9 to 12 .....	1.50

(2) For each student in the intense bilingual supplemental program, the school must add to the base weight an add-on weight of .20.

[67 FR 52830, Aug. 13, 2002]

**§ 39.13 Residential funding.**

Basic funds for student residential purposes must be computed according to the following weighted student unit factors:

Basic programs	Add-on weights
Grades 1 to 3 .....	1.40
Grades 4 to 8 .....	1.25
Grades 9 to 12 .....	1.25
Intensive Residential Guidance .....	.50

[67 FR 52830, Aug. 13, 2002]

**§ 39.14 Entitlement for small schools.**

To compensate for the additional costs of operating small schools, qualified schools shall receive the following adjustments:

(a) Instructional programs in day and boarding schools. For each separate small school having an instructional average daily membership count (called x) of less than 100 students, the formula [(100-x) divided by 200] times x shall be used to generate add-on weighted pupil units for each such school.

(b) *Boarding school residential programs.* For each separate small boarding school having a resident average daily membership count (called y) of less than 100 students, the formula [(100-y) divided by 200] times y shall be used to generate add-on weighted pupil units for each such boarding school.

(c) *Dormitory residential programs serving public schools.* For each small dormitory program having an average daily membership count (called z) of less than 100 students, the formula [(100-z) divided by 200] times z shall be used to generate add-on weighted pupil units for each dormitory.

**§ 39.15 Alaskan school cost supplements.**

To meet the statutory requirements for a salary supplement for Alaskan educational staff, and add-on weight of .25 will be used as a factor by which all pupil program-generated weighted students shall be supplemented. Such generated Alaskan cost supplements will be added to the weighted pupil units generated by each school in the same manner as small school units.

**§ 39.16 Computation of school entitlements.**

The sum of all weighted student units, including any small school and any Alaskan school cost supplements shall be computed for each school under the management of the Director. The total number of units generated by each approved school shall be multiplied by a base dollar value which is equivalent to a base weight of 1.0 in the

**§ 39.17**

formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

**§ 39.17 Comparability with public schools.**

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 39.78 of these regulations.

**§ 39.18 Recomputations of current year entitlements.**

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly

**25 CFR Ch. I (4-1-03 Edition)**

allocated to the schools, and that all funds are fully allotted to schools.

**§ 39.19 Phase-in provisions.**

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

- (1) In FY 80—20%
- (2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

- (1) In FY 80—10%
- (2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

## Bureau of Indian Affairs, Interior

## § 39.23

(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

### § 39.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop:

(a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of boarding schools and in special weighted program areas which expand upon the definitions in this part; and

(b) A uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program.

The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placements can occur before the FY 1981 October student count.

### § 39.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

- (1) A rural isolation adjustment.
- (2) A staff cost adjustment.
- (3) A gifted and talented student program.
- (4) A vocational education program.
- (5) A facilities operation and maintenance program.
- (6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout part 39. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary,

who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

### § 39.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60) days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under 25 CFR part 900 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93-638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

### § 39.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under title IV of the Indian Education Act, which are available to contract schools

**§ 39.30**

**25 CFR Ch. I (4-1-03 Edition)**

but not to Bureau schools, and determine appropriate adjustments, if any. Any adjustments in the ISEP which results from this review shall be effected by formal revision of this rule, under a Notice of Intended Rulemaking published in the FEDERAL REGISTER, and shall be subject to public comment for a minimum of sixty (60) days prior to final rulemaking.

**Subpart C—Formula Funding  
Administrative Procedures**

**§ 39.30 Definitions.**

As used in this subpart, the term:

(a) *Certifying the validity of student counts* means that counts of student ADM have been accurately recorded in compliance with specifications of these rules, and that the Agency Superintendent of Schools, the local school supervisor, and local school board chairperson, where a school board exists, testify to and confirm the correctness of this count.

(b) *Count week* means the last full week in September for the purposes of calculating allotments.

(c) *Student classification* means any special student need area that receives a separate weighting through the Indian School Equalization Formula.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 36368, Sept. 17, 1984]

**§ 39.31 Conditions of eligibility for funding.**

(a) To be eligible for direct formula funding as established in subpart B of this part, a day school, boarding school, or dormitory must meet minimum standards, or, failing to do so, must include in its financial plan steps acceptable to the Director for taking corrective action to meet the standards to be prescribed pursuant to section 1121 of the Education Amendments of 1978 (Pub. L. 95-561; 25 U.S.C. 2001). Until such standards are prescribed, the Director shall determine eligibility for funding in accordance with established procedures for authorizing Bureau operated schools.

(b) To be eligible for direct formula funding, a tribally operated day or boarding school or dormitory must

meet the requirements of part 900 of this chapter (25 CFR part 900) for receipt of Bureau Education funds under contracts for school operation.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

**§ 39.32 Annual computation of average daily membership.**

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

[49 FR 36368, Sept. 17, 1984]

**§ 39.33 Special education unduplicated count provision.**

In counting special education ADM with the exception of speech therapy, no child shall be counted or funded twice for participation in more than one special education program.

**§ 39.34 Substitution of a count week.**

A school may petition the Director to substitute another week in the same month for the specified count week if it can be established that to use the specified count week would result in grossly inaccurate student counts. Where tribal ceremonial days are known in advance, such a petition shall be submitted in advance of the determined count week.

**§ 39.35 Computation of average daily membership (ADM) for tentative allotments.**

Tentative allotments for each future year's funding shall be based on the

## Bureau of Indian Affairs, Interior

## § 39.50

ADM for the September count week of the current year.

[49 FR 36368, Sept. 17, 1984]

### § 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

[49 FR 36368, Sept. 17, 1984]

### § 39.37 Auditing of student counts.

The Secretary shall provide for auditors as required to assure timeliness and validity in reporting student counts for formula funding.

### § 39.38 Failure to provide timely and accurate student counts.

(a) Responsible Bureau school, Agency, Area, and Central Office administrators may be dismissed for cause, or otherwise penalized, for submission of invalid or fraudulent annual student ADM counts or willfully inaccurate counts of student participation in weighed program areas. A person who knowingly submits or causes to be submitted to a Federal official or employee false information upon which the expenditure of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 286, 287, 371, or 1001 of title 18, U.S. Code.

(b) Failure of responsible Federal officials to perform administrative operations which are essential to the ISEP, on a timely basis, shall result in swift disciplinary action by Bureau supervisory personnel, under existing procedures. Failure or refusal of Bureau supervisory personnel to take disciplinary action shall result in disciplinary action against them by higher level supervisors.

### § 39.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds

available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of § 39.78 in subpart F.

(b) In no case shall the Director delay the computation of initial allotments for schools which have submitted timely ADM counts while waiting for those schools which have failed to submit.

## Subpart D—Direct Allotment of Formula Entitlements

### § 39.50 Definitions.

As used in this subpart, the term:

(a) *Apportionment* means that part of a school's allotment received each quarter as an authorization to obligate funds.

(b) *Approved apportionment schedules* means that approval given for the quarterly obligation of funds for a given appropriation of funds for the Bureau.

(c) *Authorization to obligate* means that approval given to a school to incur obligations of funds against a given appropriation.

(d) *Final allotment* means that notice of funds available to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(e) *Initial allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

### § 39.51

(f) *Responsible fiscal agent* means the local school supervisor of a Bureau operated school except where such authority is designated to the Agency Superintendent of Education by a school board decision of record or by a written agreement signed by both parties. For contract schools, the responsible fiscal agent shall be designated in an action of record by the contractor.

(g) *Tentative allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 36368, Sept. 17, 1984]

#### § 39.51 Notice of allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under subpart B of this part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

[49 FR 36368, Sept. 17, 1984]

#### § 39.52 Initial allotments.

The Assistant Secretary—Indian Affairs, as requested by the Director, shall make initial allotments to Bureau operated schools, Agency Education Offices, and Central and Area Offices. The Assistant Secretary—Indian Affairs shall make initial allotments for tribally operated schools to appropriate Agency Superintendents of Education, or as otherwise provided by the Director.

#### § 39.53 Obligation of funds.

(a) Authority to obligate funds in the Bureau operated schools shall be governed by provisions of the Bureau Manual (42 BIAM).

### 25 CFR Ch. I (4–1–03 Edition)

(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR part 900.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 39.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 39.75, 39.78, 39.90, 39.102 and 39.111.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

#### § 39.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 39.55 of this part. Such quarterly apportionments will be made as determined in § 39.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25 CFR part 900 for effecting and adjusting contracts with tribally operated schools.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

#### § 39.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

(a) Expend funds solely in accordance with the local educational financial plan, as ratified or amended by the local school board, unless in the case of Bureau operated schools, this plan has been overturned under the appeal process prescribed in these rules, in which case expenditures shall be made in accordance with the local educational financial plan as determined by the Agency Superintendent of Education.

(b) Sign all documents required for the obligation and or payment of funds

## Bureau of Indian Affairs, Interior

## § 39.62

and documentation of receipt of goods and services.

(c) Report at least quarterly to the local school board on the amounts expended, amounts obligated and amounts currently remaining in funds budgeted for each program of services in the local financial plan.

(d) Recommend changes in budget amounts, as required for effective management of resources to carry out the local financial plan, and incorporate such changes in the budget as are ratified by the local school board, subject to provisions for appeal and overturn.

### § 39.56 Financial records.

Each responsible fiscal agent receiving funds under the ISEP shall maintain expenditure records in accordance with financial planning system procedures as required herein.

### § 39.57 Access to and retention of local educational financial records.

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives shall have access for audit and examination purposes to any of the local schools' accounts, documents, papers and records which are related or pertinent to the school's operation. The provisions of 25 CFR 271.47 will be applicable in the case of tribally contracted schools.

### § 39.58 Expenditure limitations for Bureau operated schools.

(a) Expenditure of allotments shall be made in accordance with applicable federal regulations and local education financial plans, as defined in § 39.60(b) of subpart E.

(b) Where there is disagreement between the Area or Agency support service staff and the responsible fiscal agent regarding the propriety of the obligation or disbursement of funds, appeal shall be made to the Director.

## Subpart E—Local Educational Financial Plan

### § 39.60 Definitions.

As used in this subpart, the term:

(a) *Consultation* means soliciting and recording the opinions of school boards regarding each element in the local fi-

ancial plan, as set forth below, and incorporating those opinions to the greatest degree feasible in the development of the local educational financial plan at each stage thereof.

(b) *Local educational financial plan* means that plan which programs dollars for educational services for a particular Bureau operated or funded school which has been ratified in an action of record by the local school board, or determined by the superintendent under the appeal process set forth in this subpart.

(c) *Budget* means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories thereunder.

### § 39.61 Development of local educational financial plans.

A local educational financial plan shall be developed by the local school supervisor, in active consultation with the local school board, based on the tentative allotment received as provided in § 39.51.

### § 39.62 Minimum requirements.

The local financial plan shall include, at a minimum, each of the following elements:

(a) Separate programing of funds for each group of Indian students for whom a discrete program of services is to be provided. This must include at a minimum each program for which funds are allotted to the school through the Indian School Equalization Program;

(b) A brief description, or outline, of the program of student services to be provided for each group identified;

(c) A budget showing the costs projected for each program, as determined by the Director through the development of a uniform cost accounting system related to the Indian School Equalization Program;

(d) A statement of the percentage relationship between the total of the anticipated costs for each program and the amount the students served by that program will generate under the Indian School Equalization Formula. Beginning in FY 1981, there shall also be included a statement of the cost incurred for each program in the preceding fiscal year and the amount received for

**§ 39.63**

**25 CFR Ch. I (4-1-03 Edition)**

each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan must provide that at least 80% of the funds generated by students served by the program be spent on those students;

(e) A provision for certification by the chairman of the school board that the plan as shown, or as amended, has been ratified in an action of record by the school board; or

(f) Except in the case of contract schools, a provision for certification by the Agency Superintendent of Education that he or she has approved the plan as shown, or as amended, in an action overturning the rejection or amendment of the plan by the school board.

**§ 39.63 Procedures for development of the plan.**

(a)(1) Within thirty (30) days after receipt of the tentative allotment for the coming school year, the school supervisor shall meet and consult with the local school board on the local financial plan.

(2) The school supervisor shall discuss at this meeting the present program of the school and any proposed changes he or she wishes to recommend. The school board members shall be given every opportunity to express their own ideas as well as their views on the supervisor's recommendations. Subsequently the school supervisor shall present a draft plan to the school board with recommendations concerning each of the elements outlined in this subpart.

(b) Within sixty (60) days of receipt of the tentative allotment, the school board shall review the local financial plan as prepared by the school supervisor and, by a quorum vote, shall have the authority to ratify, reject or amend such financial plan.

(c) The school board shall have the authority, at any time following the ratification of the financial plan on its own determination or in response to the supervisor, to revise such plan to meet needs not foreseen at the time of preparation of the plan.

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial

plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

(e) In the event that the school board does not act within the prescribed deadline, the financial plan shall be referred to the Agency Superintendent of Education for ratification, subject to subsequent amendment by the school board in accordance with paragraph (c) of this section.

(f) The Agency Superintendent of Education will review the local financial plan for compliance with prescribed laws and regulations or may refer the plan to the Solicitor's Office for legal review. If the Superintendent notes any problem with the plan, he or she shall notify the local board and local supervisor of the problem within two weeks of receipt of the local financial plan and shall make arrangements to assist the local school supervisor and board to correct the problem. If the Superintendent is not able to correct the problem, it shall be referred to the Director of the Office of Indian Education.

**§ 39.64 Procedures for financial plan appeals.**

(a) If the supervisor of a school finds an action of the local school board, in rejecting or amending the local financial plan, to be unacceptable in his or her judgment as a professional educator, the supervisor may appeal to the Agency Superintendent of Education under the following procedures and conditions:

(1) The appeal must be presented in writing, within ten (10) consecutive days of the supervisor's receipt of the school board decision which is appealed.

(2) The written appeal shall contain, at a minimum, the following information and documentation:

(i) All descriptive information concerning the element(s) in the local financial plan being appealed, substantially as presented to the school board prior to its decision.

(ii) Official documentation of the school board's decision amending or rejecting the element(s) being appealed.

(iii) A statement of the school supervisor's reasons for appealing the board's actions.

(iv) Signed certification by the supervisor that his/her reason for appeal has been presented to the chairperson of the school board, and that the school board has been offered full opportunity to submit a counter statement to the Superintendent.

(3) If the supervisor of the school is also the Superintendent, the appeal shall be made following the above procedures to the Director, who shall follow procedures set forth below, as acting Superintendent for the appeal.

(b) Within ten (10) consecutive days of receiving the appeal, the Agency Superintendent of Education shall review the appeal documents to determine if they are complete according to the criteria established in this subpart, and if so shall notify both the school supervisor and the school board of a date for an informal conference.

(c) Within twenty-five (25) consecutive days of receiving the referral for approval, the Superintendent shall:

(1) Hear any arguments on either or both sides of the appeal issue(s) at the option of either the supervisor of the school board involved.

(2) Following the informal conference, either sustain or reject the appeal for good cause, which the Superintendent shall set out in writing to both the supervisor and school board.

(d) Nothing in this subsection shall be construed as enabling the supervisor of a tribally operated school to appeal decisions of a contract school board to the Agency Superintendent for Education, nor as empowering the Agency Superintendent for Education to overturn any action of a contract school board under this appeal process as established in Pub. L. 93-638.

(e) Within 180 days after the effective date of this subpart, the Assistant Secretary shall develop and publish in the FEDERAL REGISTER procedures for a formal hearing process which shall be available to school boards who believe their decisions regarding the financial plan have been overturned for other than good cause.

## Subpart F—Contingency Funds

### § 39.70 Definitions.

As used in this subpart, the term:

(a) *Cumulative total* means the sum of all funds carried over from the previous fiscal year(s) as unobligated and the amount for the current year.

(b) *Temporary replacement* means the substitution of a structure on a temporary basis in lieu of the original permanent structure that has been lost to use. The temporary use will expire at the time that arrangements are completed for the availability of a structure similar to the original.

### § 39.71 Establishment of the School Disaster Contingency Fund.

The Bureau's annual budget justifications shall identify an amount for a separate budget account entitled the School Disaster Contingency Fund (SDCF). All schools and dormitories receiving support under the provisions of subparts B and C of this part are eligible for disaster aid from this contingency fund.

### § 39.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be added when appropriated but the Fund should not exceed a \$1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

### § 39.73 Purposes.

Disbursements from the School Disaster Contingency Fund shall be for the following purposes:

(a) Costs of replacement of items in the following categories including shipment and installation, in the event of their destruction by earthquake, fire, flood, storm, or other "acts of God," and acts of massive and catastrophic vandalism where such costs are not already covered in an insurance policy in force at the time of destruction and where such destruction could not have been prevented by prudent action by the officials responsible for the care of such items:

**§ 39.74**

(1) Educational materials and supplies.

(2) Equipment and furnishings.

(3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.

(4) Food services supplies, furnishings and equipment not a fixed part of structures.

(5) Office supplies and equipment for minimum essential administrative operations.

(6) Janitorial supplies and cleaning equipment.

(7) Student clothing and personal supplies if destroyed along with a school facility.

(8) Fuel supplies, tanks, lines, connections, meters, etc.

(9) Transportation equipment not otherwise provided for through the General Services Administration.

(10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other "acts of God," until they can be reconstructed. These costs may include purchase of or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such

**25 CFR Ch. I (4-1-03 Edition)**

as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmaries, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

**§ 39.74 Application procedures.**

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity of the school operation at either the local school, Agency or Area levels.

**§ 39.75 Disbursement procedures.**

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

**§ 39.76 Prohibitions of expenditures.**

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of facilities

## Bureau of Indian Affairs, Interior

## § 39.79

no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been "condemned" or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audio-visual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

### § 39.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contingency fund shall be established to cover such costs.

### § 39.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed \$2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

### § 39.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

**Subpart G—School Board Training**

**§ 39.90 Establishment of a school board training fund.**

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95-561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at \$5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

**§ 39.91 Other technical assistance and training.**

The provision of funds under § 39.90 of this subpart does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible. The provision of assistance under this subpart does not preclude a school board or its trial governing body from receiving financial or other assistance from the Bureau under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; Pub. L. 93-638; 25 U.S.C. 450 *et seq.*).

**§ 39.92 Training activities.**

Training funds provided under this part may be used for training in the following subject areas:

- (a) Educational philosophy;
- (b) Community school programs;
- (c) Legal aspects of being a school board member;
- (d) School board operations and procedures;
- (e) Fiscal management;
- (f) Formula funding;
- (g) Personnel matters;
- (h) Union negotiations;
- (i) Contracting procedures and obligations;
- (j) Special curriculum areas;
- (k) Students' rights and responsibilities;
- (l) Education agency relations;
- (m) Alternative sources of Federal grants;
- (n) Juvenile justice;
- (o) Teachers training and inservice options;
- (p) Needs assessment, program development, proposal writing; and

(q) Other training activities school boards deem appropriate and applicable to their situation and which are approved by the Director.

**§ 39.93 Allowable expenditures.**

Allowable expenditures under this subpart are limited to:

- (a) Contracting with individuals and organizations for training services,
- (b) Membership fees in school boards' associations and purchase of their materials and publications,
- (c) Membership reimbursement for subsistence and travel expenses incurred while participating in training activities; and
- (d) Cooperative contracts with other school boards for joint training or technical assistance activities.

**§ 39.94 Limitations on expenditures.**

- (a) No expenditure may be authorized except in accordance with a decision of record by the school board and each payment shall be made under written authorization of the board chairperson.
- (b) Expenditures under this subpart may not be made for school board members' stipends or honorariums associated with participation in training activities. Payments for such may, however, come from the school's operational budget, if so designated and approved in the school's operational budget, if so designated and approved in the school's local educational finance plan. The maximum amounts of such payments shall be determined in accordance with the laws or regulations of the tribe involved and shall be subject to approval by the Director. In the absence of such tribal laws or regulations, such maximums shall be determined by the Director in consultation with the school board. Payments under this subpart may not be made to any employee of a school served by the school board being trained or assisted.

**§ 39.95 Reporting of expenditures.**

An accounting of all expenditures of school board training funds shall be maintained as a supplement to each school's public accounting records.

## Bureau of Indian Affairs, Interior

## § 39.102

### § 39.96 Provision for annual adjustment.

The allocation of \$5,000 per school may be annually adjusted by the Director.

### § 39.97 Training for agency school board.

Provisions for training agency school board members, except as they may also be members of local school boards, are not included in these local school board training funds. If required, such provision shall be incorporated in agency or area office educational administration training plans and budgets.

## Subpart H—Student Transportation

### § 39.100 Definitions.

As used in this subpart, the term:

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

(b) *Transported student* means the average number of students transported to school on a daily basis.

(c) *School bus* means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

### § 39.101 Purpose and scope.

The purpose of this section is to provide funds to each school for the round trip transportation of students between home and the school site.

### § 39.102 Allocation of transportation funds.

Transportation funds for FY 1980 shall be allocated to each school as follows:

(a) *Day students.* Funds shall be allocated to each school which provides daily transportation of students between the student's residence and the school site by the following formula:

(1)  $180 \times (\$.85 \text{ per basic transportation mile} + \$.61 \text{ per transported student})$ .

(2) The allocation shall be based on the daily average of transported students and basic transportation miles computed during the October and November count periods.

(3) This formula shall not apply to any dormitory which provides daily transportation between dormitory and the public school which the dormitory student attends.

(b) *Boarding school and dormitory students.* Funds shall be allocated to each boarding school and dormitory for the transportation of resident students according to the following criteria:

(1) For each student whose home is more than 1 mile and no more than 100 miles from the boarding school or dormitory, the school shall receive \$3.20 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(2) For each student whose home is more than 100 and no more than 350 miles from the boarding school or dormitory, the school shall receive \$1.60 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(3) For each student whose home is more than 350 miles from the boarding school or dormitory, the school shall receive \$.48 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home agency to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(4) For each student whose home is more than 350 miles from the boarding school or dormitory and for whom it is necessary to provide airplane transportation, the school shall receive \$.60 per mile per student flown per year. The miles per student shall be the actual one way air miles between the airport

**§ 39.103**

closest to the school site and the closest to the student's home. Airplane transportation shall be provided only when ground transportation is unavailable or not cost-effective.

(5) For each student attending Mt. Edgecumbe Boarding School, Sitka, Alaska, who requires airplane transportation, the school shall receive \$1.05 per mile per student flown per year. The miles per student shall be the one way air miles between the Sitka, Alaska airport and the airport nearest the student's home.

(6) At least 80% of the funds received by the school under (3), (4), and (5) above must be used for student travel between home and school.

**§ 39.103 Annual transportation formula adjustment.**

The Director will review transportation allotment factors each year and make changes in factors based on changes in transportation costs.

**Subpart I—Interim Maintenance and Minor Repair Fund**

**§ 39.110 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 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.

**§ 39.111 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.

**§ 39.112 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.

**§ 39.113 Use of funds.**

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

**§ 39.114 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.

**Subpart J—Administrative Cost Formula**

SOURCE: 56 FR 35795, July 26, 1991, unless otherwise noted.

**§ 39.120 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.

**Bureau of Indian Affairs, Interior**

**§ 39.140**

**§ 39.121 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.

**§ 39.122 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 administering 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.

**§ 39.123 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**

**§ 39.130 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 prior to application of the phase-in provision detailed in § 39.19.

**§ 39.131 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**

**§ 39.140 Definitions.**

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries

### § 39.141

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.

#### **§ 39.141 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.

#### **§ 39.142 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 as set forth in § 39.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

#### **§ 39.143 Future consideration of contract school operation and maintenance funding.**

The Assistant Secretary shall arrange for full funding for operation and

### 25 CFR Ch. I (4-1-03 Edition)

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 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.