

(Pub. L. 95-561, title XI, §1128, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2032.)

#### REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (h)(1) and (k), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (h)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II 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.

#### PRIOR PROVISIONS

A prior section 2008, Pub. L. 95-561, title XI, §1128, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3993, related to administrative cost grants, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2008 and a prior section 2008a were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2008, Pub. L. 95-561, title XI, §1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, §2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99-89, §5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99-228, §1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100-297, title V, §§5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100-427, §§2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101-301, §5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103-382, title III, §393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95-561, title XI, §1128A, as added Pub. L. 100-297, title V, §5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100-427, §4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101-301, §5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

### § 2009. Division of Budget Analysis

#### (a) Establishment

Not later than 1 year after January 8, 2002, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (hereafter in this section referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

#### (b) Functions

In consultation with the tribal governing bodies and tribal school boards, the Director of the Office, through the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau-funded schools and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

#### (c) Annual reports

Not later than the date on which the Assistant Secretary for Indian Affairs makes the annual budget submission, for each fiscal year after January 8, 2002, the Director of the Office shall submit to the appropriate committees of Congress (including the Appropriations committees), all Bureau-funded schools, and the tribal governing bodies of such schools, a report that contains—

(1) projections, based upon the information gathered pursuant to subsection (b) and any other relevant information, of amounts necessary to provide Indian students in Bureau-funded schools the educational program set forth in this chapter;

(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

(3) such other information as the Director of the Office considers appropriate.

#### (d) Use of reports

The Director of the Office and the Assistant Secretary for Indian Affairs shall use the annual report required by subsection (c) when preparing annual budget submissions.

(Pub. L. 95-561, title XI, §1129, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2038.)

#### PRIOR PROVISIONS

A prior section 2009, Pub. L. 95-561, title XI, §1129, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3998, related to Division of Budget Analysis, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2009, Pub. L. 95-561, title XI, §1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98-511, title V, §§506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99-89, §6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99-570, title IV, §4133(b)(4), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100-427, §§6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103-382.

### § 2010. Uniform direct funding and support

#### (a) Establishment of system and forward funding

##### (1) In general

The Secretary shall establish, by regulation adopted in accordance with section 2016 of this title, a system for the direct funding and support of all Bureau-funded schools. Such system shall allot funds in accordance with section 2007 of this title. All amounts appropriated for distribution in accordance with this section shall be made available in accordance with paragraph (2).

##### (2) Timing for use of funds

###### (A) Availability

For the purposes of affording adequate notice of funding available pursuant to the allotments made under section 2007 of this title and the allotments of funds for operation and maintenance of facilities, amounts appropriated in an appropriations Act for any fiscal year for such allotments—

(i) shall become available for obligation by the affected schools on July 1 of the fiscal year for which such allotments are appropriated without further action by the Secretary; and

(ii) shall remain available for obligation through the succeeding fiscal year.

###### (B) Publications

The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

(i) publish, not later than July 1 of the fiscal year for which the amounts are ap-

propriated, information indicating the amount of the allotments to be made to each affected school under section 2007 of this title, of 80 percent of such appropriated amounts; and

(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 2007 of this title, from the remaining 20 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

**(C) Overpayments**

Any overpayments made to tribal schools shall be returned to the Secretary not later than 30 days after the final determination that the school was overpaid pursuant to this section.

**(3) Limitation**

**(A) Expenditures**

Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau-operated school may expend an aggregate of not more than \$50,000 of the amount allotted to the school under section 2007 of this title to acquire materials, supplies, equipment, operation services, maintenance services, and other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

(i) the cost for any single item acquired does not exceed \$15,000;

(ii) the school board approves the acquisition;

(iii) the supervisor certifies that the cost is fair and reasonable;

(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

**(B) Notice**

Not later than 6 months after January 8, 2002, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

**(C) Application and guidelines**

The Director of the Office shall be responsible for—

(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

(ii) ensuring that there is at least one such individual at each Bureau facility; and

(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

**(4) Effect of sequestration order**

If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 2007 of this title for any fiscal year by more than 7 percent of the amount of funds available for allotment under such section during the preceding fiscal year—

(A) to fund allotments under section 2007 of this title, the Secretary, notwithstanding any other law, may use—

(i) funds appropriated for the operation of any Bureau-funded school that is closed or consolidated; and

(ii) funds appropriated for any program that has been curtailed at any Bureau school; and

(B) the Secretary may waive the application of the provisions of section 2001(h) of this title with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 2007 of this title for such fiscal year.

**(b) Local financial plans for expenditure of funds**

**(1) Plan required**

Each Bureau-operated school that receives an allotment under section 2007 of this title shall prepare a local financial plan that specifies the manner in which the school will expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school pursuant to section 2001 of this title.

**(2) Requirement**

A local financial plan under paragraph (1) shall comply with all applicable Federal and tribal laws.

**(3) Preparation and revision**

**(A) In general**

The financial plan for a school under subparagraph (A)<sup>1</sup> shall be prepared by the supervisor of the school in active consultation with the local school board for the school.

**(B) Authority of school board**

The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

**(4) Role of supervisor**

The supervisor of the school—

(A) shall implement the decisions of the school board relating to the financial plan under paragraph (1);

<sup>1</sup> So in original. Probably should be "paragraph (1)".

(B) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board; and

(C) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

**(5) Statements**

**(A) In general**

A copy of each statement filed under paragraph (4)(C) shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

**(B) Overturned actions**

After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board.

**(C) Transmission of determination**

The appropriate education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

**(c) Tribal division of education, self-determination grant and contract funds**

The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 450h(a) of this title.

**(d) Technical assistance and training**

In carrying out this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the maximum extent practicable, provide those services and make appropriate provisions in the budget of the Office for the provision of those services.

**(e) Summer program of academic and support services**

**(1) Plan**

**(A) In general**

A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school.

**(B) Prevention activities**

Any such program may include activities related to the prevention of alcohol and substance abuse.

**(C) Summer use**

The Assistant Secretary for Indian Affairs shall provide for the use of any such school facility during any summer in which such use is requested.

**(2) Use of other funds**

Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 [25 U.S.C. 452 et seq.], and this Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

**(3) Technical assistance and program coordination**

The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall—

(A) provide technical assistance and coordination for any program described in paragraph (1); and

(B) to the extent practicable, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

**(f) Cooperative agreements**

**(1) Implementation**

**(A) In general**

From funds allotted to a Bureau school under section 2007 of this title, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school.

**(B) Terms**

The tribe, the Bureau, the school board, and the local public school district shall determine the terms of an agreement entered into under subparagraph (A).

**(2) Coordination provisions**

An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would not continue to be so accredited if the agreement encompassed the program and curriculum.

(B) Support services, including procurement and facilities maintenance.

(C) Transportation.

**(3) Equal benefit and burden**

**(A) In general**

Each agreement entered into under paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed by the school.

**(B) Limitation**

Subparagraph (A) shall not be construed to require equal expenditures, or an exchange of similar services, by the Bureau school and schools in the school district.

**(g) Product or result of student projects**

Notwithstanding any other provision of law, in a case in which there is agreement on action be-

tween the superintendent and the school board of a Bureau-funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

**(h) Matching fund requirements**

**(1) Not considered Federal funds**

Notwithstanding any other provision of law, funds received by a Bureau-funded school under this chapter for education-related activities (not including funds for construction, maintenance, and facilities improvement or repair) shall not be considered Federal funds for the purposes of a matching funds requirement for any Federal program.

**(2) Limitation**

In considering an application from a Bureau-funded school for participation in a program or project that requires matching funds, the entity administering such program or project or awarding such grant shall not give positive or negative weight to such application based solely on the provisions of paragraph (1).

(Pub. L. 95-561, title XI, §1130, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2039.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

This Act, referred to in subsec. (e)(2), 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.

This chapter, referred to in subsec. (h)(1), was in the original "this title", meaning title XI (§1101 et seq.) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95-561, title XI, §1130, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3999, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2010, Pub. L. 95-561, title XI, §1130, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 100-297, title V, §5111, Apr. 28, 1988, 102 Stat. 376; Pub. L. 100-427, §7, Sept. 9, 1988, 102 Stat. 1605, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 103-382.

**§ 2011. Policy for Indian control of Indian education**

**(a) Facilitation of Indian control**

It shall be the policy of the United States acting through the Secretary, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

**(b) Consultation with tribes**

**(1) In general**

All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

**(2) Requirements**

**(A) Definition of consultation**

In this subsection, the term "consultation" means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties.

**(B) Discussion and joint deliberation**

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity—

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

**(C) Explanation by Secretary**

The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties described in subparagraph (B).

(Pub. L. 95-561, title XI, §1131, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2043.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), 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.

PRIOR PROVISIONS

A prior section 2011, Pub. L. 95-561, title XI, §1131, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4001, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2011, Pub. L. 95-561, title XI, §1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2,