

**(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 between 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1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note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, popularly known as the Johnson-O'Malley Act, which is classified generally to section 5342 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.

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.

## 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.

**§ 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, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98-511, title V, §507(b), Oct. 19, 1984, 98 Stat. 2396; Pub. L. 100-297, title V, §§5112(a), (b)(1), 5114, 5115, Apr. 28, 1988, 102 Stat. 377, 378, 380; Pub. L. 100-427, §9(a)-(c), Sept. 9, 1988, 102 Stat. 1606, related to education personnel, 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.

### § 2012. Indian education personnel

#### (a) In general

Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, relating to classification, pay and leave, respectively, and the sections of such title relating to the appointment, promotion, hours of work, and removal of civil service employees, shall not apply to educators or to education positions (as defined in subsection (p)).

#### (b) Regulations

Not later than 60 days after January 8, 2002, the Secretary shall prescribe regulations to carry out this section. Such regulations shall provide for—

- (1) the establishment of education positions;
- (2) the establishment of qualifications for educators and education personnel;
- (3) the fixing of basic compensation for educators and education positions;
- (4) the appointment of educators;
- (5) the discharge of educators;
- (6) the entitlement of educators to compensation;
- (7) the payment of compensation to educators;
- (8) the conditions of employment of educators;
- (9) the leave system for educators;
- (10) the annual leave and sick leave for educators;
- (11) the length of the school year applicable to education positions described in subsection (a); and
- (12) such additional matters as may be appropriate.

#### (c) Qualifications of educators

##### (1) Requirements

In prescribing regulations to govern the qualifications of educators, the Secretary shall require that—

(A) lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicated in such application an interest in working in certain areas or agencies;

(B) a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2), in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (e)(2), a determination by a school board that such a person be hired shall be instituted by the supervisor of the school involved; and

(C) that<sup>1</sup> it shall not be a prerequisite to the employment of an individual in an education position at the local level that—

- (i) such individual's name appear on a list maintained pursuant to subparagraph (A); or
- (ii) such individual have applied at the national level for an education position.

##### (2) Exception for certain temporary employment

The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations if the Secretary determines that failure to do so would result in that position remaining vacant.

#### (d) Hiring of educators

##### (1) Requirements

In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school; and

(II) in a case in which there are no qualified applicants available to fill a vacancy at a Bureau school, the supervisor may consult a list maintained pursuant to subsection (c)(1)(A);

(ii) each supervisor of a Bureau school shall be hired by the education line officer of the agency office of the Bureau for the jurisdiction in which the school is located;

(iii) each educator employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office; and

(iv) each education line officer and educator employed in the office of the Director of the Office shall be hired by the Director;

<sup>1</sup> So in original. The word "that" probably should not appear.