

Nov. 18, 1988, 102 Stat. 4219; Pub. L. 101-630, title V, § 509(a), Nov. 28, 1990, 104 Stat. 4567, provided for Indian Health Service program of alcohol and substance abuse detoxification and rehabilitation for Indian youth. See section 1665c of this title.

Section 2475, Pub. L. 99-570, title IV, § 4228, Oct. 27, 1986, 100 Stat. 3207-150; Pub. L. 100-690, title II, § 2213, Nov. 18, 1988, 102 Stat. 4220, provided for program of training and community education about alcohol and substance abuse. See section 1665d of this title.

Section 2476, Pub. L. 99-570, title IV, § 4229, Oct. 27, 1986, 100 Stat. 3207-152; Pub. L. 100-690, title II, § 2214, Nov. 18, 1988, 102 Stat. 4220, provided for establishment of Navajo alcohol rehabilitation demonstration program.

Section 2477, Pub. L. 99-570, title IV, § 4230, Oct. 27, 1986, 100 Stat. 3207-152, related to compilation of data and preparation of reports on cases of alcohol or substance abuse in which Indian Health Service personnel or services were involved. See section 1665f of this title.

Section 2478, Pub. L. 99-570, title IV, § 4231, as added Pub. L. 100-690, title II, § 2215, Nov. 18, 1988, 102 Stat. 4221, authorized grants for alcohol and substance abuse prevention and treatment in urban centers.

### CHAPTER 27—TRIBALLY CONTROLLED SCHOOL GRANTS

Sec.	
2501.	Findings.
2502.	Declaration of policy. <ul style="list-style-type: none"> <li>(a) Recognition.</li> <li>(b) Commitment.</li> <li>(c) National goal.</li> <li>(d) Educational needs.</li> <li>(e) Federal relations.</li> <li>(f) Termination.</li> </ul>
2503.	Grants authorized. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Limitations.</li> <li>(c) Limitation on transfer of funds among schoolsites.</li> <li>(d) No requirement to accept grants.</li> <li>(e) No effect on Federal responsibility.</li> <li>(f) Retrocession.</li> <li>(g) No termination for administrative convenience.</li> </ul>
2504.	Composition of grants. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Special rules.</li> </ul>
2505.	Eligibility for grants. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Additional requirements for Bureau schools and certain electing schools.</li> <li>(c) Additional requirements for school which is not a Bureau funded school.</li> <li>(d) Applications and reports.</li> <li>(e) Effective date for approved applications.</li> <li>(f) Denial of applications.</li> </ul>
2506.	Duration of eligibility determination. <ul style="list-style-type: none"> <li>(a) In general.</li> <li>(b) Annual reports.</li> <li>(c) Revocation of eligibility.</li> <li>(d) Applicability of section pursuant to election under section 2508(b).</li> </ul>
2507.	Payment of grants; investment of funds. <ul style="list-style-type: none"> <li>(a) Payments.</li> <li>(b) Investment of funds.</li> <li>(c) Recoveries.</li> </ul>
2508.	Application with respect to Indian Self-Determination and Education Assistance Act. <ul style="list-style-type: none"> <li>(a) Certain provisions to apply to grants.</li> <li>(b) Election for grant in lieu of contract.</li> <li>(c) No duplication.</li> <li>(d) Transfers and carryovers.</li> <li>(e) Exceptions, problems, and disputes.</li> </ul>
2509.	Role of Director.

Sec.	
2510.	Regulations.
2511.	Definitions.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2001, 2008, 2026, 3207 of this title; title 20 sections 7813, 8064.

#### § 2501. Findings

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, Indians, finds that—

(1) the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step towards tribal and community control;

(2) the Bureau of Indian Affairs' administration and domination of the contracting process under such Act [25 U.S.C. 450 et seq.] has not provided the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities;

(3) Indians will never surrender their desire to control their relationships both among themselves and with the non-Indian governments, organizations, and persons;

(4) true self-determination in any society of people is dependent upon an educational process which will ensure the development of qualified people to fulfill meaningful leadership roles;

(5) the Federal administration of education for Indian children has not effected the desired level of educational achievement nor created the diverse opportunities and personal satisfaction which education can and should provide;

(6) true local control requires the least possible Federal interference; and

(7) the time has come to enhance the concepts made manifest in the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.].

(Pub. L. 100-297, title V, § 5202, Apr. 28, 1988, 102 Stat. 385.)

#### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in pars. (1), (2), and (7), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

#### EFFECTIVE DATE

For effective date and applicability of chapter, see section 6303 of Pub. L. 100-297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

#### SHORT TITLE

Section 5201 of Pub. L. 100-297 provided that: "This part [part B (§§ 5201-5212) of title V of Pub. L. 100-297,

enacting this chapter] may be cited as the ‘Tribally Controlled Schools Act of 1988’.”

### § 2502. Declaration of policy

#### (a) Recognition

The Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational services so as to render such services more responsive to the needs and desires of those communities.

#### (b) Commitment

The Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy for education which will deter further perpetuation of Federal bureaucratic domination of programs.

#### (c) National goal

The Congress declares that a major national goal of the United States is to provide the resources, processes, and structures which will enable tribes and local communities to effect the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

#### (d) Educational needs

The Congress affirms the reality of the special and unique educational needs of Indian peoples, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities. These may best be met through a grant process.

#### (e) Federal relations

The Congress declares its commitment to these policies and its support, to the full extent of its responsibility, for Federal relations with the Indian Nations.

#### (f) Termination

The Congress hereby repudiates and rejects House Concurrent Resolution 108 of the 83rd Congress and any policy of unilateral termination of Federal relations with any Indian Nation.

(Pub. L. 100-297, title V, § 5203, Apr. 28, 1988, 102 Stat. 385.)

#### REFERENCES IN TEXT

House Concurrent Resolution 108 of the 83rd Congress, referred to in subsec. (f), is H. Con. Res. 108, Eighty-third Congress, Aug. 1, 1953, 67 Stat. B132, which is not classified to the Code.

### § 2503. Grants authorized

#### (a) In general

(1) The Secretary shall provide grants to Indian tribes, and tribal organizations, that—

(A) operate contract schools under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.] and notify the Secretary of their election to operate the schools with as-

sistance under this chapter rather than continuing as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau schools with assistance under this chapter and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

(2) Grants provided under this chapter shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is provided.

(3)(A) Except as otherwise provided in this paragraph, grants provided under this chapter shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education-related activities for which any funds that compose the grant may be used under the laws described in section 2504(a) of this title, including but not limited to, expenditures for—

(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes, and

(ii) support services for the school, including transportation.

(B) Grants provided under this chapter may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operation and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 2504(a) of this title.

(C) If funds allocated to a tribally controlled school under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], or any Federal education law other than title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.] are included in a grant provided under this chapter, a portion of the grant equal to the amount of the funds allocated under such law shall be expended only for those activities for which funds provided under such law may be expended under the terms of such law.

#### (b) Limitations

(1) No more than one grant may be provided under this chapter with respect to any Indian tribe or tribal organization for any fiscal year.

(2) Funds provided under any grant made under this chapter may not be used in connection with religious worship or sectarian instruction.

(3) Funds provided under any grant made under this chapter may not be expended for administrative costs (as defined under section 1128A(e)(1)<sup>1</sup> of the Education Amendments of

<sup>1</sup> See References in Text note below.

1978) in excess of the amount generated for such costs under section 1128A<sup>1</sup> of such Act.

**(c) Limitation on transfer of funds among school-sites**

(1) In the case of a grantee which operates schools at more than one schoolsite, the grantee may expend no more than the lesser of—

(A) 10 percent of the funds allocated for a schoolsite under section 1128<sup>1</sup> of the Education Amendments of 1978, or

(B) \$400,000 of such funds,

at any other schoolsite.

(2) For purposes of this subsection, the term “schoolsite” means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract with, the Bureau for which a discrete student count is identified under the funding formula established under section 1128<sup>1</sup> of the Education Amendments of 1978.

**(d) No requirement to accept grants**

Nothing in this chapter may be construed—

(1) to require a tribe or tribal organization to apply for or accept, or

(2) to allow any person to coerce any tribe or tribal organization into applying for, or accepting,

a grant under this chapter to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications, and the timing of such applications, shall be strictly voluntary. Nothing in this chapter may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

**(e) No effect on Federal responsibility**

Grants provided under this chapter shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

**(f) Retrocession**

Whenever an<sup>2</sup> tribal governing body requests retrocession of any program for which assistance is provided under this chapter, such retrocession shall become effective upon a date specified by the Secretary not more than 120 days after the date on which the tribal governing body requests the retrocession, or such later date as may be mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this chapter prior to the retrocession. The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau school or as a contract school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.]. Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a

contract school) the existing equipment and materials which were acquired—

(1) with assistance under this chapter, or

(2) upon assumption of operation of the program under this chapter if it was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this chapter.

**(g) No termination for administrative convenience**

Grants provided under this Act<sup>3</sup> may not be terminated, modified, suspended, or reduced only for the convenience of the administering agency.

(Pub. L. 100-297, title V, §5204, Apr. 28, 1988, 102 Stat. 386; Pub. L. 100-427, §10(a), (b), Sept. 9, 1988, 102 Stat. 1607; Pub. L. 102-119, §26(f), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §394(m)(1), Oct. 20, 1994, 108 Stat. 4029.)

REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1)(A), (3)(C), (b)(3), (c)(1)(A), (2), and (f), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§2001 et seq.) of this title. Sections 1128 and 1128A of the Act were classified to sections 2008 and 2008a, respectively, of this title, prior to the general amendment of part B of such title XI, which is classified to chapter 22 (§2001 et seq.) of this title, by Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103-382 enacted new sections 1127, relating to allotment formulas, and 1128, relating to administrative cost grants, of the Act which are classified to sections 2007 and 2008, respectively, of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(3)(C), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(3)(C), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

This Act, referred to in subsec. (g), is Pub. L. 100-297 and probably should be “this part”, meaning part B of title V of Pub. L. 100-297, known as the Tribally Controlled Schools Act of 1988, which is classified generally to this chapter. For complete classification of part B to the Code, see Short Title note set out under section 2501 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(3)(C). Pub. L. 103-382 substituted “title I” for “chapter 1 of title I”.

1991—Subsec. (a)(3)(C). Pub. L. 102-119 substituted “Individuals with Disabilities Education Act” for “Education of the Handicapped Act”.

1988—Subsec. (a)(1). Pub. L. 100-427, §10(a), added subpars. (A) to (C) and struck out former subpars. (A) and (B) which read as follows:

“(A) operate tribally controlled schools which are eligible for assistance under this chapter, and

“(B) submit to the Secretary applications for such grants.”

Subsec. (f). Pub. L. 100-427, §10(b)(2), (3), struck out “Indian” after “Whenever an”, substituted “tribal gov-

<sup>2</sup> So in original. Probably should be “a”.

<sup>3</sup> See References in Text note below.

erning body” for “tribe” in 3 places in first sentence, and inserted at end “The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau school or as a contract school under title XI of the Education Amendments of 1978. Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a contract school) the existing equipment and materials which were acquired—

“(1) with assistance under this chapter, or

“(2) upon assumption of operation of the program under this chapter if it was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this chapter.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2007, 2504 of this title; title 20 section 5895.

### § 2504. Composition of grants

#### (a) In general

The grant provided under this chapter to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1128<sup>1</sup> and 1128A<sup>1</sup> of the Education Amendments of 1978 with respect to the tribally controlled schools eligible for assistance under this chapter that are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs,

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 450j of this title, or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to all those referenced under section 1126(d) of the Education Amendments of 1978 [25 U.S.C. 2006(d)], or any other law), and

(3) the total amount of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.],

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], and

(C) any other Federal education law,

that are allocated to such schools for such fiscal year.

#### (b) Special rules

(1) In the allocation of funds under sections 1128,<sup>1</sup> 1128A,<sup>1</sup> and 1126(d) [25 U.S.C. 2006(d)] of the Education Amendments of 1978, tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools.

(2) In the allocation of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.],

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], and

(C) any other Federal education law,

that are distributed through the Bureau, tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools.

(3)(A) Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) shall be subject to the provisions of this chapter and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.],

(ii) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.], or

(iii) any Federal education law other than title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.].

(B) Indian tribes and tribal organizations to which grants are provided under this chapter, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

(4) Notwithstanding the provision of paragraph<sup>2</sup> 2503(a)(2) of this title, with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant under such paragraph (a)(2),<sup>3</sup> the grantee shall maintain a separate account for such funds and shall, at the end of the period designated for the work covered by the funds received, render a separate accounting of the work done and the funds used to the Secretary. Funds received from these accounts may only be used for the purposes for which they were appropriated and for the work encompassed by the application or submission under which they were received, except that a school receiving a grant under this chapter for facilities improvement and repair may use such grant funds for new construction if the tribal government or other organization provides funding for the new construction equal to at least one-fourth of the total cost of such new construction. Where the appropriations measure or the application submission does not stipulate a period for the work covered by the funds so designated, the Secretary and the grantee shall consult and determine such a period prior to the transfer of funds: *Provided*, That such period may be extended upon mutual agreement.

(5) If the Secretary fails to make a determination within 180 days of a request filed by an Indian tribe or tribal organization to include in such tribe or organization's grant the funds described in subsection (a)(2) of this section, the Secretary shall be deemed to have approved such request and the Secretary shall immediately amend the grant accordingly. Such tribe or organization may enforce its rights under subsection (a)(2) of this section and this paragraph, including any denial of or failure to act on such tribe or organization's request, pursuant

<sup>2</sup> So in original. Probably should be “section”.

<sup>3</sup> So in original. Probably should be “section 2503(a)(2)”,.

<sup>1</sup> See References in Text note below.

to the disputes authority described in section 2508(e) of this title.

(Pub. L. 100-297, title V, § 5205, Apr. 28, 1988, 102 Stat. 387; Pub. L. 100-427, § 10(c), Sept. 9, 1988, 102 Stat. 1608; Pub. L. 101-301, § 5(g), May 24, 1990, 104 Stat. 209; Pub. L. 102-119, § 26(f), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §§ 382(a), (b), 394(m)(2), Oct. 20, 1994, 108 Stat. 4017, 4029.)

#### REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1) and (b)(1), (3)(A)(iii), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Act is classified principally to chapter 22 (§ 2001 et seq.) of this title. Sections 1128 and 1128A of the Act were classified to sections 2008 and 2008a, respectively, of this title, prior to the general amendment of part B of such title XI, which is classified to chapter 22 (§ 2001 et seq.) of this title, by Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103-382 enacted new sections 1127, relating to allotment formulas, and 1128, relating to administrative cost grants, of the Act which are classified to sections 2007 and 2008, respectively, of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(3)(A) and (b)(2)(A), (3)(A)(i), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(3)(B) and (b)(2)(B), (3)(A)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

#### AMENDMENTS

1994—Subsecs. (a)(3)(A), (b)(2)(A), (3)(A)(i). Pub. L. 103-382, § 394(m)(2), substituted “chapter I” for “chapter 1 of title I”.

Subsec. (b)(4). Pub. L. 103-382, § 382(a), substituted “were received, except that a school receiving a grant under this chapter for facilities improvement and repair may use such grant funds for new construction if the tribal government or other organization provides funding for the new construction equal to at least one-fourth of the total cost of such new construction” for “were received”.

Subsec. (b)(5). Pub. L. 103-382, § 382(b), added par. (5). 1991—Subsecs. (a)(3)(B), (b)(2)(B), (3)(A)(ii). Pub. L. 102-119 substituted “Individuals with Disabilities Education Act” for “Education of the Handicapped Act”.

1990—Subsec. (a)(2). Pub. L. 101-301, § 5(g)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and other facilities accounts for such schools for such fiscal year under section 1126(d) of the Education Amendments of 1978 or under any other law, and”.

Subsec. (b)(4). Pub. L. 101-301, § 5(g)(2), added par. (4). 1988—Subsec. (b)(3)(A)(i). Pub. L. 100-427 inserted “chapter 1 of” before “title I”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2503 of this title.

### § 2505. Eligibility for grants

#### (a) In general

(1) A tribally controlled school is eligible for assistance under this chapter if the school—

(A) was, on April 28, 1988, a contract school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.] and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this chapter,

(B) was a Bureau school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b) of this section,

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c) of this section, or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b) of this section.

(2) Any application which has been submitted under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] by an Indian tribe for a school which is not in operation on April 28, 1988, shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b) of this section.

#### (b) Additional requirements for Bureau schools and certain electing schools

(1) A school that was a Bureau funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.] on April 28, 1988,<sup>1</sup> and any school with respect to which an election is made under subsection (a)(2) of this section, meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

(ii) make a determination of whether the school is eligible for assistance under this chapter, and

(B) the Secretary makes a determination that the school is eligible for assistance under this chapter.

(2)(A) By no later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) if the school is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization, and

(ii) whether the school is eligible for assistance under this chapter.

(B) In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school, and

<sup>1</sup> So in original.

(ii) shall determine that the school is eligible for assistance under this chapter,

unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

(C) In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

- (i) equipment,
- (ii) bookkeeping and accounting procedures,
- (iii) substantive knowledge of operating the school,
- (iv) adequately trained personnel, or
- (v) any other necessary components in the operation of the school.

**(c) Additional requirements for school which is not a Bureau funded school**

(1) A school which is not a Bureau funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2001 et seq.] meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary of whether the school is eligible for assistance under this chapter, and

(B) the Secretary makes a determination that the school is eligible for assistance under this chapter.

(2)(A) By no later than the date that is 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this chapter.

(B) In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

- (i) with respect to the applicant's proposal—
  - (I) the adequacy of facilities or the potential to obtain or provide adequate facilities;
  - (II) geographic and demographic factors in the affected areas;
  - (III) adequacy of applicant's program plans;
  - (IV) geographic proximity of comparable public education; and
  - (V) the needs as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations; and

(ii) with respect to all education services already available—

- (I) geographic and demographic factors in the affected areas;
- (II) adequacy and comparability of programs already available;
- (III) consistency of available programs with tribal education codes or tribal legislation to education; and
- (IV) the history and success of these services for the proposed population to be served, as determined from all factors and

not just standardized examination performance.

(C) The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

(D) Applications submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers appropriate.

(E) If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application, the Secretary shall be treated as having made a determination that the tribally controlled school is eligible for assistance under the title<sup>2</sup> and the grant shall become effective 18 months after the date on which the Secretary received the application, or an earlier date, at the Secretary's discretion.

**(d) Applications and reports**

(1) All applications and reports submitted to the Secretary under this chapter, and any amendments to such applications or reports, shall be filed with the agency or area education officer designated by the Director of the Office of Indian Education of the Bureau of Indian Affairs. The date on which such filing occurs shall, for purposes of this chapter, be treated as the date on which the application or amendment is submitted to the Secretary.

(2) Any application that is submitted under this chapter shall be accompanied by a document indicating the action taken by the tribal governing body in authorizing such application.

**(e) Effective date for approved applications**

Except as provided in subsection (c)(2)(E) of this section, a grant provided under this chapter, and any transfer of the operation of a Bureau school made under subsection (b) of this section, shall become effective beginning with the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or at an earlier date determined by the Secretary.

**(f) Denial of applications**

(1) Whenever the Secretary declines to provide a grant under this chapter, to transfer operation of a Bureau school under subsection (b) of this section, or determines that a school is not eligible for assistance under this chapter, the Secretary shall—

(A) state the objections in writing to the tribe or tribal organization within the allotted time,

(B) provide assistance to the tribe or tribal organization to overcome all stated objections,

(C) provide the tribe or tribal organization a hearing on the record, under the same rules and regulations that apply under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.], and

<sup>2</sup> See References in Text note below.

(D) provide an opportunity to appeal the objection raised.

(2) The Secretary shall reconsider any amended application submitted under this chapter within 60 days after the amended application is submitted to the Secretary.

(Pub. L. 100-297, title V, § 5206, Apr. 28, 1988, 102 Stat. 388; Pub. L. 100-427, § 11, Sept. 9, 1988, 102 Stat. 1608; Pub. L. 105-362, title VIII, § 801(d), Nov. 10, 1998, 112 Stat. 3288.)

#### REFERENCES IN TEXT

The Education Amendments of 1978, referred to in subsecs. (a)(1)(A), (B), (b)(1), and (c)(1), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended. Title XI of the Education Amendments of 1978 is classified principally to chapter 22 (§ 2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a)(2) and (f)(1)(C), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The title, referred to in subsec. (c)(2)(D), probably should be "this part", meaning part B of title V of Pub. L. 100-297, known as the Tribally Controlled Schools Act of 1988, which is classified generally to this chapter. For complete classification of part B to the Code, see Short Title note set out under section 2501 of this title and Tables.

#### AMENDMENTS

1998—Subsec. (g). Pub. L. 105-362 struck out heading and text of subsec. (g). Text read as follows: "The Bureau shall submit an annual report to the Congress on all applications received, and actions taken (including the costs associated with such actions), under this section at the same time that the President is required to submit to the Congress the budget under section 1105 of title 31."

1988—Subsec. (a)(1)(A), (B). Pub. L. 100-427, § 11(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) was, on April 28, 1988, a school which received funds under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.).

"(B) was a school operated (as either an elementary or secondary school or a combined program) by the Bureau and has met the requirements of subsection (b) of this section."

Subsec. (b)(1). Pub. L. 100-427, § 11(b), in introductory provisions, substituted "A school that was a Bureau funded school under title XI of the Education Amendments of 1978 on April 28, 1988," for "Any school that was operated as a Bureau school on April 28, 1988".

Subsec. (c). Pub. L. 100-427, § 11(c), substituted "school which is not Bureau funded school" for "schools that have not received Bureau funds" in heading and substituted "A school which is not a Bureau funded school under title XI of the Education Amendments of 1978" for "A school for which the Bureau has not provided funds" in par. (1).

Subsec. (d)(1). Pub. L. 100-427, § 11(d), substituted "Bureau of Indian Affairs" for "Department of Education".

Subsec. (f)(1)(C). Pub. L. 100-427, § 11(e), inserted "on the record" after "hearing".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2506 of this title.

## § 2506. Duration of eligibility determination

### (a) In general

If the Secretary determines that a tribally controlled school is eligible for assistance under this chapter, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 2505 of this title, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

### (b) Annual reports

Each recipient of a grant provided under this chapter shall submit to the Secretary and to the tribal governing body (within the meaning of section 1121(j)<sup>1</sup> of the Education Amendments of 1978) of the tribally controlled school an annual report that shall be limited to—

(1) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(2) a biannual financial audit conducted pursuant to the standards of the Single Audit Act of 1984 [31 U.S.C. 7501 et seq.];

(3) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(4) a program evaluation conducted by an impartial entity, to be based on the standards established for purposes of subsection (c)(1)(A)(ii) of this section.

### (c) Revocation of eligibility

(1)(A) The Secretary shall not revoke a determination that a school is eligible for assistance under this chapter if—

(i) the Indian tribe or tribal organization submits the reports required under subsection (b) of this section with respect to the school, and

(ii) at least one of the following subclauses applies with respect to the school:

(I) The school is certified or accredited by a State or regional accrediting association as recognized by the Secretary of Education, or is a candidate in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by students within the education programs are, or will be, accepted at grade level by a State certified or regionally accredited institution.

(II) A determination made by the Secretary that there is a reasonable expectation that the accreditation described in subclause (I), or the candidacy in good standing for such accreditation, will be reached by the school within 3 years and that the program offered by the school is beneficial to the Indian students.

(III) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

(IV) The school accepts the standards promulgated under section 1121 of the Edu-

<sup>1</sup> See References in Text note below.

cation Amendments of 1978 [25 U.S.C. 2001] and an evaluation of performance is conducted under this section in conformance with the regulations pertaining to Bureau operated schools by an impartial evaluator chosen by the grantee, but no grantee shall be required to comply with these standards to a higher degree than a comparable Bureau operated school.

(V) A positive evaluation of the school is conducted once every 3 years under standards adopted by the contractor under a contract for a school entered into under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] (or revisions of such standards agreed to by the Secretary and the grantee) prior to April 28, 1988, such evaluation to be conducted by an impartial evaluator agreed to by the Secretary and the grantee. If the Secretary and a grantee other than the tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grantee which is the tribal governing body fail to agree on such an evaluator, this subclause shall not apply.

(B) The choice of standards employed for purposes of subparagraph (A)(ii) shall be consistent with section 1121(e)<sup>2</sup> of the Education Amendments of 1978.

(2) The Secretary shall not revoke a determination that a school is eligible for assistance under this chapter, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 2505(b)(1)(A) of this title, until the Secretary—

(A) provides notice to the tribally controlled school and the tribal governing body (within the meaning of section 1121(j)<sup>2</sup> of the Education Amendments of 1978) of the tribally controlled school which states—

(i) the specific deficiencies that led to the revocation or resumption determination, and

(ii) the actions that are needed to remedy such deficiencies, and

(B) affords such authority an opportunity to effect any remedial actions.

The Secretary shall provide such technical assistance as is necessary to effect such remedial actions. Such notice and technical assistance shall be in addition to a hearing and appeal to be conducted pursuant to the regulations described in section 2505(f)(1)(C) of this title.

**(d) Applicability of section pursuant to election under section 2508(b)**

With respect to a tribally controlled school which receives assistance under this chapter pursuant to an election made under section 2508(b) of this title—

(1) subsection (b) of this section shall apply; and

(2) the Secretary may not revoke eligibility for assistance under this chapter except in conformance with subsection (c) of this section.

(Pub. L. 100-297, title V, §5207, Apr. 28, 1988, 102 Stat. 391; Pub. L. 100-427, §12, Sept. 9, 1988, 102 Stat. 1608.)

REFERENCES IN TEXT

Section 1121 of the Education Amendments of 1978, referred to in subsecs. (b) and (c)(1)(A)(ii)(IV), (B), (2)(A), means section 1121 of Pub. L. 95-561, which was classified to section 2001 of this title, prior to the general amendment of chapter 22 (§2001 et seq.) of this title by Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103-382 enacted a new section 1121 of Pub. L. 95-561 which is classified to section 2001 of this title and which contains in subsecs. (f) and (k) provisions similar to those contained in subsecs. (e) and (j), respectively, of former section 2001 of this title.

The Single Audit Act of 1984, referred to in subsec. (b)(2), is Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(1)(A)(ii)(V), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1988—Subsec. (c)(1)(A)(ii)(I). Pub. L. 100-427, §12(a), substituted “as recognized by” for “as determined by”.

Subsec. (c)(1)(A)(ii)(V). Pub. L. 100-427, §12(b), inserted “(or revisions of such standards agreed to by the Secretary and the grantee)” after “Education Assistance Act” and substituted “If the Secretary and a grantee other than the tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grantee which is the tribal governing body fail to agree on such an evaluator, this subclause shall not apply.” for “Upon failure to agree on such an evaluator, the governing body of the tribe shall choose the evaluator or perform the evaluation.”

Subsec. (d). Pub. L. 100-427, §12(d), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2508 of this title.

**§ 2507. Payment of grants; investment of funds**

**(a) Payments**

(1) Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in 2 payments, of which—

(A) the first payment shall be made not later than July 15 of each year in an amount equal to one-half of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than December 1 of each year.

(2) For any school for which no payment under this chapter was made from Bureau funds in the preceding academic year, full payment of the amount computed for the first academic year of eligibility under this chapter shall be made not later than December 1 of the academic year.

(3) With regard to funds for grantees that become available for obligation on October 1 of the

<sup>2</sup> See References in Text note below.

fiscal year for which such funds are appropriated, the Secretary shall make payments to grantees not later than December 1 of the fiscal year.

(4) The provisions of chapter 39 of title 31 shall apply to the payments required to be made by paragraphs (1), (2), and (3).

(5) Paragraphs (1), (2), and (3) shall be subject to any restriction on amounts of payments under this chapter that are imposed by a continuing resolution or other Act appropriating the funds involved.

**(b) Investment of funds**

(1) Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this chapter after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this chapter shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law.

(2) Funds provided under this chapter may be—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or

(B) deposited only into accounts that are insured by an agency or instrumentality of the United States.

**(c) Recoveries**

For the purposes of underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this chapter shall not be taken into consideration.

(Pub. L. 100-297, title V, § 5208, Apr. 28, 1988, 102 Stat. 393; Pub. L. 100-427, § 13, Sept. 9, 1988, 102 Stat. 1609; Pub. L. 103-382, title III, § 382(c), Oct. 20, 1994, 108 Stat. 4017.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

“(1) Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in two payments:

“(A) one payment to be made no later than October 1 of each fiscal year in an amount equal to one-half the amount paid during the preceding fiscal year to the grantee or a contractor that has elected to have the provisions of this chapter apply, and

“(B) the second payment consisting of the remainder to which the grantee or contractor is entitled for the fiscal year to be made by no later than January 1 of the fiscal year.

“(2) For any school for which no payment was made from Bureau funds in the preceding fiscal year, full payment of the amount computed for each fiscal year shall be made by January 1 of the fiscal year.

“(3) Paragraphs (1) and (2) of this subsection shall be subject to any restriction on amounts of payments under this chapter that may be imposed by a continuing resolution or other Act appropriating the funds involved.”

1988—Subsec. (a)(2). Pub. L. 100-427, § 13(a), substituted “from Bureau funds” for “under this chapter”.

Subsec. (a)(3). Pub. L. 100-427, § 13(b), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 8064.

**§ 2508. Application with respect to Indian Self-Determination and Education Assistance Act**

**(a) Certain provisions to apply to grants**

All provisions of sections 5, 6, 7, 104, 105(f),<sup>1</sup> 106(f), 109, and 111 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450c, 450d, 450e, 450i, 450j(f), 450j-1(f), 450m, 450n], except those provisions relating to indirect costs and length of contract, shall apply to grants provided under this chapter.

**(b) Election for grant in lieu of contract**

(1) Contractors for activities to which this chapter applies who have entered into a contract under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] that is in effect on April 28, 1988, may, by giving notice to the Secretary, elect to have the provisions of this chapter apply to such activity in lieu of such contract.

(2) Any election made under paragraph (1) shall take effect on the later of—

(A) October 1 of the fiscal year succeeding the fiscal year in which such election is made, or

(B) the date that is 60 days after the date of such election.

(3) In any case in which the 60-day period referred to in paragraph (2)(B) is less than 60 days before the beginning of the succeeding fiscal year, such election shall not take effect until the fiscal year after the fiscal year succeeding the election. For fiscal year 1989, the Secretary may waive this paragraph for elections received prior to September 30, 1988.

**(c) No duplication**

No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] to pay any expenses incurred in providing any program or service if a grant has been made under this chapter to pay such expenses.

**(d) Transfers and carryovers**

(1) A tribe or tribal organization assuming the operation of a Bureau school with assistance under this chapter shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) A tribe or tribal organization assuming the operation of a contract school with assistance under this chapter shall be entitled to the transfer or use of the buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(3) Any tribe or tribal organization which assumes operation of a Bureau school with assist-

<sup>1</sup> See References in Text note below.

ance under this chapter and any tribe or tribal organization which elects to operate a school with assistance under this chapter rather than to continue as a contract school shall be entitled to any funds which would carryover from the previous fiscal year as if such school were operated as a contract school.

**(e) Exceptions, problems, and disputes**

Any exception or problem cited in an audit conducted pursuant to section 2506(b)(2) of this title, any dispute regarding a grant authorized to be made pursuant to this chapter or any amendment to such grant, and any dispute involving an administrative cost grant under section 1128A<sup>1</sup> of the Education Amendments of 1978 shall be handled under the provisions governing such exceptions, problems, or disputes in the case of contracts under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-658;<sup>2</sup> 25 U.S.C. 450 et seq.). The Equal Access to Justice Act shall apply to administrative appeals filed after September 8, 1988, by grantees regarding a grant under this chapter, including an administrative cost grant.

(Pub. L. 100-297, title V, § 5209, Apr. 28, 1988, 102 Stat. 394; Pub. L. 100-427, § 14, Sept. 9, 1988, 102 Stat. 1609; Pub. L. 101-301, § 5(b), May 24, 1990, 104 Stat. 207; Pub. L. 103-382, title III, § 382(d), (e), Oct. 20, 1994, 108 Stat. 4017, 4018.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a), (b)(1), (c), (d)(1), (2), and (e), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. Section 106(f) of the Act [25 U.S.C. 450j-1(f)], was redesignated section 106(e) of the Act [25 U.S.C. 450j-1(e)] by Pub. L. 105-362, title VIII, § 801(g)(2), Nov. 10, 1998, 112 Stat. 3288. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 1128A of the Education Amendments of 1978, referred to in subsec. (e), means section 1128A of Pub. L. 95-561, which was classified to section 2008A of this title, prior to the general amendment of chapter 22 (§ 2001 et seq.) of this title by Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103-382 enacted a new section 1128 of Pub. L. 95-561, relating to administrative cost grants, which is classified to section 2008 of this title.

The Equal Access to Justice Act, referred to in subsec. (e), is title II of Pub. L. 96-481, Oct. 21, 1980, 94 Stat. 2325, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, § 382(d), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “All provisions of sections 5, 6, 7, 104, 109, and 110 of the Indian Self-Determination and Education Assistance Act except those provisions pertaining to indirect costs and length of contract, shall apply to grants provided under this chapter.”

Subsec. (e). Pub. L. 103-382, § 382(e)(2), (3), substituted “an administrative cost grant” for “the amount of, or payment of, the administrative grant” and inserted at end “The Equal Access to Justice Act shall apply to administrative appeals filed after September 8, 1988, by

grantees regarding a grant under this chapter, including an administrative cost grant.”

Pub. L. 103-382, § 382(e)(1), which directed substitution of “a grant authorized to be made pursuant to this chapter or any amendment to such grant,” for “the amount of a grant under section 2504 of this title (and the amount of any funds referred to in that section), and payments to be made under section 2507 of this title,” was executed by making the substitution in text which contained the words “any payments” rather than “and payments” to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101-301 substituted “104” for “105”.

1988—Subsec. (b)(3). Pub. L. 100-427, § 14(1), added par. (3).

Subsecs. (d), (e). Pub. L. 100-427, § 14(2), added subsecs. (d) and (e).

ELECTIONS CONVEYED TO SECRETARY PRIOR TO  
AUGUST 1, 1988

Any election under subsec. (b)(1) of this section conveyed to the Secretary prior to Aug. 1, 1988, effective for the fiscal year beginning on October 1, 1988, and thereafter, see section 6303(b)(8) of Pub. L. 100-297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2504, 2506 of this title.

**§ 2509. Role of Director**

Applications for grants under this chapter, and all application modifications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

(Pub. L. 100-297, title V, § 5210, Apr. 28, 1988, 102 Stat. 394.)

**§ 2510. Regulations**

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary by this chapter. In all other matters relating to the details of planning, development, implementing, and evaluating grants under this chapter, the Secretary shall not issue regulations. Regulations issued pursuant to this chapter shall not have the standing of a Federal statute for the purposes of judicial review.

(Pub. L. 100-297, title V, § 5211, Apr. 28, 1988, 102 Stat. 394.)

**§ 2511. Definitions**

For purposes of this chapter—

(1) The term “eligible Indian student” has the meaning of such term in section 1128(f)<sup>1</sup> of the Education Amendments of 1978.

(2) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation (as defined in or established pursuant to the Alaskan Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eli-

<sup>2</sup> So in original. Probably should be Public Law “93-638;”.

<sup>1</sup> See References in Text note below.

gible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3)(A) The term “tribal organization” means—

(i) the recognized governing body of any Indian tribe, or

(ii) any legally established organization of Indians which—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization, and

(II) includes the maximum participation of Indians in all phases of its activities.

(B) In any case in which a grant is provided under this chapter to an organization to perform services benefiting more than one Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of those students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

(4) The term “Secretary” means the Secretary of the Interior.

(5) The term “tribally controlled school” means a school, operated by a tribe or a tribal organization, enrolling students in kindergarten through grade 12, including preschools, which is not a local educational agency and which is not directly administered by the Bureau of Indian Affairs.

(6) The term “a local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(7) The term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior.

(Pub. L. 100-297, title V, § 5212, Apr. 28, 1988, 102 Stat. 394.)

#### REFERENCES IN TEXT

Section 1128(f) of the Education Amendments of 1978, referred to in par. (1), means section 1128(f) of Pub. L. 95-561, which was classified to section 2008(f) of this title, prior to the general amendment of chapter 22 (§ 2001 et seq.) of this title by Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3979. Pub. L. 103-382 enacted a new section 1128 of Pub. L. 95-561, relating to administrative cost grants, which is classified to section 2008 of this title. Provisions defining “eligible Indian student” are now contained in section 2007 of this title.

The Alaskan Native Claims Settlement Act, referred to in par. (2), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

## CHAPTER 28—INDIAN EDUCATION PROGRAM

### SUBCHAPTER I—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF INDIAN CHILDREN

#### §§ 2601 to 2606. Repealed. Pub. L. 103-382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2601, Pub. L. 100-297, title V, § 5311, Apr. 28, 1988, 102 Stat. 395, related to policy declaration concerning academic needs of Indian students.

Section 2602, Pub. L. 100-297, title V, § 5312, Apr. 28, 1988, 102 Stat. 396; Pub. L. 100-427, § 15, Sept. 9, 1988, 102 Stat. 1610, related to grants to local educational agencies for education of Indian children.

Section 2603, Pub. L. 100-297, title V, § 5313, Apr. 28, 1988, 102 Stat. 398, related to permissible uses of Federal funds.

Section 2604, Pub. L. 100-297, title V, § 5314, Apr. 28, 1988, 102 Stat. 398; Pub. L. 100-427, § 16, Sept. 9, 1988, 102 Stat. 1610; Pub. L. 101-301, § 5(c), May 24, 1990, 104 Stat. 207, related to applications for grants and conditions for approval.

Section 2605, Pub. L. 100-297, title V, § 5315, Apr. 28, 1988, 102 Stat. 402; Pub. L. 100-427, § 17, Sept. 9, 1988, 102 Stat. 1611, related to payments to local educational agencies.

Section 2606, Pub. L. 100-297, title V, § 5316, Apr. 28, 1988, 102 Stat. 402, authorized appropriations for Indian education and permitted Secretary to reallocate funds.

For similar provisions, see section 7811 et seq. of Title 20, Education.

#### SHORT TITLE

Section 5301 of Pub. L. 100-297 provided that part C (§§ 5301-5352) of title V of Pub. L. 100-297, enacting this chapter, repealing sections 241aa, 241bb, 241cc to 241ff, 1211a, 1221f to 1221h, and 3385 to 3385b of Title 20, Education, and repealing provisions set out as notes under sections 241aa and 1411 of Title 20, could be cited as the “Indian Education Act of 1988”, prior to repeal by Pub. L. 103-382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976.

### SUBCHAPTER II—SPECIAL PROGRAMS AND PROJECTS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

#### §§ 2621 to 2624. Repealed. Pub. L. 103-382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section 2621, Pub. L. 100-297, title V, § 5321, Apr. 28, 1988, 102 Stat. 403; Pub. L. 100-427, § 18, Sept. 9, 1988, 102 Stat. 1612, related to improvement of educational opportunities for Indian children.

Section 2622, Pub. L. 100-297, title V, § 5322, Apr. 28, 1988, 102 Stat. 406, related to special educational training programs for teachers of Indian children.

Section 2623, Pub. L. 100-297, title V, § 5323, Apr. 28, 1988, 102 Stat. 407; Pub. L. 100-427, § 19(a), Sept. 9, 1988, 102 Stat. 1612, provided for fellowships for Indian students.

Section 2624, Pub. L. 100-297, title V, § 5324, Apr. 28, 1988, 102 Stat. 408; Pub. L. 100-427, § 20, Sept. 9, 1988, 102 Stat. 1612; Pub. L. 101-301, § 5(d)(2), May 24, 1990, 104 Stat. 208, authorized programs for gifted and talented Indian children.

For similar provisions, see section 7831 et seq. of Title 20, Education.

### SUBCHAPTER III—SPECIAL PROGRAMS RELATING TO ADULT EDUCATION FOR INDIANS

#### § 2631. Repealed. Pub. L. 103-382, title III, § 367, Oct. 20, 1994, 108 Stat. 3976

Section, Pub. L. 100-297, title V, § 5330, Apr. 28, 1988, 102 Stat. 410, related to improvement of educational op-