

(2) Free public education

The term “free public education” means education that is—

(A) provided at public expense, under public supervision and direction, and without tuition charge; and

(B) provided as elementary or secondary education in the applicable State or to pre-school children.

(3) Indian

The term “Indian” means an individual who is—

(A) a member of an Indian tribe or band, as membership is defined by the tribe or band, including—

(i) any tribe or band terminated since 1940; and

(ii) any tribe or band recognized by the State in which the tribe or band resides;

(B) a descendant, in the first or second degree, of an individual described in subparagraph (A);

(C) considered by the Secretary of the Interior to be an Indian for any purpose;

(D) an Eskimo, Aleut, or other Alaska Native; or

(E) a member of an organized Indian group that received a grant under the Indian Education Act of 1988 as in effect the day preceding October 20, 1994.

(Pub. L. 89-10, title VII, §7151, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1931.)

REFERENCES IN TEXT

The Indian Education Act of 1988, as in effect the day preceding October 20, 1994, referred to in par. (3)(E), is part C (§§5301-5352) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 395, which was classified principally to chapter 28 (§2601 et seq.) of Title 25, Indians, prior to repeal by Pub. L. 103-382, title III, §367, Oct. 20, 1994, 108 Stat. 3976.

PRIOR PROVISIONS

A prior section 7491, Pub. L. 89-10, title VII, §7161, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3736, set forth special rule relating to transition, prior to the general amendment of this subchapter by Pub. L. 107-110.

§ 7492. Authorizations of appropriations**(a) Subpart 1**

For the purpose of carrying out subpart 1 of this part, there are authorized to be appropriated \$96,400,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) Subparts 2 and 3

For the purpose of carrying out subparts 2 and 3 of this part, there are authorized to be appropriated \$24,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(Pub. L. 89-10, title VII, §7152, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1932.)

PART B—NATIVE HAWAIIAN EDUCATION

§ 7511. Short title

This part may be cited as the “Native Hawaiian Education Act”.

(Pub. L. 89-10, title VII, §7201, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1932.)

PRIOR PROVISIONS

Provisions naming former part B (§7901 et seq.) of subchapter IX of this chapter as the “Native Hawaiian Education Act” were contained in section 7901 of this title, prior to the general amendment of subchapter IX by Pub. L. 107-110.

A prior section 7511, Pub. L. 89-10, title VII, §7201, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3737, set forth short title of the Foreign Language Assistance Act of 1994, prior to the general amendment of this subchapter by Pub. L. 107-110.

§ 7512. Findings

Congress finds the following:

(1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce, and navigation.

(2) At the time of the arrival of the first non-indigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.

(3) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(4) From 1826 until 1893, the United States recognized the sovereignty and independence of the Kingdom of Hawaii, which was established in 1810 under Kamehameha I, extended full and complete diplomatic recognition to the Kingdom of Hawaii, and entered into treaties and conventions with the Kingdom of Hawaii to govern friendship, commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States citizens, who were assisted in their efforts by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993 the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self-determination through Public Law 103-150 (107 Stat. 1510).

(6) In 1898, the joint resolution entitled “Joint Resolution to provide for annexing the Hawaiian Islands to the United States”, approved July 7, 1898 (30 Stat. 750), ceded absolute title of all lands held by the Republic of Hawaii, including the government and crown lands of the former Kingdom of Hawaii, to the United States, but mandated that revenue generated from the lands be used “solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes”.

(7) By 1919, the Native Hawaiian population had declined from an estimated 1,000,000 in 1778 to an alarming 22,600, and in recognition of this severe decline, Congress enacted the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), which designated approximately 200,000 acres of ceded public lands for homesteading by Native Hawaiians.

(8) Through the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Native Hawaiians, which was described by then Secretary of the Interior Franklin K. Lane, who said: “One thing that impressed me . . . was the fact that the natives of the island who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.”

(9) In 1938, Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781, chapter 530; 16 U.S.C. 391b, 391b-1, 392b, 392c, 396, 396a), a provision to lease lands within the National Parks extension to Native Hawaiians and to permit fishing in the area “only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance.”

(10) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges and amendments to such Act affecting the rights of beneficiaries under such Act.

(11) In 1959, under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, the United States also ceded to the State of Hawaii title to the public lands formerly held by the United States, but mandated that such lands be held by the State “in public trust” and reaffirmed the special relationship that existed between the United States and the Hawaiian people by retaining the legal responsibility to enforce the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians, as defined in section 201(a) of the Hawaiian Homes Commission Act, 1920.

(12) The United States has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

(C) Congress has also delegated broad authority to administer a portion of the Fed-

eral trust responsibility to the State of Hawaii;

(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

(E) the aboriginal, indigenous people of the United States have—

(i) a continuing right to autonomy in their internal affairs; and

(ii) an ongoing right of self-determination and self-governance that has never been extinguished.

(13) The political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians in—

(A) the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.);

(B) the American Indian Religious Freedom Act (42 U.S.C. 1996[1996a]);

(C) the National Museum of the American Indian Act (20 U.S.C. 80q et seq.);

(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(F) the Native American Languages Act (25 U.S.C. 2901 et seq.);

(G) the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4401 et seq.);

(H) the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.); and

(I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

(14) In 1981, Congress instructed the Office of Education to submit to Congress a comprehensive report on Native Hawaiian education. The report, entitled the “Native Hawaiian Educational Assessment Project”, was released in 1983 and documented that Native Hawaiians scored below parity with regard to national norms on standardized achievement tests, were disproportionately represented in many negative social and physical statistics indicative of special educational needs, and had educational needs that were related to their unique cultural situation, such as different learning styles and low self-image.

(15) In recognition of the educational needs of Native Hawaiians, in 1988, Congress enacted title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (102 Stat. 130) to authorize and develop supplemental educational programs to address the unique conditions of Native Hawaiians.

(16) In 1993, the Kamehameha Schools Bishop Estate released a 10-year update of findings of the Native Hawaiian Educational Assessment Project, which found that despite the successes of the programs established under title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, many of the same educational needs still existed for Native Hawaiians. Subsequent reports by the Kamehameha Schools Bishop Estate and other orga-

nizations have generally confirmed those findings. For example—

(A) educational risk factors continue to start even before birth for many Native Hawaiian children, including—

- (i) late or no prenatal care;
- (ii) high rates of births by Native Hawaiian women who are unmarried; and
- (iii) high rates of births to teenage parents;

(B) Native Hawaiian students continue to begin their school experience lagging behind other students in terms of readiness factors such as vocabulary test scores;

(C) Native Hawaiian students continue to score below national norms on standardized education achievement tests at all grade levels;

(D) both public and private schools continue to show a pattern of lower percentages of Native Hawaiian students in the uppermost achievement levels and in gifted and talented programs;

(E) Native Hawaiian students continue to be overrepresented among students qualifying for special education programs provided to students with learning disabilities, mild intellectual disabilities, emotional impairment, and other such disabilities;

(F) Native Hawaiians continue to be underrepresented in institutions of higher education and among adults who have completed four or more years of college;

(G) Native Hawaiians continue to be disproportionately represented in many negative social and physical statistics indicative of special educational needs, as demonstrated by the fact that—

- (i) Native Hawaiian students are more likely to be retained in grade level and to be excessively absent in secondary school;
- (ii) Native Hawaiian students have the highest rates of drug and alcohol use in the State of Hawaii; and
- (iii) Native Hawaiian children continue to be disproportionately victimized by child abuse and neglect; and

(H) Native Hawaiians now comprise over 23 percent of the students served by the State of Hawaii Department of Education, and there are and will continue to be geographically rural, isolated areas with a high Native Hawaiian population density.

(17) In the 1998 National Assessment of Educational Progress, Hawaiian fourth-graders ranked 39th among groups of students from 39 States in reading. Given that Hawaiian students rank among the lowest groups of students nationally in reading, and that Native Hawaiian students rank the lowest among Hawaiian students in reading, it is imperative that greater focus be placed on beginning reading and early education and literacy in Hawaii.

(18) The findings described in paragraphs (16) and (17) are inconsistent with the high rates of literacy and integration of traditional culture and Western education historically achieved by Native Hawaiians through a Hawaiian language-based public school system established in 1840 by Kamehameha III.

(19) Following the overthrow of the Kingdom of Hawaii in 1893, Hawaiian medium schools were banned. After annexation, throughout the territorial and statehood period of Hawaii, and until 1986, use of the Hawaiian language as an instructional medium in education in public schools was declared unlawful. The declaration caused incalculable harm to a culture that placed a very high value on the power of language, as exemplified in the traditional saying: “I ka ‘ōlelo nō ke ola; I ka ‘ōlelo nō ka make. In the language rests life; In the language rests death.”

(20) Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(21) The State of Hawaii, in the constitution and statutes of the State of Hawaii—

(A) reaffirms and protects the unique right of the Native Hawaiian people to practice and perpetuate their culture and religious customs, beliefs, practices, and language;

(B) recognizes the traditional language of the Native Hawaiian people as an official language of the State of Hawaii, which may be used as the language of instruction for all subjects and grades in the public school system; and

(C) promotes the study of the Hawaiian culture, language, and history by providing a Hawaiian education program and using community expertise as a suitable and essential means to further the program.

(Pub. L. 89-10, title VII, §7202, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1932; amended Pub. L. 111-256, §2(c), Oct. 5, 2010, 124 Stat. 2643.)

REFERENCES IN TEXT

Public Law 103-150, referred to in par. (5), is Pub. L. 103-150, Nov. 23, 1993, 107 Stat. 1510, which is not classified to the Code.

Joint Resolution to provide for annexing the Hawaiian Islands to the United States, approved July 7, 1898, referred to in par. (6), is act July 7, 1898, No. 55, 30 Stat. 750, known as the Newlands Resolution. For complete classification of this joint resolution to the Code, see Tables.

The Hawaiian Homes Commission Act, 1920, referred to in pars. (7), (8), and (11), is act July 9, 1921, ch. 42, 42 Stat. 108, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code. Section 201 of the Act was classified to section 692 of Title 48.

Act of June 20, 1938, referred to in par. (9), is act June 20, 1938, ch. 530, 52 Stat. 781, which is classified to sections 391b, 391b-1, 392b, 392c, 396, and 396a of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

An Act to provide for the admission of the State of Hawaii into the Union, referred to in pars. (10) and (11), is Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, popularly known as the Hawaii Statehood Admissions Act, which is set out as a note preceding former section 491 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Native American Programs Act of 1974, referred to in par. (13)(A), is title VIII of Pub. L. 88-452, as added by Pub. L. 93-644, §11, Jan. 4, 1975, 88 Stat. 2324, which

is classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 2991 of Title 42 and Tables.

The American Indian Religious Freedom Act, referred to in par. (13)(B), is Pub. L. 95-341, Aug. 11, 1978, 92 Stat. 469, which is classified to sections 1996 and 1996a of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of Title 42 and Tables.

The National Museum of the American Indian Act, referred to in par. (13)(C), is Pub. L. 101-185, Nov. 28, 1989, 103 Stat. 1336, which is classified generally to subchapter XIII (§80q et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 80q of this title and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (13)(D), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

The National Historic Preservation Act, referred to in par. (13)(E), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

The Native American Languages Act, referred to in par. (13)(F), is title I of Pub. L. 101-477, Oct. 30, 1990, 104 Stat. 1153, which is classified generally to chapter 31 (§2901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of Title 25 and Tables.

The American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, referred to in par. (13)(G), is title XV of Pub. L. 99-498, Oct. 17, 1986, 100 Stat. 1600, which is classified generally to chapter 56 (§4401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4401 of this title and Tables.

The Workforce Investment Act of 1998, referred to in par. (13)(H), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of this title and Tables.

The Older Americans Act of 1965, referred to in par. (13)(I), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, which is classified generally to chapter 35 (§3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, referred to in pars. (15) and (16), is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130. Title IV of the Act was classified generally to chapter 61 (§4901 et seq.) of this title prior to repeal by Pub. L. 103-382, title III, §363, Oct. 20, 1994, 108 Stat. 3975.

PRIOR PROVISIONS

A prior section 7512, Pub. L. 89-10, title VII, §7202, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3737, set forth findings of the Foreign Language Assistance Act of 1994, prior to the general amendment of this subchapter by Pub. L. 107-110.

AMENDMENTS

2010—Par. (16)(E). Pub. L. 111-256 substituted “mild intellectual disabilities,” for “mild mental retardation.”.

DEFINITIONS

For meaning of references to an intellectual disability and to individuals with intellectual disabilities in

provisions amended by section 2 of Pub. L. 111-256, see section 2(k) of Pub. L. 111-256, set out as a note under section 1400 of this title.

§ 7513. Purposes

The purposes of this part are to—

(1) authorize and develop innovative educational programs to assist Native Hawaiians;

(2) provide direction and guidance to appropriate Federal, State, and local agencies to focus resources, including resources made available under this part, on Native Hawaiian education, and to provide periodic assessment and data collection;

(3) supplement and expand programs and authorities in the area of education to further the purposes of this subchapter; and

(4) encourage the maximum participation of Native Hawaiians in planning and management of Native Hawaiian education programs.

(Pub. L. 89-10, title VII, §7203, as added Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1937.)

PRIOR PROVISIONS

A prior section 7513, Pub. L. 89-10, title VII, §7203, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3737, authorized foreign language assistance program, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7259a of this title.

§ 7514. Native Hawaiian Education Council and island councils

(a) Establishment of Native Hawaiian Education Council

In order to better effectuate the purposes of this part through the coordination of educational and related services and programs available to Native Hawaiians, including those programs receiving funding under this part, the Secretary is authorized to establish a Native Hawaiian Education Council (hereafter in this part referred to as the “Education Council”).

(b) Composition of Education Council

The Education Council shall consist of not more than 21 members, unless otherwise determined by a majority of the council.

(c) Conditions and terms

(1) Conditions

At least 10 members of the Education Council shall be Native Hawaiian education service providers and 10 members of the Education Council shall be Native Hawaiians or Native Hawaiian education consumers. In addition, a representative of the State of Hawaii Office of Hawaiian Affairs shall serve as a member of the Education Council.

(2) Appointments

The members of the Education Council shall be appointed by the Secretary based on recommendations received from the Native Hawaiian community.

(3) Terms

Members of the Education Council shall serve for staggered terms of 3 years, except as provided in paragraph (4).

(4) Council determinations

Additional conditions and terms relating to membership on the Education Council, includ-