

## Bureau of Indian Affairs, Interior

## § 32.4

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

### § 32.4 Policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 32.5 Evaluation of implementation of Pub. L. 95–561.

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

## PART 33—TRANSFER OF INDIAN EDUCATION FUNCTIONS

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

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

### § 33.1 Definitions.

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

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

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

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

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

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

### § 33.2 Policy.

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

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

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

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

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

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