

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.

PART 44—GRANTS UNDER THE TRIBALLY CONTROLLED SCHOOLS ACT

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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.

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§ 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.

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(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

(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