

of a Bureau-funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

**(h) Matching fund requirements**

**(1) Not considered Federal funds**

Notwithstanding any other provision of law, funds received by a Bureau-funded school under this chapter for education-related activities (not including funds for construction, maintenance, and facilities improvement or repair) shall not be considered Federal funds for the purposes of a matching funds requirement for any Federal program.

**(2) Limitation**

In considering an application from a Bureau-funded school for participation in a program or project that requires matching funds, the entity administering such program or project or awarding such grant shall not give positive or negative weight to such application based solely on the provisions of paragraph (1).

(Pub. L. 95-561, title XI, §1130, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2039.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(4), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Act of April 16, 1934, referred to in subsec. (e)(2), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, 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 of 1978 Amendment note set out under section 6301 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h)(1), was in the original "this title", meaning title XI (§1101 et seq.) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2010, Pub. L. 95-561, title XI, §1130, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 3999, related to uniform direct funding and support, prior to the general amendment of this chapter by Pub. L. 107-110.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2015, 2411 of this title.

**§ 2011. Policy for Indian control of Indian education**

**(a) Facilitation of Indian control**

It shall be the policy of the United States acting through the Secretary, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

**(b) Consultation with tribes**

**(1) In general**

All actions under this Act shall be done with active consultation with tribes. The United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

**(2) Requirements**

**(A) Definition of consultation**

In this subsection, the term "consultation" means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties.

**(B) Discussion and joint deliberation**

During discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity—

(i) to present issues (including proposals regarding changes in current practices or programs) that will be considered for future action by the Secretary; and

(ii) to participate and discuss the options presented, or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action.

**(C) Explanation by Secretary**

The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties described in subparagraph (B).

(Pub. L. 95-561, title XI, §1131, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2043.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 2011, Pub. L. 95-561, title XI, §1131, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4001, related to policy for Indian control of Indian education, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2011, Pub. L. 95-561, title XI, §1131, Nov. 1, 1978, 92 Stat. 2322; 1978 Reorg. Plan No. 2,

§102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 98-511, title V, §507(b), Oct. 19, 1984, 98 Stat. 2396; Pub. L. 100-297, title V, §§5112(a), (b)(1), 5114, 5115, Apr. 28, 1988, 102 Stat. 377, 378, 380; Pub. L. 100-427, §9(a)-(c), Sept. 9, 1988, 102 Stat. 1606, related to education personnel, prior to the general amendment of this chapter by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 472a, 2001, 2008 of this title.

**§ 2012. Indian education personnel**

**(a) In general**

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

**(b) Regulations**

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

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

**(c) Qualifications of educators**

**(1) Requirements**

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

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

(B) a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2) of this section, 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) of this section, a determination by a school board that such a person be hired shall be instituted by the supervisor of the school involved; and

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

(i) such individual's name appear on a list maintained pursuant to subparagraph (A); or

(ii) such individual have applied at the national level for an education position.

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

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

**(d) Hiring of educators**

**(1) Requirements**

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

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

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

(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 em-

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

ployed 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) of this section, 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)<sup>2</sup> of this section 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

<sup>2</sup>So in original. Subsec. (c)(1)(A) of this section does not contain clauses.

written opinion to such board and to such 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 472 of this title 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 450e(b) of this title.

**(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 1602(c) of title 43); 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 com-

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 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 January 8, 2002, and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.].

**(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 January 8, 2002, 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 January 8, 2002, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of January 8, 2002, 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 payment of compensation from that which was in effect for the fiscal year following January 8, 2002, 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)<sup>3</sup> 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.

<sup>3</sup>See References in Text note below.

**(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, except that leave earned or accrued under regulations promulgated pursuant to subsection (b)(10) of this section 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) of this section 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)<sup>4</sup> of this section 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, 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, 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 chapter 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 and chapter 171 of title 28.

**(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 this section or title 5.

<sup>4</sup>So in original. Subsec. (l)(1) of this section does not contain subpars.

**(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) of this section.

**(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 shall apply.

**(3) Applicability of subsection**

This subsection applies to all Bureau employees, regardless of whether the employee is employed under this section or title 5.

**(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)<sup>3</sup> 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,<sup>5</sup> without the consent of such educator 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 2009(b)<sup>6</sup> of this title; 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, non-supervisory, 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

<sup>3</sup>So in original. The comma probably should be a closing parenthesis.

<sup>6</sup>So in original. Probably should be section “2010(b)”.

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.

(Pub. L. 95-561, title XI, §1132, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2044.)

#### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (g)(1)(A)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

The Defense Department Overseas Teachers Pay and Personnel Practices Act, referred to in subsec. (g)(1)(B), is Pub. L. 86-91, July 17, 1959, 73 Stat. 213, as amended, which is classified generally to chapter 25 (§901 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 901 of Title 20 and Tables.

Subsection (p), referred to in subssecs. (g)(1)(D)(ii) and (q)(1), probably should be a reference to subsec. (o) of prior section 1131 of Pub. L. 95-561 which was classified to section 2011 of this title prior to the general amendment of this chapter by Pub. L. 103-382. See Prior Provisions note set out under section 2011 of this title.

#### PRIOR PROVISIONS

A prior section 2012, Pub. L. 95-561, title XI, §1132, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4002; amended Pub. L. 105-362, title VIII, §801(c)(3), Nov. 10, 1998, 112 Stat. 3288, related to education personnel, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2012, Pub. L. 95-561, title XI, §1132, Nov. 1, 1978, 92 Stat. 2326; Pub. L. 96-46, §2(b)(9), Aug. 6, 1979, 93 Stat. 341; Pub. L. 98-511, title V, §508, Oct. 19, 1984, 98 Stat. 2397, related to establishment of a computerized management information system, prior to the general amendment of this chapter by Pub. L. 103-382.

#### ADJUSTMENTS TO RATES OF BASIC COMPENSATION OR ANNUAL SALARY RATES FOR EDUCATION POSITIONS

Pub. L. 104-208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193, provided in part: "That in fiscal year 1997 and thereafter, notwithstanding the provisions of [former] 25 U.S.C. 2012(h)(1)(A) and (B) [see now 25 U.S.C. 2012(g)(1)(A), (B)], upon the recommendation of either (i) a local school board and school supervisor for an education position in a Bureau of Indian Affairs operated school, or (ii) an Agency school board and education line officer for an Agency education position, the Secretary [of the Interior] shall establish adjustments to the rates of basic compensation or annual salary rates established under [former] 25 U.S.C. 2012(h)(1)(A) and (B) for education positions at the school or the Agency, at a level not less than that for comparable positions in the nearest public school district, and the adjustment shall be deemed to be a change to basic pay and shall not be subject to collective bargaining: *Provided further*, That any reduction to rates of basic compensation or annual salary rates below the rates established under [former]

25 U.S.C. 2012(h)(1)(A) and (B) shall apply only to educators appointed after June 30, 1997, and shall not affect the right of an individual employed on June 30, 1997, in an education position, to receive the compensation attached to such position under [former] 25 U.S.C. 2012(h)(1)(A) and (B) so long as the individual remains in the same position at the same school".

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-134, title I, §101(c) [title I], Apr. 26, 1996, 110 Stat. 1321-156, 1321-171; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 105-83, title I, Nov. 14, 1997, 111 Stat. 1555, provided in part: "That beginning in fiscal year 1998 and thereafter and notwithstanding [former] 25 U.S.C. 2012(h)(1)(B) [see now 25 U.S.C. 2012(g)(1)(B)], when the rates of basic compensation for teachers and counselors at Bureau-operated schools are established at the rates of basic compensation applicable to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act [20 U.S.C. 901 et seq.], such rates shall become effective with the start of the next academic year following the issuance of the Department of Defense salary schedule and shall not be effected retroactively".

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-208, div. A, title I, §101(d) [title I], Sept. 30, 1996, 110 Stat. 3009-181, 3009-193.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2505 of this title.

### § 2013. Computerized management information system

#### (a) In general

Not later than 12 months after January 8, 2002, the Secretary shall update the computerized management 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.

(Pub. L. 95-561, title XI, §1133, as added Pub. L. 107-110, title X, §1042, Jan. 8, 2002, 115 Stat. 2055.)

#### PRIOR PROVISIONS

A prior section 2013, Pub. L. 95-561, title XI, §1133, as added Pub. L. 103-382, title III, §381, Oct. 20, 1994, 108 Stat. 4010, related to management information system, prior to the general amendment of this chapter by Pub. L. 107-110.

Another prior section 2013, Pub. L. 95-561, title XI, §1133, Nov. 1, 1978, 92 Stat. 2327, related to Bureau education policies, practices, and procedures, prior to the general amendment of this chapter by Pub. L. 103-382.