

Stat. 3985, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2003, Pub. L. 95-561, title XI, §1123, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, §5106, Apr. 28, 1988, 102 Stat. 367, related to the incorporation of regulations into, or the application of regulations to, Pub. L. 95-561, prior to the general amendment of this chapter by Pub. L. 103-382.

#### § 2004. School boundaries

##### (a) Establishment by Secretary

The Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau-funded school.

##### (b) Establishment by tribal body

In any case where there is more than one Bureau-funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau-funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

##### (c) Boundary revisions

###### (1) Notice

On or after July 1, 2001, no geographical attendance area shall be revised or established with respect to any Bureau-funded school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been afforded—

(A) at least 6 months notice of the intention of the Bureau to revise or establish such attendance area; and

(B) the opportunity to propose alternative boundaries.

###### (2) Revision process

Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. The Secretary shall cause such revisions to be published in the Federal Register.

###### (3) Tribal resolution determination

Nothing in this section shall deny a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents the choice of the Bureau-funded school their children may attend, regardless of the attendance boundaries established under this section.

##### (d) Funding restrictions

###### (1) In general

The Secretary shall not deny funding to a Bureau-funded school for any eligible Indian student attending the school solely because that student's home or domicile is outside of the geographical attendance area established for that school under this section.

##### (2) Transportation

No funding shall be made available without tribal authorization to enable a school to provide transportation for any student to or from the school and a location outside the approved attendance area of the school.

##### (e) Reservation as boundary

When there is only one Bureau-funded program located on an Indian reservation—

(1) the attendance area for the program shall be the boundaries (established by treaty, agreement, legislation, court decisions, or executive decisions and as accepted by the tribe) of the reservation served; and

(2) those students residing near the reservation shall also receive services from such program.

##### (f) Off-reservation home-living (dormitory) schools

###### (1) In general

Notwithstanding any geographical attendance areas, attendance at off-reservation home-living (dormitory) schools shall include students requiring special emphasis programs to be implemented at each off-reservation home-living (dormitory) school.

###### (2) Coordination

Such attendance shall be coordinated between education line officers, the family, and the referring and receiving programs.

(Pub. L. 95-561, title XI, §1124, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2019.)

#### PRIOR PROVISIONS

A prior section 2004, Pub. L. 95-561, title XI, §1124, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3986, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2004, Pub. L. 95-561, title XI, §1124, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 98-511, title V, §503, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, §3, Aug. 15, 1985, 99 Stat. 380; Pub. L. 100-297, title V, §5120, Apr. 28, 1988, 102 Stat. 384, related to school boundaries, prior to the general amendment of this chapter by Pub. L. 103-382.

#### § 2005. Facilities construction

##### (a) National survey of facilities conditions

###### (1) In general

Not later than 12 months after January 8, 2002, the Government Accountability Office shall compile, collect, and secure the data that are needed to prepare a national survey of the physical conditions of all Bureau-funded school facilities.

###### (2) Data and methodologies

In preparing the national survey required under paragraph (1), the Government Accountability Office shall use the following data and methodologies:

(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

(B) Data related to conditions of Bureau-funded schools that has previously been compiled, collected, or secured from what-

ever source derived so long as the data are accurate, relevant, timely, and necessary to the survey.

(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

### **(3) Consultations**

#### **(A) In general**

In carrying out the survey required under paragraph (1), the Government Accountability Office shall, to the maximum extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

#### **(B) Requests for information**

All Bureau-funded schools shall comply with reasonable requests for information by the Government Accountability Office and shall respond to such requests in a timely fashion.

### **(4) Submission**

Not later than 2 years after January 8, 2002, the Government Accountability Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate and the Committee on Resources, the Committee on Education and the Workforce, and the Committee on Appropriations of the House of Representatives and to the Secretary. The Secretary shall submit the results of the national survey to school boards of Bureau-funded schools and their respective tribes.

### **(5) Negotiated rulemaking committee**

#### **(A) In general**

Not later than 6 months after the date on which the submission is made under paragraph (4), the Secretary shall establish a negotiated rulemaking committee pursuant to section 2018(b)(3) of this title. The negotiated rulemaking committee shall prepare and submit to the Secretary the following:

(i) A catalog of the condition of school facilities at all Bureau-funded schools that—

(I) incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;

(II) rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;

(III) establishes a routine maintenance schedule for each facility;

(IV) identifies the complementary educational facilities that do not exist but that are needed; and

(V) makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

(ii) A school replacement and new construction report that determines replace-

ment and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

(I) the size of school;

(II) school enrollment;

(III) the age of the school;

(IV) the condition of the school;

(V) environmental factors at the school; and

(VI) school isolation.

(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such report shall identify needed repairs or renovations with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in clause (i).

#### **(B) Submission of reports**

Not later than 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national and regional Indian education organizations, and to all school boards of Bureau-funded schools and their respective tribes.

### **(6) Facilities information systems support database**

The Secretary shall develop a Facilities Information Systems Support Database to maintain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by Government Accountability Office, and shall be made available to school boards of Bureau-funded schools and their respective tribes, and Congress.

### **(b) Compliance with health and safety standards**

#### **(1) In general**

The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau, into compliance with—

(A) all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards);

(B) section 794 of title 29; and

(C) the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.].

**(2) No termination required**

Nothing in this subsection requires termination of the operations of any facility that—

- (A) does not comply with the provisions and standards described in paragraph (1); and
- (B) is in use on January 8, 2002.

**(c) Compliance plan**

At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (a) of this section into compliance with the standards referred to in that subsection that includes—

- (1) detailed information on the status of each facility's compliance with such standards;
- (2) specific cost estimates for meeting such standards at each school; and
- (3) specific timelines for bringing each school into compliance with such standards.

**(d) Construction priorities****(1) System to establish priorities**

On an annual basis, the Secretary shall submit to the appropriate committees of Congress and cause to be published in the Federal Register, the system used to establish priorities for replacement and construction projects for Bureau-funded schools and home-living schools, including boarding schools and dormitories. At the time any budget request for education is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all Bureau-funded school construction priorities.

**(2) Long-term construction and replacement list**

In addition to the plan submitted under subsection (c) of this section, the Secretary shall—

- (A) not later than 18 months after January 8, 2002, establish a long-term construction and replacement list for all Bureau-funded schools;
- (B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau-funded education-related facilities over a period of 40 years to enable planning and scheduling of budget requests;
- (C) cause the list prepared under subparagraph (B) to be published in the Federal Register and allow a period of not less than 120 days for public comment;
- (D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and
- (E) cause the final list to be published in the Federal Register.

**(3) Effect on other list**

Nothing in this section shall interfere with or change in any way the construction priority list as it existed on the day before January 8, 2002.

**(e) Hazardous condition at Bureau-funded school****(1) Closure, consolidation, or curtailment****(A) In general**

A Bureau-funded school may be closed or consolidated, or the programs of a Bureau-

funded school may be substantially curtailed, by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated at the beginning of the school year by the tribe involved under subparagraph (B) determine that such conditions exist at a facility of the Bureau-funded school.

**(B) Designation of individual by tribe**

To be designated by a tribe for purposes of subparagraph (A), an individual shall—

- (i) be a licensed or certified facilities safety inspector;
- (ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or
- (iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

**(C) Inspection**

After making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety. Such inspection shall be completed as expeditiously as practicable, but not later than 20 days after the date on which the action described in subparagraph (A) is taken.

**(D) Failure to concur**

If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (C) do not concur that conditions at the facility constitute an immediate hazard to health and safety, such officer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

**(E) Consideration by tribal governing body**

Not later than 10 days after a tribal governing body receives notice under subparagraph (D), the tribal governing body shall consider all information relating to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

**(F) Agreement to close, consolidate, or curtail****(i) In general**

If the Bureau health and safety officer and the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E), the facility involved shall be closed immediately.

**(ii) Reopening of facility if no immediate hazard found to exist**

If the Bureau health and safety officer or the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C) determines that conditions at the facility do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made under this paragraph shall immediately cease and any school closed by reason of conditions at the facility shall be reopened immediately.

**(G) General closure report**

If a Bureau-funded school is temporarily closed or consolidated or the programs of a Bureau-funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 90 days after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

- (i) the reasons for such temporary action;
- (ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;
- (iii) an estimated date by which the actions described in clause (ii) will be concluded; and
- (iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

**(2) Nonapplication of certain standards for temporary facility use**

**(A) Classroom activities**

The Secretary shall permit the local school board to temporarily utilize facilities adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 2001 of this title relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

**(B) Administrative activities**

The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

**(C) Temporary**

In this paragraph, the term “temporary” means—

- (i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and
- (ii) with respect to a school that is to be closed for not less than 1 year, a time pe-

riod determined appropriate by the Bureau.

**(3) Treatment of closure**

Any closure of a Bureau-funded school under this subsection for a period that exceeds 30 days but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

**(4) Use of funds**

With respect to a Bureau-funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau-funded school, involved may authorize the use of funds allocated pursuant to section 2007 of this title, to abate the hazardous conditions without further action by Congress.

**(f) Funding requirement**

**(1) Distribution of funds**

Beginning with the first fiscal year following January 8, 2002, all funds appropriated to the budget accounts for the operations and maintenance of Bureau-funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay for administrative or other costs of any facilities branch or office, at any level of the Bureau.

**(2) Requirements for certain uses**

No funds shall be withheld from the distribution to the budget of any school operated under contract or grant by the Bureau for maintenance or any other facilities or road-related purpose, unless such school has consented, as a modification to the contract or in writing for grants schools, to the withholding of such funds, including the amount thereof, the purpose for which the funds will be used, and the timeline for the services to be provided. The school may, at the end of any fiscal year, cancel an agreement under this paragraph upon giving the Bureau 30 days notice of its intent to do so.

**(g) No reduction in Federal funding**

Nothing in this section shall diminish any Federal funding due to the receipt by the school of funding for facilities improvement or construction from a State or any other source.

(Pub. L. 95-561, title XI, §1125, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2021; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(5)(A)(i)(V), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(1)(C), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended which is classified principally to chapter 126 (§12101 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 12101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 2005, Pub. L. 95-561, title XI, §1125, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108

Stat. 3986, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2005, Pub. L. 95-561, title XI, §1125, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 100-297, title V, §5103, Apr. 28, 1988, 102 Stat. 364, related to facilities construction, prior to the general amendment of this chapter by Pub. L. 103-382.

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” wherever appearing.

#### CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### USE OF TRIBAL PRIORITY ALLOCATIONS FUNDS FOR SCHOOL FACILITIES

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-246, provided in part: “That hereafter tribes may use tribal priority allocations funds for the replacement and repair of school facilities in compliance with [former] 25 U.S.C. 2005(a) [see now 25 U.S.C. 2005(b)], so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocation funds”.

### § 2006. Bureau of Indian Affairs education functions

#### (a) Formulation and establishment of policy and procedure; supervision of programs and expenditures

The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

#### (b) Direction and supervision of personnel operations

##### (1) In general

Not later than 180 days after January 8, 2002, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.

##### (2) Transfers

The Assistant Secretary for Indian Affairs shall, not later than 180 days after January 8, 2002, coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

#### (c) Inherent Federal function

For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assis-

tance Act [25 U.S.C. 450 et seq.], unless determined by the Secretary to be inherently Federal functions as defined in section 2021(12) of this title.

#### (d) Evaluation of programs; services and support functions; technical and coordinating assistance

Education personnel who are under the direction and supervision of the Director of the Office of Indian Education Programs in accordance with subsection (b)(1) of this section shall—

(1) monitor and evaluate Bureau education programs;

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, curriculum, and operation and maintenance of school facilities.

#### (e) Construction, improvement, operation, and maintenance of facilities

##### (1) Plan for construction

The Assistant Secretary shall submit as part of the annual budget a plan—

(A) for school facilities to be constructed under section 2005(c) of this title;

(B) for establishing priorities among projects and for the improvement and repair of educational facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) for capital improvements to be made over the 5 succeeding years.

##### (2) Program for operation and maintenance

###### (A) Establishment

The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall include—

(i) a method of computing the amount necessary for each educational facility;

(ii) similar treatment of all Bureau-funded schools;

(iii) a notice of an allocation of appropriated funds from the Director of the Office of Indian Education Programs directly to the education line officers and appropriate school officials;

(iv) a method for determining the need for, and priority of, facilities repair and maintenance projects, both major and minor (to be determined, through the conduct by the Assistant Secretary, of a series of meetings at the agency and area level with representatives of the Bureau-funded schools in those areas and agencies to receive comment on the lists and prioritization of such projects); and

(v) a system for the conduct of routine preventive maintenance.

###### (B) Local supervisors

The appropriate education line officers shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance per-