

§ 273.35

contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) shall constitute the only federally-funded school lunch program for Indian students in public schools. Where Indian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.18 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible students under § 273.12.

[47 FR 57275, Dec. 23, 1982]

§ 273.35 Capital outlay or debt retirement.

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.36 Eligible subcontractors.

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any appropriate individual, organization or corporation.

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§ 273.37 Use of funds outside of schools.

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.38 Equal quality and standard of education.

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

Subpart D—General Contract Requirements

§ 273.41 Special program provisions to be included in contract.

All contracts under this part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal Funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).