

**(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 personnel. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers, except that no funds under this chapter may be authorized for expenditure unless such appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner.

**(3) Implementation**

This subsection shall be implemented as soon as practicable after January 8, 2002.

**(f) Acceptance of gifts and bequests****(1) Guidelines**

Notwithstanding any other provision of law, the Director of the Office shall promulgate guidelines for the establishment and administration of mechanisms for the acceptance of gifts and bequests for the use and benefit of particular schools or designated Bureau-operated education programs, including, in appropriate cases, the establishment and administration of trust funds.

**(2) Monitoring and reports**

Except as provided in paragraph (3), in a case in which a Bureau-operated education program is the beneficiary of such a gift or bequest, the Director shall—

- (A) make provisions for monitoring use of the gift or bequest; and
- (B) submit a report to the appropriate committees of Congress that describes the amount and terms of such gift or bequest,

the manner in which such gift or bequest shall be used, and any results achieved by such use.

**(3) Exception**

The requirements of paragraph (2) shall not apply in the case of a gift or bequest that is valued at \$5,000 or less.

**(g) Definition of functions**

For the purpose of this section, the term “functions” includes powers and duties.

(Pub. L. 95-561, title XI, § 1126, as added Pub. L. 107-110, title X, § 1042, Jan. 8, 2002, 115 Stat. 2026.)

## REFERENCES IN TEXT

This Act, referred to in subsec. (c), 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 Indian Self-Determination and Education Assistance Act, referred to in subsec. (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.

## PRIOR PROVISIONS

A prior section 2006, Pub. L. 95-561, title XI, § 1126, as added Pub. L. 103-382, title III, § 381, Oct. 20, 1994, 108 Stat. 3988, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2006, Pub. L. 95-561, title XI, § 1126, Nov. 1, 1978, 92 Stat. 2319; Pub. L. 96-46, § 2(b)(6), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, § 504, Oct. 19, 1984, 98 Stat. 2393; Pub. L. 99-89, § 4, Aug. 15, 1985, 99 Stat. 381; Pub. L. 100-427, § 1(c)(3), Sept. 9, 1988, 102 Stat. 1603, related to Bureau of Indian Affairs education functions, prior to the general amendment of this chapter by Pub. L. 103-382.

## 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.

**§ 2007. Allotment formula****(a) Factors considered; revision to reflect standards****(1) Formula**

The Secretary shall establish, by regulation adopted in accordance with section 2017 of this title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau-funded school. In establishing such formula, the Secretary shall consider—

- (A) the number of eligible Indian students served and total student population of the school;
- (B) special cost factors, such as—
  - (i) the isolation of the school;
  - (ii) the need for special staffing, transportation, or educational programs;
  - (iii) food and housing costs;
  - (iv) maintenance and repair costs associated with the physical condition of the educational facilities;
  - (v) special transportation and other costs of isolated and small schools;

(vi) the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board;

(vii) costs associated with greater lengths of service by education personnel;

(viii) the costs of therapeutic programs for students requiring such programs; and

(ix) special costs for gifted and talented students;

(C) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(D) whether the available funding will enable the school involved to comply with the accreditation standards applicable to the school under section 2001 of this title; and

(E) such other relevant factors as the Secretary determines are appropriate.

**(2) Revision of formula**

**(A) In general**

Upon the establishment of the standards required in section 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost of funding such standards.

**(B) Review of formula**

Not later than January 1, 2003, the Secretary shall review the formula established under this section and shall take such steps as are necessary to increase the availability of counseling and therapeutic programs for students in off-reservation home-living (dormitory) schools and other Bureau-operated residential facilities.

**(C) Review of standards**

Concurrent with such action, the Secretary shall review the standards established under section 2002 of this title to be certain that adequate provision is made for parental notification regarding, and consent for, such counseling and therapeutic programs.

**(b) Pro rata allotment**

Notwithstanding any other provision of law, Federal funds appropriated for the general local operation of Bureau-funded schools shall be allotted pro rata in accordance with the formula established under subsection (a).

**(c) Annual adjustment; reservation of amount for school board activities**

**(1) Annual adjustment**

For fiscal year 2003, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to ensure that the formula does the following:

(A) Uses a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school in considering the number of eligible Indian students served by the school.

(B) Considers a school with an enrollment of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools.

(C) Takes into account the provision of residential services on less than a 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved.

(D) Uses a weighted unit of 2.0 for each eligible Indian student that—

(i) is gifted and talented; and

(ii) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school.

(E) Uses a weighted unit of 0.25 for each eligible Indian student who is enrolled in a year-long credit course in an Indian or Native language as part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school. The adjustment required under this subparagraph shall be used for such school after—

(i) the certification of the Indian or Native language curriculum by the school board of such school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second school year for which the certification is made; and

(ii) the funds appropriated for allotment under this section are designated by the appropriations Act appropriating such funds as the amount necessary to implement such adjustment at such school without reducing allotments made under this section to any school by virtue of such adjustment.

**(2) Reservation of amount**

**(A) In general**

From the funds allotted in accordance with the formula established under subsection (a) for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

(i) \$8,000; or

(ii) the lesser of—

(I) \$15,000; or

(II) 1 percent of such allotted funds,

for school board activities for such school, including (notwithstanding any other provision of law) meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

**(B) Training**

**(i) In general**

Each local school board, and any agency school board that serves as a local school board for any grant or contract school, shall ensure that each individual who is a new member of the school board receives, within 1 year after the individual becomes a member of the school board, 40 hours of training relevant to that individual's service on the board.

**(ii) Types of training**

Such training may include training concerning legal issues pertaining to Bureau-

funded schools, legal issues pertaining to school boards, ethics, and other topics determined to be appropriate by the school board.

**(iii) Recommendation**

The training described in this subparagraph shall not be required, but is recommended, for a tribal governing body that serves in the capacity of a school board.

**(d) Reservation of amount for emergencies**

**(1) In general**

The Secretary shall reserve from the funds available for distribution for each fiscal year under this section an amount that, in the aggregate, equals 1 percent of the funds available for such purpose for that fiscal year, to be used, at the discretion of the Director of the Office of Indian Education Programs, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section.

**(2) Use of funds**

Funds reserved under this subsection may be expended only for education services or programs, including emergency repairs of educational facilities, at a schoolsite (as defined by section 2503(c)(2)<sup>1</sup> of this title).

**(3) Availability of funds**

Funds reserved under this subsection shall remain available without fiscal year limitation until expended. However, the aggregate amount available from all fiscal years may not exceed 1 percent of the current year funds.

**(4) Report**

When the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress within the annual budget submission.

**(e) Supplemental appropriations**

Supplemental appropriations enacted to meet increased pay costs attributable to school level personnel shall be distributed under this section.

**(f) Eligible Indian student defined**

In this section, the term “eligible Indian student” means a student who—

(1) is a member of, or is at least one-fourth degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians;

(2) resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

(3) is enrolled in a Bureau-funded school.

**(g) Tuition**

**(1) In general**

No eligible Indian student or a student attending a Bureau school under paragraph (2)(C) may be charged tuition for attendance at a Bureau school or contract or grant school.

**(2) Attendance of non-Indian students at Bureau schools**

The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

(A) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards or accreditation;

(B) the school board consents;

(C) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site; or

(D) tuition is paid for the student that is not more than the tuition charged by the nearest public school district for out-of-district students and shall be in addition to the school's allocation under this section.

**(3) Attendance of non-Indian students at contract and grant schools**

The school board of a contract or grant school may permit students who are not eligible Indian students under this subsection to attend its contract school or grant school. Any tuition collected for those students shall be in addition to funding received under this section.

**(h) Funds available without fiscal year limitation**

Notwithstanding any other provision of law, at the election of the school board of a Bureau school made at any time during the fiscal year, a portion equal to not more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary shall take such steps as are necessary to implement this subsection.

**(i) Students at Richfield dormitory, Richfield, Utah**

**(1) In general**

Tuition for the instruction of each out-of-State Indian student in a home-living situation at the Richfield dormitory in Richfield, Utah, who attends Sevier County high schools in Richfield, Utah, for an academic year, shall be paid from Indian school equalization program funds authorized in this section and section 2009<sup>2</sup> of this title, at a rate not to exceed the weighted amount provided for under subsection (b) for a student for that year.

**(2) No administrative cost funds**

No additional administrative cost funds shall be provided under this chapter to pay for administrative costs relating to the instruction of the students.

(Pub. L. 95-561, title XI, §1127, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2028.)

PRIOR PROVISIONS

A prior section 2007, Pub. L. 95-561, title XI, §1127, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3989, related to allotment formula, prior to the general amendment of this chapter by Pub. L. 107-110.

<sup>1</sup> So in original. Probably should be section “2502(c)(2)”.

<sup>2</sup> So in original. Probably should be section “2010”.

Another prior section 2007, Pub. L. 95-561, title XI, §1127, Nov. 1, 1978, 92 Stat. 2320, related to policies and procedures for implementation of transferred administrative functions, prior to the general amendment of this chapter by Pub. L. 103-382.

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.

**§ 2008. Administrative cost grants**

**(a) Definitions**

In this section:

**(1) Administrative cost**

**(A) In general**

The term “administrative cost” means the cost of necessary administrative functions which—

- (i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program;
- (ii) are not customarily paid by comparable Bureau-operated programs out of direct program funds; and
- (iii) are either—
  - (I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds; or
  - (II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

**(B) Inclusions**

The term “administrative cost” may include—

- (i) contract or grant (or other agreement) administration;
- (ii) executive, policy, and corporate leadership and decisionmaking;
- (iii) program planning, development, and management;
- (iv) fiscal, personnel, property, and procurement management;
- (v) related office services and record keeping; and
- (vi) costs of necessary insurance, auditing, legal, safety and security services.

**(2) Bureau elementary and secondary functions**

The term “Bureau elementary and secondary functions” means—

- (A) all functions funded at Bureau schools by the Office;
- (B) all programs—
  - (i) funds for which are appropriated to other agencies of the Federal Government; and
  - (ii) which are administered for the benefit of Indians through Bureau schools; and
- (C) all operation, maintenance, and repair funds for facilities and Government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

**(3) Direct cost base**

**(A) In general**

Except as otherwise provided in subparagraph (B), the direct cost base of a tribe or

tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

- (i) the second fiscal year preceding such fiscal year; or
- (ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

**(B) Functions not previously operated**

In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

**(4) Maximum base rate**

The term “maximum base rate” means 50 percent.

**(5) Minimum base rate**

The term “minimum base rate” means 11 percent.

**(6) Standard direct cost base**

The term “standard direct cost base” means \$600,000.

**(7) Tribal elementary or secondary educational programs**

The term “tribal elementary or secondary educational programs” means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are funded through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

**(b) Grants; effect upon appropriated amounts**

**(1) Grants**

Subject to the availability of funds, the Secretary shall provide grants to each tribe or tribal organization operating a contract school or grant school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract or grant schools, provided that no school operated as a stand-alone institution shall receive less than \$200,000 per year for these purposes, in order to—

- (A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice; and