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

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

Subpart C—Off-Reservation Boarding Schools

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

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

§ 37.131 Who may attend an ORBS?

Any student is eligible to attend an ORBS.

PART 38—EDUCATION PERSONNEL

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

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

§ 38.1 Scope.

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

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ondary school positions and agency education positions.

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

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

§ 38.2 Information collection.

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

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

§ 38.3 Definitions.

As used in this part, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any activity (other than teaching) that requires academic credits in

educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

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

(4) Support services at or associated with the site of the school; or

(b) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent for Education is excluded.

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

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

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

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

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

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

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

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

§ 38.4 Education positions.

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

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

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

§ 38.5 Qualifications for educators.

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

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

the position to which he/she is appointed.

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

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

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

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

§ 38.6 Basic compensation for educators and education positions.

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