

Services and Appropriations of the Senate and the House of Representatives] a report setting forth a plan to provide assistance to local educational agencies that experience growth in the enrollment of military dependent students as a result of any of the following events:

- “(1) Force structure changes.
- “(2) The relocation of a military unit.
- “(3) The closure or realignment of military installations pursuant to defense base closure and realignment under the base closure laws.

“(b) ELEMENTS.—The report required by subsection (a), and each updated report required by subsection (c), shall include the following:

“(1) An identification, current as of the date of the report, of the total number of military dependent students who are anticipated to be arriving at or departing from military installations as a result of any event described in subsection (a), including—

- “(A) an identification of the military installations affected by such arrivals and departures;
- “(B) an estimate of the number of such students arriving at or departing from each such installation; and
- “(C) the anticipated schedule of such arrivals and departures.

“(2) Such recommendations as the Office of Economic Adjustment of the Department of Defense considers appropriate for means of assisting affected local educational agencies in accommodating increases in enrollment of military dependent students as a result of any such event.

“(3) A plan for outreach to be conducted to affected local educational agencies, commanders of military installations, and members of the Armed Forces and civilian personnel of the Department of Defense regarding information on the assistance to be provided under the plan under subsection (a).

“(c) UPDATED REPORTS.—Not later than March 1, 2008, and annually thereafter to coincide with the submission of the budget of the President for a fiscal year under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an update of the report required by subsection (a).

“(d) TRANSITION OF MILITARY DEPENDENTS AMONG LOCAL EDUCATIONAL AGENCIES.—(1) The Secretary of Defense shall work collaboratively with the Secretary of Education in any efforts to ease the transitions of military dependent students from Department of Defense dependent schools to other schools and among schools of local educational agencies.

“(2) The Secretary of Defense may use funds of the Department of Defense Education Activity for the following purposes:

“(A) To share expertise and experience of the Activity with local educational agencies as military dependent students make the transitions described in paragraph (1), including transitions resulting from the closure or realignment of military installations under a base closure law, global rebasing, and force restructuring.

“(B) To provide grant assistance programs for local educational agencies with military dependent students undergoing the transitions described in paragraph (1), including programs on the following:

- “(i) Access to virtual and distance learning capabilities and related applications.
- “(ii) Training for teachers.
- “(iii) Academic strategies to increase academic achievement.
- “(iv) Curriculum development.
- “(v) Support for practices that minimize the impact of transition and deployment.
- “(vi) Other appropriate services to improve the academic achievement of such students.

“(3) The authority provided by this subsection expires September 30, 2016.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘base closure law’ has the meaning given that term in section 101 of title 10, United States Code.

“(2) The term ‘local educational agency’ has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

“(3) The term ‘military dependent students’ refers to—

“(A) elementary and secondary school students who are dependents of members of the Armed Forces;

“(B) elementary and secondary school students who are dependents of civilian employees of the Department of Defense; and

“(C) elementary and secondary school students who are dependents of personnel who are not members of the Armed Forces or civilian employees of the Department of Defense but who are employed on Federal property.”

## § 7704. Policies and procedures relating to children residing on Indian lands

### (a) In general

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title shall establish policies and procedures to ensure that—

(1) such children participate in programs and activities supported by such funds on an equal basis with all other children;

(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency’s general educational program.

### (b) Records

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title shall maintain records demonstrating such agency’s compliance with the requirements contained in subsection (a) of this section.

### (c) Waiver

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title shall not be required to comply with the requirements of subsections (a) and (b) of this section for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

### (d) Technical assistance and enforcement

The Secretary shall—

(1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and

(2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.

**(e) Complaints**

**(1) In general**

(A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.

(B) Within ten working days from receipt of a complaint, the Secretary shall—

(i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

(ii) designate a hearing examiner to conduct the hearing; and

(iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

**(2) Hearing**

The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

**(3) Evidence; recommendations; cost**

The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.

**(4) Findings and recommendations**

Within 30 days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

**(5) Written determination**

Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by

the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

**(6) Copies provided**

Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

**(7) Consolidation**

In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

**(8) Withholding**

If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 7703 of this title until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.

**(9) Rejection of determination**

If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) of this section was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 7703 of this title. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

**(f) Construction**

This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

(Pub. L. 89-10, title VIII, §8004, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3759.)

REFERENCES IN TEXT

Section 1101(d) of the Education Amendments of 1978, referred to in subsec. (e)(9), is section 1101(d) of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2315, set out below.

## PRIOR PROVISIONS

A prior section 8004 of Pub. L. 89-10 was renumbered section 9004 and was classified to section 3384 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

CONTRACT AUTHORITY OF INDIAN TRIBES IF REMEDIAL ACTION IS NOT TAKEN; ELECTION TO HAVE SERVICES PROVIDED BY BUREAU SCHOOLS; SPECIAL REGULATIONS

Pub. L. 95-561, title XI, §1101(d), Nov. 1, 1978, 92 Stat. 2315, directed Secretary of Health, Education, and Welfare, in cooperation with Commissioner of Education, within one year of Nov. 1, 1978, to promulgate special regulations which would provide that where a local educational agency had not undertaken the remedial action required by the Commissioner under 20 U.S.C. 240(b)(3)(C)(vi), the affected tribes could elect for the Bureau of Indian Affairs to provide educational services provided by the local educational agency.

**§ 7705. Application for payments under sections 7702 and 7703 of this title**

**(a) In general**

A local educational agency desiring to receive a payment under section 7702 or 7703 of this title shall—

- (1) submit an application for such payment to the Secretary; and
- (2) provide a copy of such application to the State educational agency.

**(b) Contents**

Each such application shall be submitted in such form and manner, and shall contain such information, as the Secretary may require, including—

- (1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and
- (2) where applicable, an assurance that such agency is in compliance with section 7704 of this title (relating to children residing on Indian lands).

**(c) Deadline for submission**

The Secretary shall establish deadlines for the submission of applications under this section.

**(d) Approval**

**(1) In general**

The Secretary shall approve an application submitted under this section that—

- (A) except as provided in paragraph (2), is filed by the deadline established under subsection (c) of this section; and
- (B) otherwise meets the requirements of this subchapter.

**(2) Reduction in payment**

The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c) of this section, or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be, that otherwise meets the requirements of this subchapter, except that, notwithstanding section 7703(e) of this title, the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

**(3) Late applications**

**(A) Notice**

The Secretary shall, as soon as practicable after the deadline established under subsection (c) of this section, provide to each local educational agency that applied for a payment under section 7702 or 7703 of this title for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which the Secretary sends the notice.

**(B) Acceptance and approval of late applications**

The Secretary shall not accept or approve any application of a local educational agency that is filed more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to subparagraph (A).

**(4) State application authority**

Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

(Pub. L. 89-10, title VIII, §8005, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3761; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1809], Oct. 30, 2000, 114 Stat. 1654, 1654A-382.)

REFERENCES IN TEXT

Section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994), referred to in subsec. (d)(4), means section 3 of act Sept. 30, 1950, ch. 1124, which was classified to section 238 of this title prior to repeal by Pub. L. 103-382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

PRIOR PROVISIONS

A prior section 8005 of Pub. L. 89-10 was renumbered section 9005 and was classified to section 3386 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106-398, §1 [[div. A], title XVIII, §1809(1)], inserted “, or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be,” after “subsection (c) of this section”.

Subsec. (d)(3). Pub. L. 106-398, §1 [[div. A], title XVIII, §1809(2)], amended heading and text generally. Prior to amendment, text read as follows: “The Secretary shall not accept or approve any application that is filed more