

organization involved would be deficient in ensuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a))<sup>4</sup> with respect to organizational and financial management capabilities.

**(iv) Disputes**

Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 2508(e)<sup>5</sup> of this title.

**(C) New construction**

Notwithstanding subparagraph (A), a school receiving a grant under this chapter for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

**(D) Period**

In a case in which the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

**(5) Enforcement of request to include funds**

**(A) In general**

If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe<sup>6</sup> or organization's grant under this chapter the funds described in subsection (a)(2) within 180 days after the filing of the request, the Secretary shall—

(i) be deemed to have approved such request; and

(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

**(B) Rights**

A tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 2508(e)<sup>5</sup> of this title.

(Pub. L. 100-297, title V, § 5204, as added Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2066.)

<sup>4</sup> See References in Text note below.

<sup>5</sup> So in original. Probably should be "2507(e)".

<sup>6</sup> So in original. Probably should be "tribe's".

**Editorial Notes**

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.

**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.

**§ 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 Edu-

cation 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 orga-

nization a hearing on the record under the same rules and regulations that apply under 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.)

**Editorial Notes**

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.

**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.

**§ 2505. Duration of eligibility determination**

**(a) In general**

If the Secretary determines that a tribally controlled school is eligible for assistance under

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