

**Education Amendments of 1978 - Title XI, XIV, and Part C
of Title XV**

[As Amended Through P.L. 114-328, Enacted December 23, 2016]

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TITLE XI—INDIAN EDUCATION

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

AMENDMENT TO PUBLIC LAW 874

SEC. 1101. [20 U.S.C. 240 note] (a)¹

(b)²

(c)³

(d) Within one year of the date of enactment of this Act, the Secretary, in cooperation with the Commissioner, shall propose and promulgate special regulations which will provide that where a local educational agency does not undertake the remedial action required by the Commissioner under section 5(b)(3)(C)(vi) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) and the Commissioner determines that an extension of time will not effectively encourage the remedy, the affected tribes may elect to contract with the Bureau under title I of the Indian Self-Determination and Education Assistance Act to provide educational services provided by the local educational agency or elect to have such services provided by a Bureau of Indian Affairs school. Such regulations shall also establish procedures whereby the funding necessary to provide such educational services may be obtained, and establish such procedures as are necessary to insure orderly and expeditious transition in provision of educational services.

(e)⁴

FUNDING PROVISION

SEC. 1102. [25 U.S.C. 13 note] (a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplement program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act, for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act, and shall publish in the Federal Register by March 1, 1979, such alternatives for

¹Section 1101(a) of the Education Amendments of 1978 (P.L. 95-561) amended section 3(d)(2)(D) of Public Law 874.

²Section 1101(b) of the Education Amendments of 1978 repealed section 5(a)(2) of Public Law 874.

³Section 1101(c) of the Education Amendments of 1978 amended section 5(b) of Public Law 874 to add a new paragraph (3).

⁴Section 1101(e) of the Education Amendments of 1978 amended section 5(c)(2)(A) of Public Law 874 by redesignating divisions (ii) through (vi) as (iii) through (viii) and by adding a new division (ii).

the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the Secretary shall conduct a field survey listing all alternative formula.

(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, but vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary.

BASIC EDUCATIONAL SUPPORT

SEC. 1103. [25 U.S.C. 13 note] (a)(1) From sums already appropriated under the Act of November 2, 1921 (25 U.S.C. 13) and notwithstanding any other provision of law or any requirement of a grant or agreement relating to the timing of payments for basic support contracts or grants under the Act of April 16, 1934 (25 U.S.C. (452-457), the Secretary of the Interior shall make payments of all funds appropriated under the authority of the Act of November 2, 1921, for fiscal year 1978 (including any fiscal year 1978 funds subsequently obligated in fiscal year 1979 from such appropriation) for basic support contracts or grants to any school that had a deficit in its operating budget for fiscal year 1978 as a consequence of the lack of complete payment from the Department of the Interior for such contract or grant. Such payments shall be made in accordance with any applicable condition of such contracts or grants other than conditions relating to the timing of payments.

(2) The Secretary of the Interior shall make the payments referred to in paragraph (1) not later than thirty days after the date of the enactment of this Act, Saturdays, Sundays, and legal public holidays, as established by section 6103 of title 5, United States Code, shall not be considered as days for purposes of the preceding sentence.

(b) Such sums as are needed under such Act of November 2, 1921, are authorized to be appropriated to provide funds for basic educational support through parent committees under such Act of April 16, 1934, to those public schools educating Indian students and whose total sum of Federal, State, and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools.

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

SEC. 1120. [25 U.S.C. 2000] DECLARATION OF POLICY.

Congress declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has established on

or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes toward the goal of ensuring that the programs of the Bureau of Indian Affairs-funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.

SEC. 1121. [25 U.S.C. 2001] ACCREDITATION FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS.

(a) PURPOSE; DECLARATIONS OF PURPOSE.—

(1) PURPOSE.—The purpose of the accreditation required under this section shall be to ensure that Indian students being served by a school funded by the Bureau of Indian Affairs are provided with educational opportunities that equal or exceed those for all other students in the United States.

(2) DECLARATIONS OF PURPOSE.—Local school boards for schools operated by the Bureau of Indian Affairs, in cooperation and consultation with the appropriate tribal governing bodies and their communities, are encouraged to adopt declarations of purpose for education for their communities, taking into account the implications of such declarations on education in their communities and for their schools. In adopting such declarations of purpose, the school boards shall consider the effect the declarations may have on the motivation of students and faculties.

(b) ACCREDITATION.—

(1) DEADLINE.—

(A) IN GENERAL.—Not later than 24 months after the date of enactment of the Native American Education Improvement Act of 2001⁵, each Bureau-funded school shall, to the extent that necessary funds are provided, be a candidate for accreditation or be accredited—

(i) by a tribal accrediting body, if the accreditation standards of the tribal accrediting body have been accepted by formal action of the tribal governing body and such accreditation is acknowledged by a generally recognized State certification or regional accrediting agency;

(ii) by a regional accreditation agency;

(iii) by State accreditation standards for the State in which the Bureau-funded school is located; or

(iv) in the case of a Bureau-funded school that is located on a reservation that is located in more than one State, in accordance with the State accreditation standards of one State as selected by the tribal government.

⁵ Such date of enactment was January 8, 2002.

(B) FEASIBILITY STUDY.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001⁶, the Secretary of the Interior and the Secretary of Education shall, in consultation with Indian tribes, Indian education organizations, and accrediting agencies, develop and submit to the appropriate committees of Congress a report on the desirability and feasibility of establishing a tribal accreditation agency that would—

(i) review and acknowledge the accreditation standards for Bureau-funded schools; and

(ii) establish accreditation procedures to facilitate the application, review of the standards and review processes, and recognition of qualified and credible tribal departments of education as accrediting bodies serving tribal schools.

(2) DETERMINATION OF ACCREDITATION TO BE APPLIED.—The accreditation type applied for each school shall be determined by the tribal governing body, or the school board, if authorized by the tribal governing body.

(3) ASSISTANCE TO SCHOOL BOARDS.—

(A) IN GENERAL.—The Secretary, through contracts and grants, shall provide technical and financial assistance to Bureau-funded schools, to the extent that necessary amounts are made available, to enable such schools to obtain the accreditation required under this subsection, if the school boards request that such assistance, in part or in whole, be provided.

(B) ENTITIES THROUGH WHICH ASSISTANCE MAY BE PROVIDED.—The Secretary may provide such assistance directly or through the Department of Education, an institution of higher education, a private not-for-profit organization or for-profit organization, an educational service agency, or another entity with demonstrated experience in assisting schools in obtaining accreditation.

(4) APPLICATION OF CURRENT STANDARDS DURING ACCREDITATION.—A Bureau-funded school that is seeking accreditation shall remain subject to the standards issued under section 1121 of the Education Amendments of 1978 and in effect on the day before the date of enactment of the Native American Education Improvement Act of 2001⁶ until such time as the school is accredited, except that if any of such standards are in conflict with the standards of the accrediting agency, the standards of such agency shall apply in such case.

(5) ANNUAL REPORT ON UNACCREDITED SCHOOLS.—Not later than 90 days after the end of each school year, the Secretary shall prepare and submit to the Committee on Appropriations, the Committee on Education and the Workforce, and the Committee on Resources of the House of Representatives and the Committee on Appropriations, the Committee on Indian Affairs, and the Committee on Health, Education, Labor, and

⁶ Such date of enactment was January 8, 2002.

Pensions of the Senate, a report concerning unaccredited Bureau-funded schools that—

(A) identifies those Bureau-funded schools that fail to be accredited or to be candidates for accreditation within the period provided for in paragraph (1);

(B) with respect to each Bureau-funded school identified under subparagraph (A), identifies the reasons that each such school is not accredited or a candidate for accreditation, as determined by the appropriate accreditation agency, and a description of any possible way in which to remedy such nonaccreditation; and

(C) with respect to each Bureau-funded school for which the reported reasons for the lack of accreditation under subparagraph (B) are a result of the school's inadequate basic resources, contains information and funding requests for the full funding needed to provide such schools with accreditation, such funds if provided shall be applied to such unaccredited school under this paragraph.

(6) OPPORTUNITY TO REVIEW AND PRESENT EVIDENCE.—

(A) IN GENERAL.—Prior to including a Bureau-funded school in an annual report required under paragraph (5), the Secretary shall—

(i) ensure that the school has exhausted all administrative remedies provided by the accreditation agency; and

(ii) provide the school with an opportunity to review the data on which such inclusion is based.

(B) PROVISION OF ADDITIONAL INFORMATION.—If the school board of a school that the Secretary has proposed for inclusion in an annual report under paragraph (5) believes that such inclusion is in error, the school board may provide to the Secretary such information as the board believes is in conflict with the information and conclusions of the Secretary with respect to the determination to include the school in such annual report. The Secretary shall consider such information provided by the school board before making a final determination concerning the inclusion of the school in any such report.

(C) PUBLICATION OF ACCREDITATION STATUS.—Not later than 30 days after making an initial determination to include a school in an annual report under paragraph (5), the Secretary shall make public the final determination on the accreditation status of the school.

(7) SCHOOL PLAN.—

(A) IN GENERAL.—Not later than 120 days after the date on which a school is included in an annual report under paragraph (5), the school shall develop a school plan, in consultation with interested parties including parents, school staff, the school board, and other outside experts (if appropriate), that shall be submitted to the Secretary for approval. The school plan shall cover a 3-year period and shall—

(i) incorporate strategies that address the specific issues that caused the school to fail to be accredited or fail to be a candidate for accreditation;

(ii) incorporate policies and practices concerning the school that have the greatest likelihood of ensuring that the school will obtain accreditation during the 3-year period beginning on the date on which the plan is implemented;

(iii) contain an assurance that the school will reserve the necessary funds, from the funds described in paragraph (3), for each fiscal year for the purpose of obtaining accreditation;

(iv) specify how the funds described in clause (iii) will be used to obtain accreditation;

(v) establish specific annual, objective goals for measuring continuous and significant progress made by the school in a manner that will ensure the accreditation of the school within the 3-year period described in clause (ii);

(vi) identify how the school will provide written notification about the lack of accreditation to the parents of each student enrolled in such school, in a format and, to the extent practicable, in a language the parents can understand; and

(vii) specify the responsibilities of the school board and any assistance to be provided by the Secretary under paragraph (3).

(B) IMPLEMENTATION.—A school shall implement the school plan under subparagraph (A) expeditiously, but in no event later than the beginning of the school year following the school year in which the school was included in the annual report under paragraph (5) so long as the necessary resources have been provided to the school.

(C) REVIEW OF PLAN.—Not later than 45 days after receiving a school plan, the Secretary shall—

(i) establish a peer-review process to assist with the review of the plan; and

(ii) promptly review the school plan, work with the school as necessary, and approve the school plan if the plan meets the requirements of this paragraph.

(8) CORRECTIVE ACTION.—

(A) DEFINITION.—In this subsection, the term “corrective action” means any action that—

(i) substantially and directly responds to—

(I) the failure of a school to achieve accreditation; and

(II) any underlying staffing, curriculum, or other programmatic problem in the school that contributed to the lack of accreditation; and

(ii) is designed to increase substantially the likelihood that the school will be accredited.

(B) WAIVER.—The Secretary shall grant a waiver which shall exempt a school from any or all of the requirements of this paragraph and paragraph (7) (though such

school shall be required to comply with the standards contained in part 36 of title 25, Code of Federal Register, as in effect on the date of enactment of the Native American Education Improvement Act of 2001⁷) if the school—

(i) is identified in the report described in paragraph (5)(C); and

(ii) fails to be accredited for reasons that are beyond the control of the school board, as determined by the Secretary, including, but not limited to—

(I) a significant decline in financial resources;

(II) the poor condition of facilities, vehicles, or other property; and

(III) a natural disaster.

(C) DUTIES OF SECRETARY.—After providing assistance to a school under paragraph (3), the Secretary shall—

(i) annually review the progress of the school under the applicable school plan to determine whether the school is meeting, or making adequate progress toward achieving the goals described in paragraph (7)(A)(v) with respect to reaccreditation or becoming a candidate for accreditation;

(ii) except as provided in subparagraph (B), continue to provide assistance while implementing the school's plan, and, if determined appropriate by the Secretary, take corrective action with respect to the school if it fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7);

(iii) provide all students enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) with the option to transfer to another public or Bureau-funded school, including a public charter school, that is accredited;

(iv) promptly notify the parents of children enrolled in a school that is eligible for a corrective action determination by the Secretary under clause (ii) of the option to transfer their child to another public or Bureau-funded school; and

(v) provide, or pay for the provision of, transportation for each student described in clause (iii) to the school described in clause (iii) to which the student elects to be transferred to the extent funds are available, as determined by the tribal governing body.

(D) FAILURE OF SCHOOL PLAN OF BUREAU-OPERATED SCHOOL.—With respect to a Bureau-operated school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7), the Secretary may take one or more of the following corrective actions:

(i) Institute and fully implement actions suggested by the accrediting agency.

⁷ Such date of enactment was January 8, 2002.

(ii) Consult with the tribe involved to determine the causes for the lack of accreditation including potential staffing and administrative changes that are or may be necessary.

(iii) Set aside a certain amount of funds that may only be used by the school to obtain accreditation.

(iv)(I) Provide the tribe with a 60-day period during which to determine whether the tribe desires to operate the school as a contract or grant school before meeting the accreditation requirements in section 5207(c) of the Tribally Controlled Schools Act of 1988 at the beginning of the next school year following the determination to take corrective action. If the tribe agrees to operate the school as a contract or grant school, the tribe shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7), to achieve accreditation.

(II) If the tribe declines to assume control of the school, the Secretary, in consultation with the tribe, may contract with an outside entity, consistent with applicable law, or appoint a receiver or trustee to operate and administer the affairs of the school until the school is accredited. The outside entity, receiver, or trustee shall prepare a plan, pursuant to paragraph (7), for approval by the Secretary in accordance with paragraph (7).

(III) Upon accreditation of the school, the Secretary shall allow the tribe to continue to operate the school as a grant or contract school, or if the school is being controlled by an outside entity, provide the tribe with the option to assume operation of the school as a contract school, in accordance with the Indian Self-Determination Act, or as a grant school in accordance with the Tribally Controlled Schools Act of 1988, at the beginning of the school year following the school year in which the school obtains accreditation. If the tribe declines, the Secretary may allow the outside entity, receiver, or trustee to continue the operation of the school or reassume control of the school.

(E) FAILURE OF SCHOOL PLAN OF CONTRACT OR GRANT SCHOOL.—

(i) CORRECTIVE ACTION.—With respect to a contract or grant school that fails to be accredited at the end of the third full year immediately following the date that the school's plan was first in effect under paragraph (7), the Secretary may take one or more of the corrective actions described in subparagraph (D)(i) and (D)(ii). The Secretary shall implement such corrective action for at least 1 year prior to taking any action described under clause (ii).

(ii) OUTSIDE ENTITY.—If the corrective action described in clause (i) does not result in accreditation of the school, the Secretary, in conjunction with the tribal governing body, may contract with an outside entity

to operate the school in order to achieve accreditation of the school within 2 school years. Prior to entering into such a contract, the Secretary shall develop a proposal for such operation which shall include, at a minimum, the following elements:

(I) The identification of one or more outside entities each of which has demonstrated to the Secretary its ability to develop a satisfactory plan for achieving accreditation and its willingness and availability to undertake such a plan.

(II) A plan for implementing operation of the school by such an outside entity, including the methodology for oversight and evaluation of the performance of the outside entity by the Secretary and the tribe.

(iii) PROPOSAL AMENDMENTS.—The tribal governing body shall have 60 days to amend the plan developed pursuant to clause (ii), including identifying another outside entity to operate the school. The Secretary shall reach agreement with the tribal governing body on the proposal and any such amendments to the plan not later than 30 days after the expiration of the 60-day period described in the preceding sentence. After the approval of the proposal and any amendments, the Secretary, with continuing consultation with such tribal governing body, shall implement the proposal.

(iv) ACCREDITATION.—Upon accreditation of the school, the tribe shall have the option to assume the operation and administration of the school as a contract school after complying with the Indian Self-Determination Act, or as a grant school, after complying with the Tribally Controlled Schools Act of 1988, at the beginning of the school year following the year in which the school obtains accreditation.

(v) RETROCEDE.—Nothing in this subparagraph shall limit a tribe's right to retrocede operation of a school to the Secretary pursuant to section 105(e) of the Indian Self-Determination Act (with respect to a contract school) or section 5204(f) of the Tribally Controlled Schools Act of 1988 (with respect to a grant school).

(vi) CONSISTENT.—The provisions of this subparagraph shall be construed to be consistent with the provisions of the Tribally Controlled Schools Act of 1988 and the Indian Self-Determination Act as in effect on the day before the date of enactment of the Native American Education Improvement Act of 2001⁸, and shall not be construed as expanding the authority of the Secretary under any other law.

(F) HEARING.—With respect to a school that is operated pursuant to a grant, or a school that is operated

⁸ Such date of enactment was January 8, 2002.

under a contract under the Indian Self-Determination Act, prior to implementing any corrective action under this paragraph, the Secretary shall provide notice and an opportunity for a hearing to the affected school pursuant to section 5207 of the Tribally Controlled Schools Act of 1988.

(9) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to school employees under applicable law (including applicable regulations or court orders) or under the terms of any collective bargaining agreement, memorandum of understanding, or other agreement between such employees and their employers.

(10) FISCAL CONTROL AND FUND ACCOUNTING STANDARDS.—The Bureau shall, either directly or through contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools. Such standards shall provide data comparable to those used by Bureau-operated schools.

(c) ANNUAL PLAN.—

(1) IN GENERAL.—Except as provided in subsection (b), the Secretary shall implement the standards in effect under this section on the day before the date of enactment of the Native American Education Improvement Act of 2001⁹.

(2) PLAN.—On an annual basis, the Secretary shall submit to the appropriate committees of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools a detailed plan to ensure that all Bureau-funded schools are accredited, or if such schools are in the process of obtaining accreditation that such schools meet the Bureau standards in effect on the day before the date of enactment of the Native American Education Improvement Act of 2001⁹ to the extent that such standards do not conflict with the standards of the accrediting agency. Such plan shall include detailed information on the status of each school's educational program in relation to the applicable standards, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school up to the level required by such standards.

(d) CLOSURE OR CONSOLIDATION OF SCHOOLS.—

(1) IN GENERAL.—Except as specifically required by law—

(A) no Bureau-funded school or dormitory operated on or after January 1, 1992, may be closed, consolidated, or transferred to another authority; and

(B) no program of such a school may be substantially curtailed except in accordance with the requirements of this subsection.

(2) EXCEPTIONS.—This subsection (other than this paragraph) shall not apply—

(A) in those cases in which the tribal governing body for a school, or the local school board concerned (if designated by the tribal governing body to act under this

⁹ Such date of enactment was January 8, 2002.

paragraph), requests the closure, consolidation, or substantial curtailment; or

(B) if a temporary closure, consolidation, or substantial curtailment is required by facility conditions that constitute an immediate hazard to health and safety.

(3) REGULATIONS.—The Secretary shall, by regulation, promulgate standards and procedures for the closure, transfer to another authority, consolidation, or substantial curtailment of Bureau schools, in accordance with the requirements of this subsection.

(4) NOTICE.—

(A) IN GENERAL.—In a case in which closure, transfer to another authority, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified immediately in writing, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review.

(B) DECISION TO CLOSE.—If a formal decision is made to close, transfer to another authority, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated school board shall be notified not later than 180 days before the end of the school year preceding the proposed closure date.

(C) COPIES.—Copies of any such notices and information shall be—

(i) submitted promptly to the appropriate committees of Congress; and

(ii) published in the Federal Register.

(5) REPORT.—The Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the designated school board, a report describing the process of the active consideration or review referred to in paragraph (4) that includes—

(A) a study of the impact of such action on the student population;

(B) a description of those students with particular educational and social needs;

(C) recommendations to ensure that alternative services are available to such students; and

(D) a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representatives and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students.

(6) LIMITATION ON CERTAIN ACTIONS.—No irrevocable action may be taken in furtherance of any such proposed school closure, transfer to another authority, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) prior to the end of the first full academic year after such report is made.

(7) APPROVAL OF INDIAN TRIBES.—The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.

(e) APPLICATION FOR CONTRACTS OR GRANTS FOR NON-BUREAU-FUNDED SCHOOLS OR EXPANSION OF BUREAU-FUNDED SCHOOLS.—

(1) REVIEW BY SECRETARY.—

(A) CONSIDERATION OF FACTORS.—

(i) IN GENERAL.—The Secretary shall consider only the factors described in subparagraph (B) in reviewing—

(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau-funded school; and

(II) applications from any tribe or school board of any Bureau-funded school for—

(aa) a school which is not a Bureau-funded school; or

(bb) the expansion of a Bureau-funded school which would increase the amount of funds received by the Indian tribe or school board under section 1127.

(ii) NO DENIAL BASED ON GEOGRAPHIC PROXIMITY.—With respect to applications described in this subparagraph, the Secretary shall give consideration to all factors described in subparagraph (B), but no such application shall be denied based primarily upon the geographic proximity of comparable public education.

(B) FACTORS.—With respect to applications described in subparagraph (A), the Secretary shall consider the following factors relating to the program and services that are the subject of the application:

(i) The adequacy of the facilities or the potential to obtain or provide adequate facilities.

(ii) Geographic and demographic factors in the affected areas.

(iii) The adequacy of the applicant's program plans or, in the case of a Bureau-funded school, of projected needs analysis done either by the tribe or the Bureau.

(iv) Geographic proximity of comparable public education.

(v) The stated needs of all affected parties, including students, families, tribal governments at both the central and local levels, and school organizations.

(vi) Adequacy and comparability of programs already available.

(vii) Consistency of available programs with tribal educational codes or tribal legislation on education.

(viii) The history and success of those services for the proposed population to be served, as determined

from all factors, including standardized examination performance.

(2) DETERMINATION ON APPLICATION.—

(A) IN GENERAL.—Not later than 180 days after the date on which an application described in paragraph (1)(A) is submitted to the Secretary, the Secretary shall make a determination of whether to approve the application.

(B) FAILURE TO MAKE DETERMINATION.—If the Secretary fails to make a determination with respect to an application by the date described in subparagraph (A), the application shall be deemed to have been approved by the Secretary.

(3) REQUIREMENTS FOR APPLICATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (2)(B), an application described in paragraph (1)(A) may be approved by the Secretary only if—

(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application; and

(ii) written evidence of such approval is submitted with the application.

(B) INCLUDED INFORMATION.—Each application described in paragraph (1)(A) shall include information concerning each of the factors described in paragraph (1)(B).

(4) DENIAL OF APPLICATIONS.—If the Secretary denies an application described in paragraph (1)(A), the Secretary shall—

(A) state the objections to the application in writing to the applicant not later than 180 days after the date the application is submitted to the Secretary;

(B) provide assistance to the applicant to overcome the stated objections;

(C) provide to the applicant a hearing on the record regarding the denial, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act; and

(D) provide to the applicant a notice of the applicant's appeals rights and an opportunity to appeal the decision resulting from the hearing under subparagraph (D).

(5) EFFECTIVE DATE OF A SUBJECT APPLICATION.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, an action that is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective—

(i) at the beginning of the academic year following the fiscal year in which the application is approved; or

(ii) at an earlier date determined by the Secretary.

(B) APPLICATIONS DEEMED APPROVED.—If an application is deemed to have been approved by the Secretary under paragraph (2)(B), the action that is the subject of the application shall become effective—

(i) on the date that is 18 months after the date on which the application is submitted to the Secretary; or

(ii) at an earlier date determined by the Secretary.

(6) STATUTORY CONSTRUCTION.—Nothing in this section or any other provision of law, shall be construed to preclude the expansion of grades and related facilities at a Bureau-funded school, if such expansion is paid for with non-Bureau funds. Subject to the availability of appropriated funds the Secretary is authorized to provide the necessary funds needed to supplement the cost of operations and maintenance of such expansion.

(f) JOINT ADMINISTRATION.—Administrative, transportation, and program cost funds received by Bureau-funded schools, and any program from the Department of Education or any other Federal agency for the purpose of providing education or related services, and other funds received for such education and related services from nonfederally funded programs, shall be apportioned and the funds shall be retained at the school.

(g) GENERAL USE OF FUNDS.—Funds received by Bureau-funded schools from the Bureau of Indian Affairs, and under any program from the Department of Education or any other Federal agency, for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program for all Indian students.

(h) STUDY ON ADEQUACY OF FUNDS AND FORMULAS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau-funded schools, taking into account unique circumstances applicable to Bureau-funded schools. The study shall analyze existing information gathered and contained in germane studies that have been conducted or are currently being conducted with regard to Bureau-funded schools.

(2) ACTION.—Upon completion of the study, the Secretary of the Interior shall take such action as necessary to ensure distribution of the findings of the study to all affected Indian tribes, local school boards, and associations of local school boards.

SEC. 1122. [25 U.S.C. 2002] NATIONAL CRITERIA FOR HOME-LIVING SITUATIONS.

(a) REVISION OF STANDARDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Education, Indian organizations and tribes, and Bureau-funded schools, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, needs for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy.

(2) IMPLEMENTATION.—Such standards shall be implemented in Bureau-operated schools, and shall serve as minimum standards for contract or grant schools.

(3) REVISION AFTER ESTABLISHMENT.—Once established, any revisions of such standards shall be developed according to the requirements established under section 1137.

(b) IMPLEMENTATION.—The Secretary shall implement the revised standards established under this section immediately upon completion of the standards.

(c) PLAN.—

(1) IN GENERAL.—The Secretary shall submit to the appropriate committees of Congress, the tribes, and the affected schools, and publish in the Federal Register, a detailed plan to bring all Bureau-funded schools that provide home-living (dormitory) situations up to the standards established under this section.

(2) COMPONENTS OF PLAN.—The plan described in paragraph (1) shall include—

(A) a statement of the relative needs of each Bureau-funded home-living (dormitory) school;

(B) projected future needs of each Bureau-funded home-living (dormitory) school;

(C) detailed information on the status of each school in relation to the standards established under this section;

(D) specific cost estimates for meeting each standard for each such school;

(E) aggregate cost estimates for bringing all such schools into compliance with the criteria established under this section; and

(F) specific timelines for bringing each school into compliance with such standards.

(d) WAIVER.—

(1) IN GENERAL.—A tribal governing body or local school board may, in accordance with this subsection, waive the standards established under this section for a school described in subsection (a).

(2) INAPPROPRIATE STANDARDS.—

(A) IN GENERAL.—A tribal governing body, or the local school board so designated by the tribal governing body, may waive, in whole or in part, the standards established under this section if such standards are determined by such body or board to be inappropriate for the needs of students from that tribe.

(B) ALTERNATIVE STANDARDS.—The tribal governing body or school board involved shall, not later than 60 days after providing a waiver under subparagraph (A) for a school, submit to the Director a proposal for alternative standards that take into account the specific needs of the tribe's children. Such alternative standards shall be established by the Director for the school involved unless specifically rejected by the Director for good cause and in writing provided to the affected tribes or local school board.

(e) CLOSURE FOR FAILURE TO MEET STANDARDS PROHIBITED.—No school in operation on or before July 1, 1999 (regardless of compliance or noncompliance with the standards established under this section), may be closed, transferred to another authority, or consolidated, and no program of such a school may be substantially curtailed, because the school failed to meet such standards.

SEC. 1123. [25 U.S.C. 2003] CODIFICATION OF REGULATIONS.

(a) PART 32 OF TITLE 25, CODE OF FEDERAL REGULATIONS.—The provisions of part 32 of title 25, Code of Federal Regulations, as in effect on January 1, 1987, are incorporated into this Act and shall be treated as though such provisions are set forth in this subsection. Such provisions may be altered only by means of an Act of Congress. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before November 1, 1978, the provisions of this Act and the provisions of such other statutory law shall govern.

(b) DEFINITION OF REGULATION.—In this section, the term “regulation” means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.

SEC. 1124. [25 U.S.C. 2004] SCHOOL BOUNDARIES.

(a) ESTABLISHMENT BY SECRETARY.—The Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau-funded school.

(b) ESTABLISHMENT BY TRIBAL BODY.—In any case where there is more than one Bureau-funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau-funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

(c) BOUNDARY REVISIONS.—

(1) NOTICE.—On or after July 1, 2001, no geographical attendance area shall be revised or established with respect to any Bureau-funded school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been afforded—

(A) at least 6 months notice of the intention of the Bureau to revise or establish such attendance area; and

(B) the opportunity to propose alternative boundaries.

(2) REVISION PROCESS.—Any tribe may petition the Secretary for revision of existing attendance area boundaries. The Secretary shall accept such proposed alternative or revised boundaries unless the Secretary finds, after consultation with the affected tribe or tribes, that such revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. The Secretary shall cause such revisions to be published in the Federal Register.

(3) TRIBAL RESOLUTION DETERMINATION.—Nothing in this section shall deny a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents the choice of the Bureau-funded school their children may attend, regardless of the attendance boundaries established under this section.

(d) FUNDING RESTRICTIONS.—

(1) IN GENERAL.—The Secretary shall not deny funding to a Bureau-funded school for any eligible Indian student attending the school solely because that student's home or domicile

is outside of the geographical attendance area established for that school under this section.

(2) TRANSPORTATION.—No funding shall be made available without tribal authorization to enable a school to provide transportation for any student to or from the school and a location outside the approved attendance area of the school.

(e) RESERVATION AS BOUNDARY.—When there is only one Bureau-funded program located on an Indian reservation—

(1) the attendance area for the program shall be the boundaries (established by treaty, agreement, legislation, court decisions, or executive decisions and as accepted by the tribe) of the reservation served; and

(2) those students residing near the reservation shall also receive services from such program.

(f) OFF-RESERVATION HOME-LIVING (DORMITORY) SCHOOLS.—

(1) IN GENERAL.—Notwithstanding any geographical attendance areas, attendance at off-reservation home-living (dormitory) schools shall include students requiring special emphasis programs to be implemented at each off-reservation home-living (dormitory) school.

(2) COORDINATION.—Such attendance shall be coordinated between education line officers, the family, and the referring and receiving programs.

SEC. 1125. [25 U.S.C. 2005] FACILITIES CONSTRUCTION.

(a) NATIONAL SURVEY OF FACILITIES CONDITIONS.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001¹⁰, the General Accounting Office shall compile, collect, and secure the data that are needed to prepare a national survey of the physical conditions of all Bureau-funded school facilities.

(2) DATA AND METHODOLOGIES.—In preparing the national survey required under paragraph (1), the General Accounting Office shall use the following data and methodologies:

(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

(B) Data related to conditions of Bureau-funded schools that has previously been compiled, collected, or secured from whatever source derived so long as the data are accurate, relevant, timely, and necessary to the survey.

(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

(3) CONSULTATIONS.—

(A) IN GENERAL.—In carrying out the survey required under paragraph (1), the General Accounting Office shall, to the maximum extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

¹⁰Such date of enactment was January 8, 2002.

(B) REQUESTS FOR INFORMATION.—All Bureau-funded schools shall comply with reasonable requests for information by the General Accounting Office and shall respond to such requests in a timely fashion.

(4) SUBMISSION.—Not later than 2 years after the date of enactment of the Native American Education Improvement Act of 2001¹⁰, the General Accounting Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate and the Committee on Resources, the Committee on Education and the Workforce, and the Committee on Appropriations of the House of Representatives and to the Secretary. The Secretary shall submit the results of the national survey to school boards of Bureau-funded schools and their respective tribes.

(5) NEGOTIATED RULEMAKING COMMITTEE.—

(A) IN GENERAL.—Not later than 6 months after the date on which the submission is made under paragraph (4), the Secretary shall establish a negotiated rulemaking committee pursuant to section 1138(b)(3). The negotiated rulemaking committee shall prepare and submit to the Secretary the following:

(i) A catalog of the condition of school facilities at all Bureau-funded schools that—

(I) incorporates the findings from the General Accounting Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;

(II) rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;

(III) establishes a routine maintenance schedule for each facility;

(IV) identifies the complementary educational facilities that do not exist but that are needed; and

(V) makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.

(ii) A school replacement and new construction report that determines replacement and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

(I) the size of school;

(II) school enrollment;

(III) the age of the school;

(IV) the condition of the school;

(V) environmental factors at the school; and

(VI) school isolation.

(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau-funded schools. Such report shall identify needed repairs or renovations with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in clause (ii).

(B) SUBMISSION OF REPORTS.—Not later than 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national and regional Indian education organizations, and to all school boards of Bureau-funded schools and their respective tribes.

(6) FACILITIES INFORMATION SYSTEMS SUPPORT DATABASE.—The Secretary shall develop a Facilities Information Systems Support Database to maintain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by General Accounting Office, and shall be made available to school boards of Bureau-funded schools and their respective tribes, and Congress.

(b) COMPLIANCE WITH HEALTH AND SAFETY STANDARDS.—

(1) IN GENERAL.—The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau, into compliance with—

(A) all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards);

(B) section 504 of the Rehabilitation Act of 1973; and

(C) the Americans with Disabilities Act of 1990.

(2) NO TERMINATION REQUIRED.—Nothing in this subsection requires termination of the operations of any facility that—

(A) does not comply with the provisions and standards described in paragraph (1); and

(B) is in use on the date of enactment of the Native American Education Improvement Act of 2001¹¹.

(c) COMPLIANCE PLAN.—At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (a) into compli-

¹¹Such date of enactment was January 8, 2002

ance with the standards referred to in that subsection that includes—

(1) detailed information on the status of each facility's compliance with such standards;

(2) specific cost estimates for meeting such standards at each school; and

(3) specific timelines for bringing each school into compliance with such standards.

(d) CONSTRUCTION PRIORITIES.—

(1) SYSTEM TO ESTABLISH PRIORITIES.—On an annual basis, the Secretary shall submit to the appropriate committees of Congress and cause to be published in the Federal Register, the system used to establish priorities for replacement and construction projects for Bureau-funded schools and home-living schools, including boarding schools and dormitories. At the time any budget request for education is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all Bureau-funded school construction priorities.

(2) LONG-TERM CONSTRUCTION AND REPLACEMENT LIST.—In addition to the plan submitted under subsection (c), the Secretary shall—

(A) not later than 18 months after the date of enactment of the Native American Education Improvement Act of 2001¹², establish a long-term construction and replacement list for all Bureau-funded schools;

(B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau-funded education-related facilities over a period of 40 years to enable planning and scheduling of budget requests;

(C) cause the list prepared under subparagraph (B) to be published in the Federal Register and allow a period of not less than 120 days for public comment;

(D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and

(E) cause the final list to be published in the Federal Register.

(3) EFFECT ON OTHER LIST.—Nothing in this section shall interfere with or change in any way the construction priority list as it existed on the day before the date of enactment of the Native American Education Improvement Act of 2001¹².

(e) HAZARDOUS CONDITION AT BUREAU-FUNDED SCHOOL.—

(1) CLOSURE, CONSOLIDATION, OR CURTAILMENT.—

(A) IN GENERAL.—A Bureau-funded school may be closed or consolidated, or the programs of a Bureau-funded school may be substantially curtailed, by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated at the beginning of the school year by the tribe involved under subparagraph (B)

¹²Such date of enactment was January 8, 2002.

determine that such conditions exist at a facility of the Bureau-funded school.

(B) DESIGNATION OF INDIVIDUAL BY TRIBE.—To be designated by a tribe for purposes of subparagraph (A), an individual shall—

(i) be a licensed or certified facilities safety inspector;

(ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or

(iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

(C) INSPECTION.—After making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety. Such inspection shall be completed as expeditiously as practicable, but not later than 20 days after the date on which the action described in subparagraph (A) is taken.

(D) FAILURE TO CONCUR.—If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (C) do not concur that conditions at the facility constitute an immediate hazard to health and safety, such officer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

(E) CONSIDERATION BY TRIBAL GOVERNING BODY.—Not later than 10 days after a tribal governing body receives notice under subparagraph (D), the tribal governing body shall consider all information relating to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

(F) AGREEMENT TO CLOSE, CONSOLIDATE, OR CURTAIL.—

(i) IN GENERAL.—If the Bureau health and safety officer and the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E), the facility involved shall be closed immediately.

(ii) REOPENING OF FACILITY IF NO IMMEDIATE HAZARD FOUND TO EXIST.—If the Bureau health and safety officer or the individual designated by the tribe conducting the inspection of a facility required under subparagraph (C) determines that conditions at the facility do not constitute an immediate hazard to health

and safety, any consolidation or curtailment that was made under this paragraph shall immediately cease and any school closed by reason of conditions at the facility shall be reopened immediately.

(G) GENERAL CLOSURE REPORT.—If a Bureau-funded school is temporarily closed or consolidated or the programs of a Bureau-funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 90 days after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

- (i) the reasons for such temporary action;
- (ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;
- (iii) an estimated date by which the actions described in clause (ii) will be concluded; and
- (iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

(2) NONAPPLICATION OF CERTAIN STANDARDS FOR TEMPORARY FACILITY USE.—

(A) CLASSROOM ACTIVITIES.—The Secretary shall permit the local school board to temporarily utilize facilities adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 1121 relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

(B) ADMINISTRATIVE ACTIVITIES.—The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

(C) TEMPORARY.—In this paragraph, the term “temporary” means—

- (i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and
- (ii) with respect to a school that is to be closed for not less than 1 year, a time period determined appropriate by the Bureau.

(3) TREATMENT OF CLOSURE.—Any closure of a Bureau-funded school under this subsection for a period that exceeds 30 days but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

(4) USE OF FUNDS.—With respect to a Bureau-funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau-funded

ed school, involved may authorize the use of funds allocated pursuant to section 1127, to abate the hazardous conditions without further action by Congress.

(f) FUNDING REQUIREMENT.—

(1) DISTRIBUTION OF FUNDS.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001¹³, all funds appropriated to the budget accounts for the operations and maintenance of Bureau-funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay for administrative or other costs of any facilities branch or office, at any level of the Bureau.

(2) REQUIREMENTS FOR CERTAIN USES.—No funds shall be withheld from the distribution to the budget of any school operated under contract or grant by the Bureau for maintenance or any other facilities or road-related purpose, unless such school has consented, as a modification to the contract or in writing for grants schools, to the withholding of such funds, including the amount thereof, the purpose for which the funds will be used, and the timeline for the services to be provided. The school may, at the end of any fiscal year, cancel an agreement under this paragraph upon giving the Bureau 30 days notice of its intent to do so.

(g) NO REDUCTION IN FEDERAL FUNDING.—Nothing in this section shall diminish any Federal funding due to the receipt by the school of funding for facilities improvement or construction from a State or any other source.

SEC. 1126. [25 U.S.C. 2006] BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS.

(a) FORMULATION AND ESTABLISHMENT OF POLICY AND PROCEDURE; SUPERVISION OF PROGRAMS AND EXPENDITURES.—The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

(b) DIRECTION AND SUPERVISION OF PERSONNEL OPERATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Native American Education Improvement Act of 2001¹⁴, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.

(2) TRANSFERS.—The Assistant Secretary for Indian Affairs shall, not later than 180 days after the date of enactment of the Native American Education Improvement Act of 2001¹⁴,

¹³Such date of enactment was January 8, 2002.

¹⁴Such date of enactment was January 8, 2002.

coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

(c) **INHERENT FEDERAL FUNCTION.**—For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assistance Act, unless determined by the Secretary to be inherently Federal functions as defined in section 1141(12).

(d) **EVALUATION OF PROGRAMS; SERVICES AND SUPPORT FUNCTIONS; TECHNICAL AND COORDINATING ASSISTANCE.**—Education personnel who are under the direction and supervision of the Director of the Office of Indian Education Programs in accordance with subsection (b)(1) shall—

- (1) monitor and evaluate Bureau education programs;
- (2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and
- (3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, curriculum, and operation and maintenance of school facilities.

(e) **CONSTRUCTION, IMPROVEMENT, OPERATION, AND MAINTENANCE OF FACILITIES.**—

(1) **PLAN FOR CONSTRUCTION.**—The Assistant Secretary shall submit as part of the annual budget a plan—

(A) for school facilities to be constructed under section 1125(c);

(B) for establishing priorities among projects and for the improvement and repair of educational facilities, which together shall form the basis for the distribution of appropriated funds; and

(C) for capital improvements to be made over the 5 succeeding years.

(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 the date of enactment of the Native American Education Improvement Act of 2001¹⁵.

(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.

SEC. 1127. [25 U.S.C. 2007] ALLOTMENT FORMULA.

(a) FACTORS CONSIDERED; REVISION TO REFLECT STANDARDS.—

(1) FORMULA.—The Secretary shall establish, by regulation adopted in accordance with section 1137, 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;

¹⁵Such date of enactment was January 8, 2002.

- (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 1121; 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 1122, 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 1122 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 at-

tendance 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 school site (as defined by section 5204(c)(2) of the Tribally Controlled Schools Act of 1988).

(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 Bu-

reau 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 1129, 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 part to pay for administrative costs relating to the instruction of the students.

SEC. 1128. [25 U.S.C. 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

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau-operated programs.

(2) EFFECT UPON APPROPRIATED AMOUNTS.—Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

(c) DETERMINATION OF GRANT AMOUNT.—

(1) IN GENERAL.—The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to the aggregate of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau.

(2) DIRECT COST BASE FUNDS.—The Secretary shall—

(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization; and

(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

(d) ADMINISTRATIVE COST PERCENTAGE RATE.—

(1) IN GENERAL.—For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

(A) the sum of—

(i) the amount equal to—

(I) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(II) the minimum base rate; plus

(ii) the amount equal to—

(I) the standard direct cost base; multiplied by

(II) the maximum base rate; by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year; plus

(ii) the standard direct cost base.

(2) ROUNDING.—The administrative cost percentage rate shall be determined to the $\frac{1}{100}$ of a decimal point.

(3) APPLICABILITY.—The administrative cost percentage rate determined under this subsection shall not apply to other programs operated by the tribe or tribal organization.

(e) COMBINING FUNDS.—

(1) IN GENERAL.—Funds received by a tribe or contract or grant school as grants under this section for tribal elementary or secondary educational programs may be combined by the tribe or contract or grant school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

(2) INDIRECT COST FUNDS.—Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in paragraph (1).

(f) AVAILABILITY OF FUNDS.—Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract or grant school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(g) TREATMENT OF FUNDS.—Funds received as grants under this section for Bureau-funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

(h) TREATMENT OF ENTITY OPERATING OTHER PROGRAMS.—In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

(1) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988; and

(2) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs that are associated with operating the contract or grant school, and of the indirect costs, that are associated with all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

(i) STUDIES FOR DETERMINATION OF FACTORS AFFECTING COSTS; BASE RATES LIMITS; STANDARD DIRECT COST BASE; REPORT TO CONGRESS.—

(1) STUDIES.—Not later than 120 days after the date of enactment of the Native American Education Improvement Act of 2001¹⁶, the Director of the Office of Indian Education Programs shall—

(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting required administrative costs of tribal elementary and secondary education programs, using the formula set forth in subsection (c); and

(B)¹⁷ conduct a study to determine—

(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs;

(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs; and

(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (d) will—

¹⁶Such date of enactment was January 8, 2002.

¹⁷Margins so in law.

- (I) be equal to the median between the maximum base rate and the minimum base rate; and
- (II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.
- (2) GUIDELINES.—The studies required under paragraph (1) shall—
- (A) be conducted in full consultation (in accordance with section 1131) with—
- (i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c); and
- (ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;
- (B) be conducted onsite with a representative statistical sample of the tribal elementary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;
- (C) take into account the availability of skilled labor commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found to substantially affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to ensure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;
- (D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and
- (E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how the factors may effectively be incorporated into such formula.
- (3) CONSULTATION WITH INSPECTOR GENERAL.—In carrying out the studies required under this subsection, the Director shall obtain the input of, and afford an opportunity to participate to, the Inspector General of the Department of the Interior.
- (4) CONSIDERATION OF DELIVERY OF ADMINISTRATIVE SERVICES.—Determinations described in paragraph (2)(C) shall be based on what is practicable at each location studied, given

prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or whether other services were delivered instead, during the period of the study.

(5) REPORT.—Upon completion of the studies conducted under paragraph (1), the Director shall submit to Congress a report on the findings of the studies, together with determinations based upon such studies that would affect the definitions set forth under subsection (e) that are used in the formula set forth in subsection (c).

(6) PROJECTION OF COSTS.—The Secretary shall include in the Bureau's justification for each appropriations request beginning in the first fiscal year after the completion of the studies conducted under paragraph (1), a projection of the overall costs associated with the formula set forth in subsection (c) for all tribal elementary or secondary education programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(7) DETERMINATION OF PROGRAM SIZE.—For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the aggregate direct cost program funding level for all Bureau-funded programs which share common administrative cost functions.

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

(2) REDUCTIONS.—If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (c) for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (c) for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grants determined under subsection (c) bears to the total of all grants determined under subsection (c) section for all tribes and tribal organizations for such fiscal year.

(k) APPLICABILITY TO SCHOOLS OPERATING UNDER TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—The provisions of this section shall apply to schools operating under the Tribally Controlled Schools Act of 1988.

(l) ADMINISTRATIVE COST GRANT BUDGET REQUESTS.—

(1) IN GENERAL.—Beginning with President's annual budget request under section 1105 of title 31, United States Code for fiscal year 2002, and with respect to each succeeding budget request, at the discretion of the Secretary, the Secretary shall submit to the appropriate committees of Congress information and funding requests for the full funding of administrative costs grants required to be paid under this section.

(2) REQUIREMENTS.—

(A) FUNDING FOR NEW CONVERSIONS TO CONTRACT OR GRANT SCHOOL OPERATIONS.—With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe

or tribal organization expected to begin operation of a Bureau-funded school as contract or grant school in the academic year funded by such annual budget request, the amount so required shall not be less than 10 percent of the amount required for subparagraph (B).

(B) FUNDING FOR CONTINUING CONTRACT AND GRANT SCHOOL OPERATIONS.—With respect to a budget request under paragraph (1), the amount required to provide full funding for an administrative cost grant for each tribe or tribal organization operating a contract or grant school at the time the annual budget request is submitted, which amount shall include the amount of funds required to provide full funding for an administrative cost grant for each tribe or tribal organization which began operation of a contract or grant school with administrative cost grant funds supplied from the amount described in subparagraph (A).

SEC. 1129. [25 U.S.C. 2009] DIVISION OF BUDGET ANALYSIS.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Native American Education Improvement Act of 2001¹⁸, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (hereafter in this section referred to as the “Division”). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) FUNCTIONS.—In consultation with the tribal governing bodies and tribal school boards, the Director of the Office, through the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau-funded schools and project the amount necessary to provide Indian students in such schools the educational program set forth in this part.

(c) ANNUAL REPORTS.—Not later than the date on which the Assistant Secretary for Indian Affairs makes the annual budget submission, for each fiscal year after the date of enactment of the Native American Education Improvement Act of 2001¹⁹, the Director of the Office shall submit to the appropriate committees of Congress (including the Appropriations committees), all Bureau-funded schools, and the tribal governing bodies of such schools, a report that contains—

(1) projections, based upon the information gathered pursuant to subsection (b) and any other relevant information, of amounts necessary to provide Indian students in Bureau-funded schools the educational program set forth in this part;

(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

(3) such other information as the Director of the Office considers appropriate.

(d) USE OF REPORTS.—The Director of the Office and the Assistant Secretary for Indian Affairs shall use the annual report required by subsection (c) when preparing annual budget submissions.

¹⁸Such date of enactment was January 8, 2002.

¹⁹Such date of enactment was January 8, 2002.

SEC. 1130. [25 U.S.C. 2010] UNIFORM DIRECT FUNDING AND SUPPORT.**(a) ESTABLISHMENT OF SYSTEM AND FORWARD FUNDING.—**

(1) **IN GENERAL.**—The Secretary shall establish, by regulation adopted in accordance with section 1136, a system for the direct funding and support of all Bureau-funded schools. Such system shall allot funds in accordance with section 1127. All amounts appropriated for distribution in accordance with this section shall be made available in accordance with paragraph (2).

(2) TIMING FOR USE OF FUNDS.—

(A) **AVAILABILITY.**—For the purposes of affording adequate notice of funding available pursuant to the allotments made under section 1127 and the allotments of funds for operation and maintenance of facilities, amounts appropriated in an appropriations Act for any fiscal year for such allotments—

(i) shall become available for obligation by the affected schools on July 1 of the fiscal year for which such allotments are appropriated without further action by the Secretary; and

(ii) shall remain available for obligation through the succeeding fiscal year.

(B) **PUBLICATIONS.**—The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

(i) publish, not later than July 1 of the fiscal year for which the amounts are appropriated, information indicating the amount of the allotments to be made to each affected school under section 1127, of 80 percent of such appropriated amounts; and

(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 1127, from the remaining 20 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

(C) **OVERPAYMENTS.**—Any overpayments made to tribal schools shall be returned to the Secretary not later than 30 days after the final determination that the school was overpaid pursuant to this section.

(3) LIMITATION.—

(A) **EXPENDITURES.**—Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau-operated school may expend an aggregate of not more than \$50,000 of the amount allotted to the school under section 1127 to acquire materials, supplies, equipment, operation services, maintenance services, and other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

(i) the cost for any single item acquired does not exceed \$15,000;

(ii) the school board approves the acquisition;

(iii) the supervisor certifies that the cost is fair and reasonable;

(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

(B) NOTICE.—Not later than 6 months after the date of enactment of the Native American Education Improvement Act of 2001²⁰, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

(C) APPLICATION AND GUIDELINES.—The Director of the Office shall be responsible for—

(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

(ii) ensuring that there is at least one such individual at each Bureau facility; and

(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

(4) EFFECT OF SEQUESTRATION ORDER.—If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 1127 for any fiscal year by more than 7 percent of the amount of funds available for allotment under such section during the preceding fiscal year—

(A) to fund allotments under section 1127, the Secretary, notwithstanding any other law, may use—

(i) funds appropriated for the operation of any Bureau-funded school that is closed or consolidated; and

(ii) funds appropriated for any program that has been curtailed at any Bureau school; and

(B) the Secretary may waive the application of the provisions of section 1121(h) with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 1127 for such fiscal year.

(b) LOCAL FINANCIAL PLANS FOR EXPENDITURE OF FUNDS.—

(1) PLAN REQUIRED.—Each Bureau-operated school that receives an allotment under section 1127 shall prepare a local financial plan that specifies the manner in which the school will

²⁰Such date of enactment was January 8, 2002.

expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school pursuant to section 1121.

(2) REQUIREMENT.—A local financial plan under paragraph (1) shall comply with all applicable Federal and tribal laws.

(3) PREPARATION AND REVISION.—

(A) IN GENERAL.—The financial plan for a school under subparagraph (A) shall be prepared by the supervisor of the school in active consultation with the local school board for the school.

(B) AUTHORITY OF SCHOOL BOARD.—The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

(4) ROLE OF SUPERVISOR.—The supervisor of the school—

(A) shall implement the decisions of the school board relating to the financial plan under paragraph (1);

(B) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board; and

(C) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

(5) STATEMENTS.—

(A) IN GENERAL.—A copy of each statement filed under paragraph (4)(C) shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(B) OVERTURNED ACTIONS.—After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board.

(C) TRANSMISSION OF DETERMINATION.—The appropriate education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

(c) TRIBAL DIVISION OF EDUCATION, SELF-DETERMINATION GRANT AND CONTRACT FUNDS.—The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 103(a) of the Indian Self-Determination and Education Assistance Act.

(d) TECHNICAL ASSISTANCE AND TRAINING.—In carrying out this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the maximum extent practicable, provide those services and make ap-

appropriate provisions in the budget of the Office for the provision of those services.

(e) SUMMER PROGRAM OF ACADEMIC AND SUPPORT SERVICES.—

(1) PLAN.—

(A) IN GENERAL.—A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school.

(B) PREVENTION ACTIVITIES.—Any such program may include activities related to the prevention of alcohol and substance abuse.

(C) SUMMER USE.—The Assistant Secretary for Indian Affairs shall provide for the use of any such school facility during any summer in which such use is requested.

(2) USE OF OTHER FUNDS.—Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934, and this Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

(3) TECHNICAL ASSISTANCE AND PROGRAM COORDINATION.—The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall—

(A) provide technical assistance and coordination for any program described in paragraph (1); and

(B) to the extent practicable, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.

(f) COOPERATIVE AGREEMENTS.—

(1) IMPLEMENTATION.—

(A) IN GENERAL.—From funds allotted to a Bureau school under section 1127, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school.

(B) TERMS.—The tribe, the Bureau, the school board, and the local public school district shall determine the terms of an agreement entered into under subparagraph (A).

(2) COORDINATION PROVISIONS.—An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would not continue to be so accredited if the agreement encompassed the program and curriculum.

(B) Support services, including procurement and facilities maintenance.

(C) Transportation.

(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 title 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).

SEC. 1131. [25 U.S.C. 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).

SEC. 1132. [25 U.S.C. 2012] INDIAN EDUCATION PERSONNEL.

(a) IN GENERAL.—Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, United States Code, 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 the date of enactment of the Native American Education Improvement Act of 2001²¹, 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;

²¹Such date of enactment was January 8, 2002.

(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 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;

(B)(i) before an individual is employed in an education position in a Bureau school by the supervisor of the school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted; and

(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be so employed shall be instituted by the supervisor (or with respect to the position of supervisor, by the superintendent for education of the agency office);

(C)(i) before an individual is employed in an education position in an agency or area office of the Bureau, the appropriate agency school board shall be consulted; and

(ii) a determination by such school board, as evidenced by school board records, that such individual should or should not be employed shall be instituted by the superintendent for education of the agency office; and

(D) all employment decisions or actions be in compliance with all applicable Federal, State, and tribal laws.

(2) INFORMATION REGARDING APPLICATION AT NATIONAL LEVEL.—

(A) IN GENERAL.—Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau.

(B) DETERMINATION OF ACCURACY.—If such individual is employed at the local level, such individual's name shall be immediately forwarded to the Secretary, who shall, as soon as practicable but in no event in more than 30 days, ascertain the accuracy of the statement made by such individual pursuant to subparagraph (A).

(C) FALSE STATEMENTS.—Notwithstanding subsection (e), if the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged.

(D) CONDITIONAL APPOINTMENT FOR NATIONAL PROVISION.—If the individual has applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of 90 days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) to the position to which such individual was appointed.

(3) STATUTORY CONSTRUCTION.—Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards authority over, or control of, educators at Bureau-funded schools or the authority to issue management decisions.

(4) APPEALS.—

(A) BY SUPERVISOR.—

(i) IN GENERAL.—The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(ii) ACTION BY BOARD.—A copy of such statement shall be submitted to the local school board and such

board shall be afforded an opportunity to respond, in writing, to such appeal.

(iii) OVERTURNING OF DETERMINATION.—After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board.

(iv) TRANSMISSION OF DETERMINATION.—The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(B) BY EDUCATION LINE OFFICER.—

(i) IN GENERAL.—The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(ii) ACTION BY BOARD.—A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(iii) OVERTURNING OF DETERMINATION.—After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board.

(iv) TRANSMISSION OF DETERMINATION.—The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

(5) OTHER APPEALS.—

(A) IN GENERAL.—The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned.

(B) ACTION BY BOARD.—A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal.

(C) OVERTURNING OF DETERMINATION.—After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board.

(D) TRANSMISSION OF DETERMINATION.—The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such edu-

- education line officer identifying the reasons for overturning such determination.
- (e) DISCHARGE AND CONDITIONS OF EMPLOYMENT OF EDUCATORS.—
- (1) REGULATIONS.—In promulgating regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—
- (A) that procedures shall be established for the rapid and equitable resolution of grievances of educators;
- (B) that no educator may be discharged without notice of the reasons for the discharge and an opportunity for a hearing under procedures that comport with the requirements of due process; and
- (C) that each educator employed in a Bureau school shall be notified 30 days prior to the end of an academic year whether the employment contract of the individual will be renewed for the following year.
- (2) PROCEDURES FOR DISCHARGE.—
- (A) DETERMINATIONS.—
- (i) IN GENERAL.—Except as provided in clause (iii), the supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school.
- (ii) NOTIFICATION OF BOARD.—On giving notice to an educator of the supervisor's intention to discharge the educator, the supervisor shall immediately notify the local school board of the proposed discharge.
- (iii) DETERMINATION BY BOARD.—If the local school board determines that such educator shall not be discharged, that determination shall be followed by the supervisor.
- (B) APPEALS.—
- (i) IN GENERAL.—The supervisor shall have the right to appeal to the education line officer of the appropriate agency office of the Bureau a determination by a local school board under subparagraph (A)(iii), as evidenced by school board records, not to discharge an educator.
- (ii) DECISION OF AGENCY EDUCATION LINE OFFICER.—Upon hearing such an appeal, the agency education line officer may, for good cause, issue a decision overturning the determination of the local school board with respect to the employment of such individual.
- (iii) FORM OF DECISION.—The education line officer shall make the decision in writing and submit the decision to the local school board.
- (3) RECOMMENDATIONS OF SCHOOL BOARDS FOR DISCHARGE.—Each local school board for a Bureau school shall have the right—
- (A) to recommend to the supervisor that an educator employed in the school be discharged; and

- (B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.
- (f) APPLICABILITY OF INDIAN PREFERENCE LAWS.—
- (1) APPLICABILITY.—
- (A) IN GENERAL.—Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action carried out under this section with respect to an applicant or employee not entitled to an Indian preference if each tribal organization concerned—
- (i) grants a written waiver of the application of those laws with respect to the personnel action; and
- (ii) states that the waiver is necessary.
- (B) NO EFFECT ON RESPONSIBILITY OF BUREAU.—This paragraph shall not be construed to relieve the responsibility of the Bureau to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).
- (2) DEFINITIONS.—In this subsection:
- (A) INDIAN PREFERENCE LAWS.—
- (i) IN GENERAL.—The term “Indian preference laws” means section 12 of the Act of June 18, 1934 (48 Stat. 986, chapter 576) or any other provision of law granting a preference to Indians in promotions and other personnel actions.
- (ii) EXCLUSION.—The term “Indian preference laws” does not include section 7(b) of the Indian Self-Determination and Education Assistance Act.
- (B) TRIBAL ORGANIZATION.—The term “tribal organization” means—
- (i) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act); or
- (ii) in connection with any personnel action referred to in this subsection, any local school board to which the governing body has delegated the authority to grant a waiver under this subsection with respect to a personnel action.
- (g) COMPENSATION OR ANNUAL SALARY.—
- (1) IN GENERAL.—
- (A) COMPENSATION FOR EDUCATORS AND EDUCATION POSITIONS.—Except as otherwise provided in this section, the Secretary shall establish the compensation or annual salary rate for educators and education positions—
- (i) at rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5, United States Code, is applicable; or
- (ii) on the basis of the Federal Wage System schedule in effect for the locality involved, and for the

comparable positions, at the rates of compensation in effect for the senior executive service.

(B) COMPENSATION OR SALARY FOR TEACHERS AND COUNSELORS.—

(i) IN GENERAL.—The Secretary shall establish the rate of compensation, or annual salary rate, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rate of compensation applicable (on the date of enactment of the Native American Education Improvement Act of 2001²² and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act.

(ii) ESSENTIAL PROVISIONS.—The Secretary shall allow the local school boards involved authority to implement only the aspects of the Defense Department Overseas Teachers Pay and Personnel Practices Act pay provisions that are considered essential for recruitment and retention of teachers and counselors. Implementation of such provisions shall not be construed to require the implementation of that entire Act.

(C) RATES FOR NEW HIRES.—

(i) IN GENERAL.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001²³, each local school board of a Bureau school may establish a rate of compensation or annual salary rate described in clause (ii) for teachers and counselors (including academic counselors) who are new hires at the school and who had not worked at the school, as of the first day of such fiscal year.

(ii) CONSISTENT RATES.—The rates established under clause (i) shall be consistent with the rates paid for individuals in the same positions, with the same tenure and training, as the teachers and counselors, in any other school within whose boundaries the Bureau school is located.

(iii) DECREASES.—In a case in which the establishment of rates under clause (i) causes a reduction in compensation at a school from the rate of compensation that was in effect for the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001²³, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of such date of enactment by applying those rates at each contract renewal for the employees so that the reduction takes effect in three equal installments.

(iv) INCREASES.—In a case in which adoption of rates under clause (i) leads to an increase in the pay-

²² Such date of enactment was January 8, 2002.

²³ Such date of enactment was January 8, 2002.

ment of compensation from that which was in effect for the fiscal year following the date of enactment of the Native American Education Improvement Act of 2001²³, the school board may make such rates applicable at the next contract renewal such that—

(I) the increase occurs in its entirety; or

(II) the increase is applied in three equal installments.

(D) USE OF REGULATIONS; CONTINUED EMPLOYMENT OF CERTAIN EDUCATORS.—The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not—

(i) preclude the use of regulations and procedures used by the Bureau prior to April 28, 1988, in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of the educator; or

(ii) affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make an election under subsection (p) as in effect on January 1, 1990.

(2) POST DIFFERENTIAL RATES.—

(A) IN GENERAL.—The Secretary may pay a post differential rate, not to exceed 25 percent of the rate of compensation, for educators or education positions, on the basis of conditions of environment or work that warrant additional pay, as a recruitment and retention incentive.

(B) SUPERVISOR'S AUTHORITY.—

(i) IN GENERAL.—Except as provided in clause (ii), on the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide one or more post differential rates under subparagraph (A).

(ii) EXCEPTION.—The Secretary shall disapprove, or approve with a modification, a request for authorization to provide a post differential rate if the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that the rate should be disapproved or decreased because the disparity of compensation between the appropriate educators or positions in the Bureau school, and the comparable educators or positions at the nearest public school, is—

(I)(aa) at least 5 percent; or

(bb) less than 5 percent; and

(II) does not affect the recruitment or retention of employees at the school.

(iii) APPROVAL OF REQUESTS.—A request made under clause (i) shall be considered to be approved at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that

time the request is approved, approved with a modification, or disapproved by the Secretary.

(iv) DISCONTINUATION OF OR DECREASE IN RATES.—The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential rate provided for under this paragraph at the beginning of an academic year if—

(I) the local school board requests that such differential be discontinued or decreased; or

(II) the Secretary or the supervisor, respectively, determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

(v) REPORTS.—On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and approvals of authorization made under this paragraph during the previous year and listing the positions receiving post differential rates under contracts entered into under those authorizations.

(h) LIQUIDATION OF REMAINING LEAVE UPON TERMINATION.—Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual covered by this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under regulations promulgated pursuant to subsection (b)(10) shall not be so liquidated.

(i) TRANSFER OF REMAINING SICK LEAVE UPON TRANSFER, PROMOTION, OR REEMPLOYMENT.—In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations promulgated pursuant to subsection (b)(10) shall be transferred to such person's credit in the employing agency on an adjusted basis in accordance with regulations which shall be promulgated by the Office of Personnel Management.

(j) INELIGIBILITY FOR EMPLOYMENT OF VOLUNTARILY TERMINATED EDUCATORS.—An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(k) DUAL COMPENSATION.—In the case of any educator employed in an education position described in subsection (l)(1)(A) who—

- (1) is employed at the close of a school year;
- (2) agrees in writing to serve in such position for the next school year; and
- (3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to

in section 5533 of title 5, United States Code, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for any receipt of additional compensation.

(l) VOLUNTARY SERVICES.—

(1) IN GENERAL.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools.

(2) FEDERAL EMPLOYEE PROTECTION.—Nothing in this part requires Federal employees to work without compensation or allows the use of volunteer services to displace or replace Federal employees.

(3) FEDERAL STATUS.—An individual providing volunteer services under this section is a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(m) PRORATION OF PAY.—

(1) ELECTION OF EMPLOYEE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school year over the entire 12-month period.

(B) ELECTION.—Each educator employed for the academic school year shall annually elect to be paid on a 12-month basis or for those months while school is in session.

(C) NO LOSS OF PAY OR BENEFITS.—No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

(2) CHANGE OF ELECTION.—During the course of such year the employee may change election once.

(3) LUMP SUM PAYMENT.—That portion of the employee's pay which would be paid between academic school years may be paid in a lump sum at the election of the employee.

(4) NONAPPLICABILITY.—This subsection applies to those individuals employed under the provisions of section 1132 of this title or title 5, United States Code.

(5) DEFINITIONS.—For purposes of this subsection, the terms "educator" and "education position" have the meanings contained in paragraphs (1) and (2) of subsection (o).

(n) EXTRACURRICULAR ACTIVITIES.—

(1) STIPEND.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may provide, for each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off.

(B) PROVISION TO EMPLOYEES.—Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend.

(C) NATURE OF STIPEND.—Such stipend shall be paid as a supplement to the employee's base pay.

(2) ELECTION NOT TO RECEIVE STIPEND.—If an employee elects not to be compensated through the stipend established by this subsection, the appropriate provisions of title 5, United States Code, shall apply.

(3) APPLICABILITY OF SUBSECTION.—This subsection applies to all Bureau employees, regardless of whether the employee is employed under section 1132 of this title or title 5, United States Code.

(o) DEFINITIONS.—In this section:

(1) EDUCATION POSITION.—The term “education position” means a position in the Bureau the duties and responsibilities of which—

(A)(i) are performed on a school year basis principally in a Bureau school; and

(ii) involve—

(I) classroom or other instruction or the supervision or direction of classroom or other instruction;

(II) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

(III) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(IV) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position for agency superintendent for education.

(2) EDUCATOR.—The term “educator” means an individual whose services are required, or who is employed, in an education position.

(p) COVERED INDIVIDUALS; ELECTION.—This section shall apply with respect to any educator hired after November 1, 1979 (and to any educator who elected for coverage under that provision after November 1, 1979) and to the position in which such individual is employed. The enactment of this section shall not affect the continued employment of an individual employed on October 31, 1979, in an education position, or such person's right to receive the compensation attached to such position.

(q) FURLOUGH WITHOUT CONSENT.—

(1) IN GENERAL.—An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under subsection (p) at that time, and who did not make the election under such subsection, may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5, United States Code, without the consent of such educa-

tor for an aggregate of more than 4 weeks within the same calendar year, unless—

(A) the supervisor, with the approval of the local school board (or of the education line officer upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 1129(b); and

(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue one or more educators in pay status if—

(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

(ii) such educators are selected based upon such educator's qualifications after public notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

(2) APPEALS.—The supervisor of a Bureau school may appeal to the appropriate agency education line officer any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, approve the determination of the supervisor. The educational line officer shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.

(r) STIPENDS.—The Secretary is authorized to provide annual stipends to teachers who become certified by the National Board of Professional Teaching Standards, the National Council on Teacher Quality, or other nationally recognized certification or credentialing organizations.

SEC. 1133. [25 U.S.C. 2013] COMPUTERIZED MANAGEMENT INFORMATION SYSTEM.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001²⁴, the Secretary shall update the computerized management

²⁴Such date of enactment was January 8, 2002.

information system within the Office. The information to be updated shall include information regarding—

- (1) student enrollment;
- (2) curricula;
- (3) staffing;
- (4) facilities;
- (5) community demographics;
- (6) student assessment information;
- (7) information on the administrative and program costs attributable to each Bureau program, divided into discrete elements;
- (8) relevant reports;
- (9) personnel records;
- (10) finance and payroll; and
- (11) such other items as the Secretary determines to be appropriate.

(b) IMPLEMENTATION OF SYSTEM.—Not later than July 1, 2003, the Secretary shall complete the implementation of the updated computerized management information system at each Bureau field office and Bureau-funded school.

SEC. 1134. [25 U.S.C. 2014] RECRUITMENT OF INDIAN EDUCATORS.

The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

SEC. 1135. [25 U.S.C. 2015] ANNUAL REPORT; AUDITS.

(a) ANNUAL REPORTS.—The Secretary shall submit to each appropriate committee of Congress, all Bureau-funded schools, and the tribal governing bodies of such schools, a detailed annual report on the state of education within the Bureau, and any problems encountered in Indian education during the period covered by the report, that includes—

- (1) suggestions for the improvement of the Bureau educational system and for increasing tribal or local Indian control of such system; and
- (2) information on the status of tribally controlled community colleges.

(b) BUDGET REQUEST.—The annual budget request for the education programs of the Bureau, as submitted as part of the President's next annual budget request under section 1105 of title 31, United States Code, shall include the plans required by sections 1121(c), 1122(c), and 1124(c).

(c) FINANCIAL AND COMPLIANCE AUDITS.—The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits, based upon the extent to which a school described in subsection (a) has complied with the local financial plan under section 1130, are conducted of each Bureau-operated school at least once every 3 years.

(d) ADMINISTRATIVE EVALUATION OF SCHOOLS.—The Director shall, at least once every 3 to 5 years, conduct a comprehensive evaluation of Bureau-operated schools. Such evaluation shall be in addition to any other program review or evaluation that may be required under Federal law.

SEC. 1136. [25 U.S.C. 2016] RIGHTS OF INDIAN STUDENTS.

The Secretary shall prescribe such rules and regulations as are necessary to ensure the constitutional and civil rights of Indian students attending Bureau-funded schools, including such students' rights to—

- (1) privacy under the laws of the United States;
- (2) freedom of religion and expression; and
- (3) due process in connection with disciplinary actions, suspensions, and expulsions.

SEC. 1137. [25 U.S.C. 2017] REGULATIONS.**(a) PROMULGATION.—**

(1) **IN GENERAL.**—The Secretary may promulgate only such regulations—

(A) as are necessary to ensure compliance with the specific provisions of this part; and

(B) as the Secretary is authorized to promulgate pursuant to section 5211 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2510).

(2) **PUBLICATION.**—In promulgating the regulations, the Secretary shall—

(A) publish proposed regulations in the Federal Register; and

(B) provide a period of not less than 120 days for public comment and consultation on the regulations.

(3) **CITATION.**—The regulations shall contain, immediately following each regulatory section, a citation to any statutory provision providing authority to promulgate such regulatory section.

(b) **MISCELLANEOUS.**—The provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this Act and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.

SEC. 1138. [25 U.S.C. 2018] REGIONAL MEETINGS AND NEGOTIATED RULEMAKING.

(a) **REGIONAL MEETINGS.**—Prior to publishing any proposed regulations under subsection (b)(1), and prior to establishing the negotiated rulemaking committee under subsection (b)(3), the Secretary shall convene regional meetings to consult with personnel of the Office of Indian Education Programs, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by Bureau-funded schools to provide guidance to the Secretary on the content of regulations authorized to be promulgated under this part and the Tribally Controlled Schools Act of 1988.

(b) NEGOTIATED RULEMAKING.—

(1) **IN GENERAL.**—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, the Secretary shall promulgate regulations authorized under subsection (a) and under the Tribally Controlled Schools Act of 1988, in accordance with the negotiated rulemaking procedures provided for under subchapter III of chapter 5 of title 5, United States Code, and shall publish final regulations in the Federal Register.

(2) NOTIFICATION TO CONGRESS.—If draft regulations implementing this part and the Tribally Controlled Schools Act of 1988 are not promulgated in final form within 18 months after the date of enactment of the Native American Education Improvement Act of 2001²⁵, the Secretary shall notify the appropriate committees of Congress of which draft regulations were not promulgated in final form by the deadline and the reason such final regulations were not promulgated.

(3) RULEMAKING COMMITTEE.—The Secretary shall establish a negotiated rulemaking committee to carry out this subsection. In establishing such committee, the Secretary shall—

(A) apply the procedures provided for under subchapter III of chapter 5 of title 5, United States Code, in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States;

(B) ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by Bureau-funded schools;

(C) select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally operated schools;

(D) ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau-funded school system; and

(E) comply with the Federal Advisory Committee Act (5 U.S.C. App.).

(4) SPECIAL RULE.—The Secretary shall carry out this section using the general administrative funds of the Department of the Interior. In accordance with subchapter III of chapter 5 of title 5, United States Code, and section 7(d) of the Federal Advisory Committee Act, payment of costs associated with negotiated rulemaking shall include the reasonable expenses of committee members.

(c) APPLICATION OF SECTION.—

(1) SUPREMACY OF PROVISIONS.—The provisions of this section shall supersede any conflicting regulations in effect on the day before the date of enactment of this part, and the Secretary may repeal any regulation that is inconsistent with the provisions of this part.

(2) MODIFICATIONS.—The Secretary may modify regulations promulgated under this section or the Tribally Controlled Schools Act of 1988, only in accordance with this section.

SEC. 1139. [25 U.S.C. 2019] EARLY CHILDHOOD DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall provide grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

(b) AMOUNT OF GRANTS.—

²⁵Such date of enactment was January 8, 2002.

(1) IN GENERAL.—The total amount of the grants provided under subsection (a) with respect to each tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount which bears the same relationship to the total amount appropriated under the authority of subsection (g) for such fiscal year (less amounts provided under subsection (f)) as—

(A) the total number of children under 6 years of age who are members of—

(i) such tribe;

(ii) the tribe that authorized such tribal organization; or

(iii) any tribe that—

(I) is a member of such consortium; or

(II) authorizes any tribal organization that is a member of such consortium; bears to

(B) the total number of all children under 6 years of age who are members of any tribe that—

(i) is eligible to receive funds under subsection (a);

(ii) is a member of a consortium that is eligible to receive such funds; or

(iii) authorizes a tribal organization that is eligible to receive such funds.

(2) LIMITATION.—No grant may be provided under subsection (a)—

(A) to any tribe that has less than 500 members;

(B) to any tribal organization which is authorized—

(i) by only one tribe that has less than 500 members; or

(ii) by one or more tribes that have a combined total membership of less than 500 members; or

(C) to any consortium composed of tribes, or tribal organizations authorized by tribes, that have a combined total tribal membership of less than 500 members.

(c) APPLICATION.—

(1) IN GENERAL.—A grant may be provided under subsection (a) to a tribe, tribal organization, or consortium of tribes and tribal organizations only if the tribe, organization, or consortium submits to the Secretary an application for the grant at such time and in such form as the Secretary shall prescribe.

(2) CONTENTS.—Applications submitted under paragraph (1) shall set forth the early childhood development program that the applicant desires to operate.

(d) REQUIREMENT OF PROGRAMS FUNDED.—The early childhood development programs that are funded by grants provided under subsection (a)—

(1) shall coordinate existing programs and may provide services that meet identified needs of parents and children under 6 years of age which are not being met by existing programs, including—

(A) prenatal care;

(B) nutrition education;

(C) health education and screening;

- (D) family literacy services;
- (E) educational testing; and
- (F) other educational services;

(2) may include instruction in the language, art, and culture of the tribe; and

(3) shall provide for periodic assessment of the program.

(e) **COORDINATION OF FAMILY LITERACY PROGRAMS.**—Family literacy programs operated under this section and other family literacy programs operated by the Bureau of Indian Affairs shall be coordinated with family literacy programs for Indian children under subpart 2 of part B of title II of the Elementary and Secondary Education Act of 1965 in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving Indians.

(f) **ADMINISTRATIVE COSTS.**—The Secretary shall, out of funds appropriated under subsection (g), include in the grants provided under subsection (a) amounts for administrative costs incurred by the tribe, tribal organization, or consortium of tribes in establishing and maintaining the early childhood development program.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 1140. [25 U.S.C. 2020] TRIBAL DEPARTMENTS OR DIVISIONS OF EDUCATION.

(a) **IN GENERAL.**—Subject to the availability of appropriations, the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

(b) **APPLICATIONS.**—For a tribe to be eligible to receive a grant under this section, the governing body of the tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) **DIVERSITY.**—The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

(d) **USE.**—Tribes that receive grants under this section shall use the funds made available through the grants—

(1) to facilitate tribal control in all matters relating to the education of Indian children on reservations (and on former Indian reservations in Oklahoma);

(2) to provide for the development of coordinated educational programs (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) on reservations (and on former Indian reservations in Oklahoma) by encouraging tribal administrative support of all Bureau-funded educational programs as well as encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other Federal agencies, State agencies, or private entities; and

(3) to provide for the development and enforcement of tribal educational codes, including tribal educational policies and

tribal standards applicable to curriculum, personnel, students, facilities, and support programs.

(e) PRIORITIES.—In making grants under this section, the Secretary shall give priority to any application that—

(1) includes—

(A) assurances that the applicant serves three or more separate Bureau-funded schools; and

(B) assurances from the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools;

(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

(3) provides a plan and schedule that—

(A) provides for—

(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office associated with the tribe, to the extent the assets and functions relate to education; and

(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(f) TIME PERIOD OF GRANT.—Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

(g) TERMS, CONDITIONS, OR REQUIREMENTS.—A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 103(a) of the Indian Self-Determination and Education Assistance Act that are in effect on the date that the tribal governing body submits the application for the grant under subsection (b). The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$2,000,000.

SEC. 1141. [25 U.S.C. 2021] DEFINITIONS.

For the purposes of this part, unless otherwise specified:

(1) AGENCY SCHOOL BOARD.—The term “agency school board” means a body—

(A) the members of which are appointed by all of the school boards of the schools located within an agency, including schools operated under contract or grant; and

(B) the number of such members is determined by the Secretary, in consultation with the affected tribes; except that, in agencies serving a single school, the school board of such school shall fulfill these duties, and in agencies having schools or a school operated under contract or grant, one such member at least shall be from such a school.

(2) BUREAU.—The term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior.

(3) BUREAU-FUNDED SCHOOL.—The term “Bureau-funded school” means—

(A) a Bureau school;

(B) a contract or grant school; or

(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(4) BUREAU SCHOOL.—The term “Bureau school” means a Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school.

(5) COMPLEMENTARY EDUCATIONAL FACILITIES.—The term “complementary educational facilities” means educational program functional spaces such as libraries, gymnasiums, and cafeterias.

(6) CONTRACT OR GRANT SCHOOL.—The term “contract or grant school” means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act, or under the Tribally Controlled Schools Act of 1988.

(7) DIRECTOR.—The term “Director” means the Director of the Office of Indian Education Programs.

(8) EDUCATION LINE OFFICER.—The term “education line officer” means a member of the education personnel under the supervision of the Director of the Office, whether located in a central, area, or agency office.

(9) FAMILY LITERACY SERVICES.—The term “family literacy services” has the meaning given that term in section 8101 of the Elementary and Secondary Education Act of 1965.

(10) FINANCIAL PLAN.—The term “financial plan” means a plan of services provided by each Bureau school.

(11) INDIAN ORGANIZATION.—The term “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized tribes.

(12) INHERENTLY FEDERAL FUNCTIONS.—The term “inherently Federal functions” means functions and responsibilities which, under section 1126(c), are noncontractable, including—

(A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;

(B) the administration of Federal personnel laws for Federal employees;

(C) the administration of Federal contracting and grant laws, including the monitoring and auditing of con-

tracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;

(D) the conducting of administrative hearings and deciding of administrative appeals;

(E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;

(F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

(G) reporting to Congress and the President;

(H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and

(I) the nondelegable statutory duties of the Secretary relating to trust resources.

(13) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, or independent or other school district located within a State, and includes any State agency that directly operates and maintains facilities for providing free public education.

(14) LOCAL SCHOOL BOARD.—The term “local school board”, when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that, for a school serving a substantial number of students from different tribes—

(A) the members of the body shall be appointed by the tribal governing bodies of the tribes affected; and

(B) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

(15) OFFICE.—The term “Office” means the Office of Indian Education Programs within the Bureau.

(16) REGULATION.—

(A) IN GENERAL.—The term “regulation” means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this Act.

(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) or any other provision of this title shall be construed to prohibit the Secretary from issuing guidance, internal directives, or other documents similar to the documents found in the Indian Affairs Manual of the Bureau of Indian Affairs.

(17) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(18) SUPERVISOR.—The term “supervisor” means the individual in the position of ultimate authority at a Bureau school.

(19) TRIBAL GOVERNING BODY.—The term “tribal governing body” means, with respect to any school, the tribal governing

body, or tribal governing bodies, that represent at least 90 per cent of the students served by such school.

(20) **TRIBE.**—The term “tribe” means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Regional Corporation or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

TITLE XIV—OVERSEAS DEFENSE DEPENDENTS EDUCATION

SHORT TITLE

SEC. 1401. This title may be cited as the “Defense Dependents’ Education Act of 1978”.

ESTABLISHMENT OF DEFENSE DEPENDENTS’ EDUCATION SYSTEM

SEC. 1402. [20 U.S.C. 921] (a) The Secretary of Defense shall establish and operate a program (hereinafter in this title referred to as the “defense dependents’ education system”) to provide a free public education through secondary school for dependents in overseas areas.

(b)(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) receive an education of high quality.

(2) In establishing the defense dependents’ education system under subsection (a), the Secretary shall provide programs designed to meet the special needs of—

- (A) the handicapped,
- (B) individuals in need of compensatory education,
- (C) individuals with an interest in vocational education,
- (D) gifted and talented individuals, and
- (E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

(c) The Secretary of Defense shall consult with the Secretary of Education on the educational programs and practices of the defense dependents’ education system.

(d)(1) The Secretary of Defense may provide optional summer school programs in the defense dependents’ education system.

(2) The Secretary shall provide any summer school program under this subsection on the same financial basis as programs offered during the regular school year, except that the Secretary may charge reasonable fees for all or portions of such summer school programs to the extent that the Secretary determines appropriate.

(3) The amounts received by the Secretary in payment of the fees shall be available to the Department of Defense for defraying the costs of conducting summer school programs under this subsection.

ADMINISTRATION OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1403. [20 U.S.C. 922] (a) The defense dependents' education system is operated through the field activity of the Department of Defense known as the Department of Defense Education Activity. That activity is headed by a Director, who is a civilian and is selected by the Secretary of Defense. The Director reports to an Assistant Secretary of Defense designated by the Secretary of Defense for purposes of this title.

(b) Except with respect to the authority to prescribe regulations, the Secretary of Defense may carry out his functions under this title through the Director.

(c) The Director shall—

(1) establish personnel policies, consistent with the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 901 et seq.), for employees in the defense dependents' education system,

(2) have authority to transfer professional employees in the defense dependents' education system from one position to another,

(3) prepare a unified budget for each fiscal year, which shall include necessary funds for construction and operation and maintenance of facilities, for the defense dependents' education system for inclusion in the Department of Defense budget for that year,

(4) have authority to establish, in accordance with section 1410, local school advisory committees,

(5) have authority to arrange for inservice and other training programs for employees in the defense dependents' education system, and

(6) perform such other functions as may be required or delegated by the Secretary of Defense or the Assistant Secretary of Defense designated under subsection (a).

(d)(1) The Director shall establish appropriate regional or area offices in order to provide for thorough and efficient administration of the defense dependents' education system.

(2) Whenever the Department of Defense Education Activity is reorganized in a manner that affects the defense dependents' education system, the Secretary of Defense shall submit a report to the Congress describing the reorganization.

(3) Subject to the approval of the Secretary of Defense, the Department of Defense Education Activity is authorized an appropriate number of civilian employees in its central office and such regional or area office as are established pursuant to paragraph (1).

SPACE-AVAILABLE ENROLLMENT OF STUDENTS; TUITION

SEC. 1404. [20 U.S.C. 923] (a) Subject to subsection (b) and in accordance with regulations issued under subsection (c), the Director may authorize the enrollment in a school of the defense dependents' education system of a child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

(b)(1) Except as otherwise provided under subsection (c), any child permitted to enroll in a school of the defense dependents' edu-

cation system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents' education system to assist in defraying the cost of enrollment of children in the system under this section.

(c)(1) The Secretary of Defense may by regulation identify classes of children who shall be eligible to enroll in schools of the defense dependents' education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

(2)(A) The Secretary shall include in the regulations prescribed under this subsection a requirement that children in the class of children described in subparagraph (B) shall be subject to the same tuition requirements, or waiver of tuition requirements, as children in the class of children described in subparagraph (C).

(B) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—

(i) are on active duty under an order to active duty under section 12301 or 12302 of title 10, United States Code;

(ii) were ordered to active duty from a location in the United States (other than in Alaska or Hawaii); and

(iii) are serving on active duty outside the United States or in Alaska or Hawaii.

(C) The class of children described in this subparagraph are children of members of reserve components of the Armed Forces who—

(i) are on active duty under an order to active duty under section 12301 or 12302 of title 10, United States Code;

(ii) were ordered to active duty from a location outside the United States (or in Alaska or Hawaii); and

(iii) are serving on active duty outside the United States or in Alaska or Hawaii.

(d)(1) The Secretary of Defense may authorize the enrollment in schools of the defense dependents' education system of children in the following classes:

(A) Children of officers and employees of the United States (other than civilian officers and employees who are sponsors under section 1414(2)) stationed in overseas areas.

(B) Children of employees of contractors employed in carrying out work for the United States in overseas areas.

(C) Children of other citizens or nationals of the United States or of foreign nationals, if the Secretary determines that enrollment of such children is in the national interest.

(2) Notwithstanding subsection (c), the Secretary may not waive the tuition requirements of subsection (b)(1) with respect to children referred to in paragraph (1).

ENROLLMENT OF CERTAIN ADDITIONAL CHILDREN ON TUITION-FREE BASIS

SEC. 1404A. [20 U.S.C. 923a] (a) ENROLLMENT AUTHORIZED.—Under regulations to be prescribed by the Secretary of Defense, the Secretary may authorize the enrollment in schools of the defense dependents' education system on a tuition-free basis of—

(1) the children of full-time, locally-hired employees of the Department of Defense in an overseas area if such employees are citizens or nationals of the United States; and

(2) the children of a foreign military member assigned to the Supreme Headquarters Allied Powers, Europe, but only in a school of the defense dependents' education system in Mons, Belgium.

(b) FUNDING.—The Secretary may use funds available for the defense dependents' education system to provide for the education of children enrolled in the defense dependents' education system under subsection (a).

(c) SPECIAL RULES REGARDING ENROLLMENT OF DEPENDENTS OF FOREIGN MILITARY MEMBERS ASSIGNED TO SUPREME HEADQUARTERS ALLIED POWERS, EUROPE.—(1) In the regulations required by subsection (a), the Secretary shall prescribe a methodology based on the estimated total number of dependents of sponsors under section 1414(2) enrolled in schools of the defense dependents' education system in Mons, Belgium, to determine the number of children described in paragraph (2) of subsection (a) who will be authorized to enroll under such subsection. The Secretary shall prescribe such methodology with the advice and assistance of the commander of the geographic combatant command with jurisdiction over Mons, Belgium.

(2) If the number of children described in paragraph (2) of subsection (a) who seek enrollment in schools of the defense dependents' education system in Mons, Belgium, exceeds the number authorized by the Secretary under paragraph (1), the Secretary may enroll the additional children on a space-available, tuition-free basis notwithstanding section 1404(d)(2).

ANNUAL EDUCATIONAL ASSESSMENT

SEC. 1405. [20 U.S.C. 924] (a) The Director shall assess each year the performance of the defense dependents' education system in providing an education of high quality to children enrolled in the system. Such assessment may include the use of educational assessment measures and such other means as the Director determines to be suitable for assessing student performance.

(b) The results of each annual assessment under subsection (a) with respect to an individual enrolled in the defense dependents' education system shall be made available to the sponsor of such individual, and summary results of each such annual assessment shall be made available to Members of Congress and to professional employees in the system.

SCHOOL CONSTRUCTION BY THE DIRECTOR OF DEPENDENTS'
EDUCATION

SEC. 1406. [20 U.S.C. 925] The President shall include in his budget for each fiscal year a separate request for funds for construction of school facilities by the Director.

SCHOOL SYSTEM FOR DEPENDENTS IN OVERSEAS AREAS

SEC. 1407. [20 U.S.C. 926] (a) The Secretary of Defense shall establish and operate a school system for dependents in overseas areas as part of the defense dependents' education system.

(b) TUITION AND ASSISTANCE WHEN SCHOOLS UNAVAILABLE.—
(1) Under such circumstances as the Secretary of Defense may prescribe in regulations, the Secretary may provide tuition to allow dependents in an overseas area where a school operated by the Secretary is not reasonably available to attend schools other than schools established under subsection (a) on a tuition-free basis. Schools to which tuition may be paid under this subsection may include private boarding schools in the United States. Any school to which tuition is paid under this subsection to allow a dependent in an overseas area to attend such school shall provide an educational program satisfactory to the Secretary.

(2)(A) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy, may provide financial assistance to sponsors of dependents in overseas areas where schools operated by the Secretary of Defense under subsection (a) are not reasonably available in order to assist the sponsors to defray the costs incurred by the sponsors for the attendance of the dependents at schools in such areas other than schools operated by the Secretary of Defense.

(B) The Secretary of Defense and the Secretary of Homeland Security shall each prescribe regulations relating to the availability of financial assistance under subparagraph (A). Such regulations shall, to the maximum extent practicable, be consistent with Department of State regulations relating to the availability of financial assistance for the education of dependents of Department of State personnel overseas.

(c) CONTINUATION OF ENROLLMENT FOR CERTAIN DEPENDENTS OF MEMBERS OF THE ARMED FORCES INVOLUNTARILY SEPARATED.—

(1) A member of the Armed Forces serving on active duty on September 30, 1990, who is involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, and who has a dependent described in paragraph (2) who is enrolled in a school of the defense dependents' education system (or a school for which tuition is provided under subsection (b)) on the date of that separation shall be eligible to enroll or continue the enrollment of that dependent at that school (or another school serving the same community) for the final year of secondary education of that dependent in the same manner as if the member were still on active duty.

(2) A dependent referred to in paragraph (1) is a dependent who on the date of the separation of the member has completed the

eleventh grade and is likely to complete secondary education within the one-year period beginning on that date.

(d) **AUXILIARY SERVICES AVAILABLE TO HOME SCHOOL STUDENTS.**—(1) A dependent who is educated in a home school setting, but who is eligible to enroll in a school of the defense dependents' education system, shall be permitted to use or receive auxiliary services of that school without being required to either enroll in that school or register for a minimum number of courses offered by that school. The dependent may be required to satisfy other eligibility requirements and comply with standards of conduct applicable to students actually enrolled in that school who use or receive the same auxiliary services.

(2) For purposes of paragraph (1), the term "auxiliary services" includes use of academic resources, access to the library of the school, after hours use of school facilities, and participation in music, sports, and other extracurricular and interscholastic activities.

(e) **Subsection (e), as redesignated by section 353(1) of P.L. 107-107, added a new section 429 (relating to travel and transportation allowances for minor dependent schooling) to title 37, United States Code.**】

ELIGIBILITY FOR SCHOOL LUNCH AND BREAKFAST PROGRAMS

SEC. 1408. **【Section 1408 amended the National School Lunch Act and the Child Nutrition Act of 1966.】**

ALLOTMENT FORMULA

SEC. 1409. **【20 U.S.C. 927】** (a) The Director shall by regulation establish a formula for determining the minimum allotment of funds necessary for the operation of each school in the defense dependents' education system. In establishing such formula, the Director shall take into consideration—

(1) the number of students served by a school and the size of the school;

(2) special cost factors for a school, including—

(A) geographic isolation of the school,

(B) a need for special staffing, transportation, or educational programs at the school, and

(C) unusual food and housing costs,

(3) the cost of providing academic services of a high quality as required by section 1402(b)(1); and

(4) such other factors as the Director considers appropriate.

(b) Any regulation under subsection (a) shall be issued, and shall become effective, in accordance with the procedures applicable to regulations required to be issued by the Secretary of Education in accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232).

(c) **APPLICABILITY OF CERTAIN PROVISIONS.**—

(1) **CHILDREN WITH DISABILITIES.**—Notwithstanding the provisions of section 1402(b)(3), the provisions of part B of the Individuals with Disabilities Education Act, other than the funding and reporting provisions, shall apply to all schools op-

erated by the Department of Defense under this title, including the requirement that children with disabilities, aged 3 to 5, inclusive, receive a free appropriate public education.

(2) INFANTS AND TODDLERS WITH DISABILITIES.—The responsibility to provide comparable early intervention services to infants and toddlers with disabilities and their families in accordance with individualized family service plans described in section 636 of the Individuals with Disabilities Education Act and to comply with the procedural safeguards set forth in part C of such Act shall apply with respect to all eligible dependents overseas.

(3) IMPLEMENTATION.—In carrying out paragraph (2), the Secretary shall have in effect a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among Department of Defense entities involved in the provision of such services to such individuals.

SCHOOL ADVISORY COMMITTEES

SEC. 1410. [20 U.S.C. 928] (a)(1) The Director shall provide for the establishment of an advisory committee for each school in the defense dependents' education system. An advisory committee for a school shall advise the principal or superintendent of the school with respect to the operation of the school, may make recommendations with respect to curriculum and budget matters, and, except as provided under paragraph (2), shall advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander. The membership of each such advisory committee shall include an equal number of parents of students enrolled in the school and of employees working at the school and, when appropriate, may include a student enrolled in the school. The membership of each such advisory committee shall also include one nonvoting member designated by the organization recognized as the exclusive bargaining representative of the employees working at the school.

(2) In the case of any military installation or overseas area where there is more than one school in the defense dependents' education system, the Director shall provide for the establishment of an advisory committee for such military installation or overseas area to advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander.

(b) Except in the case of a nonvoting member designated under the last sentence of subsection (a)(1), members of a school advisory committee established under this section shall be elected by individuals of voting age residing in the area to be served by the advisory committee. The Secretary of Defense shall by regulation prescribe the qualifications for election to an advisory committee and procedures for conducting elections of advisory committee members.

(c) Members of school advisory committees established under this section shall serve without pay.

【Section 1411 repealed by section 576 of division A of Public Law 114-328.】

STUDY OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1412. 【20 U.S.C. 930】 (a)(1) The Director may from time to time, but not more frequently than once a year, provide for a comprehensive study of the entire defense dependents' education system. Any such study shall include a detailed analysis of the education programs and the facilities of the system.

(2) Any study under paragraph (1) shall be conducted by a contractor selected by the Director after an open competition. After conducting such study, the contractor shall submit a report to the Director describing the results of the study and giving its assessment of the defense dependents' education system.

(b) In designing the specifications for any study to be conducted pursuant to subsection (a)(1), and in selecting a contractor to conduct such study under subsection (a)(2), the Director shall consult with the Advisory Council on Dependents' Education established under section 1411 of this title.

(c) The Director shall submit to the Congress any report submitted to him under subsection (a)(2) describing the results of a study carried out pursuant to subsection (a)(1), together with the recommendations, if any, of the contractor for legislation or any increase in funding needed to improve the defense dependents' education system. Notwithstanding any law, rule, or regulation to the contrary, such report shall not be submitted to any review before its transmittal to the Congress, but the Secretary of Defense shall, at the time of the transmittal of such report, submit to the Congress such recommendations as he may have with respect to legislation or any increase in funding needed to improve the defense dependents' education system.

REGULATIONS

SEC. 1413. 【20 U.S.C. 931】 The Secretary of Defense shall issue regulations to carry out this title. Such regulations shall—

(1) prescribe the educational goals and objectives of the defense dependents' education system,

(2) establish standards for the development of curricula for the system and for the selection of instructional materials,

(3) prescribe professional standards for professional personnel employed in the system,

(4) provide for arrangements between the Director and commanders of military installations for necessary logistic support for schools of the system located on military installations,

(5) provide for a recertification program for professional personnel employed in the system, and

(6) provide for such other matters as may be necessary to ensure the efficient organization and operation of the defense dependents' education system.

DEFINITIONS

SEC. 1414. 【20 U.S.C. 932】 For purposes of this title:

- (1) The term “dependent” means a minor individual—
- (A) who has not completed secondary schooling, and
 - (B) who is the child, stepchild, adopted child, ward, or spouse of a sponsor, or who is a resident in the household of a sponsor who stands in loco parentis to such individual and who receives one half or more of his support from such sponsor.
- (2) The term “sponsor” means a person—
- (A) who is—
 - (i) a member of the Armed Forces serving on active duty, or
 - (ii) a full-time civilian officer or employee of the Department of Defense and a citizen or national of the United States; and
 - (B) who is authorized to transport dependents to or from an overseas area at Government expense and is provided an allowance for living quarters in that area.
- (3) The term “overseas area” means any area situated outside the United States.
- (4) The term “United States”, when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island).
- (5) The term “involuntarily separated” has the meaning given that term in section 1141 of title 10, United States Code.
- (6) The term “Director” means the Director of the Department of Defense Education Activity.

EFFECTIVE DATES

SEC. 1415. [20 U.S.C. 921 note] (a)(1) Except as provided in paragraph (2) this title shall take effect on July 1, 1979.

(2) Section 1407(b) and the amendments made by section 1407(c), 1408(a), and 1408(b) shall take effect on October 1, 1978.

(b) Notwithstanding subsection (a) or any other provision of this title no provision of this title shall be construed to impair or prevent the taking effect of the provision of any other Act providing for the transfer of the functions described in this title to an executive department having responsibility for education.

TITLE XV—MISCELLANEOUS PROVISIONS

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PART C—MISCELLANEOUS AMENDMENTS; EFFECTIVE DATES²⁶

PREPARATION OF CENSUS DATA

SEC. 1521. [20 U.S.C. 2711 note] For the purpose of establishing a reliable statistical basis for the rendering of determinations under section 111(c) of the Elementary and Secondary Education Act of 1965, and for other purposes, the Secretary of Com-

²⁶Parts A and B of title XV, relating to the International Year of the Child and the National Academy of Peace and Conflict Resolution, have been executed and are therefore not included in this compilation.

merce shall take such steps as may be necessary to ensure that data developed from the 1980 decennial census will be available to the Secretary of Health, Education, and Welfare and to the Commissioner of Education identifying data for children under 18 years of age, by single year of age, for school districts. Such data shall relate to the family characteristics of these children, including income, education, and such other family characteristics as may be appropriate and available from the decennial census.

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AVAILABILITY OF EDUCATION REPORTS

SEC. 1523. [20 U.S.C. 1226c-1] Any evaluation report or data or information collected in preparation of such report, which is paid for with appropriated funds, shall be made available, upon request, within 4 days to the chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives and of the Committee on Labor and Human Resources of the Senate.

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TELEVISION PROGRAM ASSISTANCE

SEC. 1527. [20 U.S.C. 1221j] (a) The Secretary is authorized to make grants to and contracts with public and private agencies for the production, development, or distribution (or any combination thereof) of programs designed for television systems, whether broadcast or nonbroadcast.

(b) The Assistant Secretary for Education shall be responsible for the administration of this section and shall also conduct surveys, research, and evaluation studies which may assist in decisions to support pilot programs for full scale production.

LIMITATION ON CONTRACTING AUTHORITY

SEC. 1528. Notwithstanding any other provision of this Act, no authority to enter into contracts under this Act shall be effective except to such an extent or in such amounts as are provided in advance in appropriations Acts.

REPEAL

SEC. 1529. Title VII of the Education Amendments of 1974 is repealed.

GENERAL EFFECTIVE DATE

SEC. 1530. Except as otherwise specifically provided in this Act, the provisions of this Act and the amendments and repeals made by this Act shall take effect October 1, 1978.