

**(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.)

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## 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.

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

**(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.)

**Editorial Notes**

**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.

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.

**Statutory Notes and Related Subsidiaries**

**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

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