

## REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(3)(A) and (b)(1)(A)(i), (3)(A), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. 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)(1)(A)(ii), (3)(B), 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, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Education Amendments of 1978, referred to in subsec. (b)(1)(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 (§2000 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.

Section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)), referred to in subsec. (b)(4)(B)(iii), probably should be section 1125 of the Education Amendments of 1978, Pub. L. 95-561, which is classified to section 2005 of this title and requires, in subsec. (b), compliance with health and safety standards. Section 1124 of Pub. L. 95-561, which is classified to section 2004 of this title, relates to school boundaries.

## PRIOR PROVISIONS

A prior section 2503, 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, authorized grants, prior to repeal by Pub. L. 107-110, title X, §1043, Jan. 8, 2002, 115 Stat. 2063. See section 2502 of this title.

## EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

**§ 2504. Eligibility for grants****(a) Rules****(1) In general**

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

(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 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-operated school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and has met the requirements of subsection (b);

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

**(2) New schools**

Any application which has been submitted under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.]

by an Indian tribe for a school which is not in operation on January 8, 2002, 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).

**(b) Additional requirements for Bureau-funded schools and certain electing schools****(1) Bureau-funded schools**

A school that was a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] on January 8, 2002, and any school with respect to which an election is made under subsection (a)(2), 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 as to 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) Certain electing schools****(A) In general**

By not 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) in the case of a school which 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) Other determinations**

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 tribe or tribal organization is not already operating the school; and

(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) Considerations**

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) ability to adequately manage a school; or
- (iv) adequately trained personnel.

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

**(1) In general**

A school which is not a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 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 as to whether the school is eligible for assistance under this chapter; and

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

**(2) Deadline for determination by Secretary**

**(A) In general**

By not 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) Considerations**

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 the 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.

(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 on education; and

(IV) the history and success of these services for the proposed population to be served, as determined from all factors including, if relevant, standardized examination performance.

**(C) Geographic proximity**

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

**(D) Other information**

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) Deadline**

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>1</sup> and the grant shall become effective 18 months after the date on which the Secretary received the application, or on an earlier date, at the Secretary's discretion.

**(d) Filing of applications and reports**

**(1) In general**

All applications and reports submitted to the Secretary under this chapter, and any amendments to such applications or reports, shall be filed with the education line officer designated by the Director of the Office of Indian Education Programs 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 was submitted to the Secretary.

**(2) Supporting documentation**

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 by subsection (c)(2)(E), a grant provided under this chapter, and any transfer of the operation of a Bureau school made under subsection (b), shall become effective beginning 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) In general**

Whenever the Secretary refuses to approve a grant under this chapter, to transfer operation of a Bureau school under subsection (b), 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) at the request of the tribe or tribal organization, provide the tribe or tribal organization a hearing on the record under the same rules and regulations that apply under

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

the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.]; and

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

**(2) Timeline for reconsideration of amended applications**

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

**(g) Report**

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 Congress the budget under section 1105 of title 31.

(Pub. L. 100-297, title V, §5205, as added Pub. L. 107-110, title X, §1043, Jan. 8, 2002, 115 Stat. 2068.)

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 Act is classified principally to chapter 22 (§2000 et seq.) of this title. 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 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, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The title, referred to in subsec. (c)(2)(E), 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.

PRIOR PROVISIONS

A prior section 2504, 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, related to composition of grants, prior to repeal by Pub. L. 107-110, title X, §1043, Jan. 8, 2002, 115 Stat. 2063. See section 2503 of this title.

EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

**§ 2505. 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 2504 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**

**(1) In general**

Each recipient of a grant provided under this chapter shall complete an annual report which shall be limited to—

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

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

(C) a biennial compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

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

(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).<sup>1</sup>

**(2) Evaluation review teams**

Where appropriate, other tribally controlled schools and representatives of tribally controlled community colleges shall make up members of the evaluation review teams.

**(3) Evaluations**

In the case of a school which is accredited, evaluations will be conducted at intervals under the terms of accreditation.

**(4) Submission of report**

**(A) To tribal governing body**

Upon completion of the report required under paragraph (1), the recipient of the grant shall send (via first class mail, return receipt requested) a copy of such annual report to the tribal governing body (as defined in section 2012(f) of this title) of the tribally controlled school.

**(B) To Secretary**

Not later than 30 days after receiving written confirmation that the tribal governing body has received the report sent pursuant to subparagraph (A), the recipient of the grant shall send a copy of the report to the Secretary.

**(c) Revocation of eligibility**

**(1) Determination of eligibility for assistance**

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

(A) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school; and

(B) at least one of the following clauses applies with respect to the school:

<sup>1</sup> So in original. Probably should be subsection “(c)(1)(B)(ii).”