

(A) if the amount of the grant determined under subsection (b) of this section for fiscal year 1991 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1990, the sum of—

- (i) such amount received, plus
- (ii) ½ of the excess of—
 - (I) such amount determined under subsection (b) of this section, over
 - (II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b) of this section, the excess of—

- (i) such amount received, over
- (ii) an amount equal to ½ of the excess of—
 - (I) such amount received over,
 - (II) such amount determined under subsection (b) of this section.

(i) Application of section to certain tribally controlled schools

The provisions of this section shall also apply to those schools operating under the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.].

(Pub. L. 95-561, title XI, §1128, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3993.)

REFERENCES IN TEXT

The Tribally Controlled Schools Act of 1988, referred to in subsecs. (d)(4) and (i), is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, as amended, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d)(4)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to part A (§450 et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

PRIOR PROVISIONS

Prior sections 2008 and 2008a were omitted in the general amendment of this chapter by Pub. L. 103-382.

Section 2008, Pub. L. 95-561, title XI, §1128, Nov. 1, 1978, 92 Stat. 2320; Pub. L. 96-46, §2(b)(7), (8), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §505, Oct. 19, 1984, 98 Stat. 2394; Pub. L. 99-89, §5, Aug. 15, 1985, 99 Stat. 381; Pub. L. 99-228, §1, Dec. 28, 1985, 99 Stat. 1747; Pub. L. 100-297, title V, §§5107(a), 5108(b), (c), Apr. 28, 1988, 102 Stat. 368, 375; Pub. L. 100-427, §§2(a), (b)(1), (c), 3, 5, Sept. 9, 1988, 102 Stat. 1604, 1605; Pub. L. 101-301, §5(d)(1), May 24, 1990, 104 Stat. 208; Pub. L. 103-382, title III, §393(b), Oct. 20, 1994, 108 Stat. 4026, related to allotment formula.

Section 2008a, Pub. L. 95-561, title XI, §1128A, as added Pub. L. 100-297, title V, §5108(a), Apr. 28, 1988, 102 Stat. 369; amended Pub. L. 100-427, §4, Sept. 9, 1988, 102 Stat. 1604; Pub. L. 101-301, §5(f), May 24, 1990, 104 Stat. 208, related to administrative cost grants.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 458cc, 2503, 2504, 2511 of this title.

§ 2009. Division of Budget Analysis

(a) Establishment

Within 24 months of October 20, 1994, the Secretary shall establish within the Office a Divi-

sion of Budget Analysis (hereinafter referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) Functions

The Division shall have the capacity to conduct such studies, surveys, or other activities as are necessary to gather demographic information on Bureau-funded schools (current and future) and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

(c) Annual reports

The Division shall prepare projections on such amounts, along with such other information as the Director of the Office shall require, for each fiscal year beginning after October 1, 1996. The Director of the Office and the Assistant Secretary for Indian Affairs shall use such reports when preparing their annual budget submissions.

(Pub. L. 95-561, title XI, §1129, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3998.)

PRIOR PROVISIONS

A prior section 2009, Pub. L. 95-561, title XI, §1129, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 98-511, title V, §§506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396; Pub. L. 99-89, §6, Aug. 15, 1985, 99 Stat. 382; Pub. L. 99-570, title IV, §4133(b)(4), Oct. 27, 1986, 100 Stat. 3207-134; Pub. L. 100-297, title V, §§5109, 5110, 5118, Apr. 28, 1988, 102 Stat. 375, 376, 382; Pub. L. 100-427, §§6, 9(d), Sept. 9, 1988, 102 Stat. 1605, 1607, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2006 of this title.

§ 2010. Uniform direct funding and support

(a) Establishment of system

(1) Within six months after October 20, 1994, the Secretary shall establish, by regulation adopted in accordance with section 2019¹ of this title, a system for the direct funding and support of all Bureau funded schools. Such system shall allot funds, in accordance with section 2007 of this title. All amounts appropriated for distribution under this section may be made available under paragraph (2).

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 2007 of this title, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which such amounts are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

- (i) publish, on July 1 of the fiscal year for which the funds are appropriated, allotments to each affected school made under section 2007 of this title of 85 percent of such appropriation; and

¹ See References in Text note below.

(ii) publish, not later than September 30 of such fiscal year, the allotments to be made under section 2007 of this title of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

(3)(A) Notwithstanding any law or regulation, the supervisor of a Bureau school may expend an aggregate of not more than \$35,000 of the amount allotted the school under section 2007 of this title to acquire supplies and equipment for the school without competitive bidding if—

(i) the cost for any single item purchased does not exceed \$10,000;

(ii) the school board approves the procurement;

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

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

(v) the transaction is documented in a journal maintained at the school clearly identifying when the transaction occurred, what was acquired and from whom, the prices paid, the quantities acquired, and any other information the supervisor or school board considers relevant.

(B) The Director shall be responsible for determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph, and shall be responsible for the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

(4) 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 2007 of this title 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) the Secretary, notwithstanding any other law, may use—

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

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

to fund allotments made under section 2007 of this title, and

(B) the Secretary may waive the application of the provisions of section 2001(h) of this title 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 2007 of this title for such fiscal year.

(b) Local financial plans for expenditure of funds

In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such fi-

ancial plan, and expenditures thereunder, and, on its own determination 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. The supervisor shall provide the appropriate union representative of the education employees with copies of proposed draft financial plans and all amendments or modifications thereto, at the same time such copies are submitted to the local school board. The supervisor of the school 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. 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 appropriate education line officer may, for good cause, overturn the action of the local school board. The appropriate line education 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) Use of self-determination grant funds

Funds for self-determination grants under section 450h(a)(2) of this title shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary may approve applications for funding tribal divisions of education and the development of tribal codes of education from funds appropriated pursuant to section 450h(a)¹ of this title.

(d) Technical assistance and training

In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and the Secretary shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

(e) Summer program of academic and support services

(1) A financial plan under subsection (b) of this section 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. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) 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) The Assistant Secretary of Indian Affairs, acting through the Director of the Office, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, 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) From funds allotted to a Bureau school under section 2007 of this title, the Secretary shall, if specifically requested by the tribal governing body (within the meaning of section 2001(k) of this title), implement any cooperative agreement entered into between the tribe, the Bureau school board, and the local public school district which meets the requirements of paragraph (2) and involves the school. The tribe, the Bureau school board, and the local public school district shall determine the terms of the agreement. Such agreement may encompass coordination of all or any part of the following:

(A) Academic program and curriculum, unless the Bureau school is currently accredited by a State or regional accrediting entity and would not continue to be so accredited.

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

(C) Transportation.

(2) Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed, though this requirement shall not be construed so as to require equal expenditures or an exchange of similar services.

(g) Product or result of student projects

Notwithstanding any other provision of law, where 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) Federal matching funds requirements

Notwithstanding any other provision of law, funds received by a Bureau funded school under this chapter shall not be considered Federal funds for purposes of meeting a matching funds requirement in any Federal program.

(Pub. L. 95-561, title XI, §1130, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3999.)

REFERENCES IN TEXT

Section 2019 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105-362, title VIII, §801(c)(5), Nov. 10, 1998, 112 Stat. 3288.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, re-

pealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Section 450h(a) of this title, referred to in subsec. (c), was in the original "section 104(a) of such Act", meaning section 104(a) of the Indian Self-Determination and Education Assistance Act, which was translated as reading section 103(a) of that Act to reflect the probable intent of Congress, because section 104(a) amended section 3371 of Title 5, Government Organization and Employees, but former section 104(a), which was renumbered section 103(a) by Pub. L. 100-472, title II, §202(a), Oct. 5, 1988, 102 Stat. 2289, authorizes the Secretary of the Interior to contract with and make grants to tribal organizations.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

This Act, referred to in subsec. (e)(2), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h), was in the original "this title", meaning title XI (§§1101-1152) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95-561, title XI, §1130, Nov. 1, 1978, 92 Stat. 2321; Pub. L. 100-297, title V, §5111, Apr. 28, 1988, 102 Stat. 376; Pub. L. 100-427, §7, Sept. 9, 1988, 102 Stat. 1605, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2007, 2012, 2017, 2411 of this title; title 20 section 7816.

§2011. Policy for Indian control of Indian education

(a) Facilitation of Indian control

It shall be the policy of the Secretary and the Bureau, 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) All actions under this Act shall be done with active consultation with tribes.

(2) The consultation required under paragraph (1) 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. During such discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be given an opportunity to participate and discuss the options presented or to present other alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from informa-