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1           **PART B—INDIAN AND ALASKA NATIVE**

2                           **EDUCATION**

3   **SEC. 311. ELEMENTARY AND SECONDARY EDUCATION ACT**

4                           **OF 1965.**

5           (a) IN GENERAL.—Title III (as amended by section  
6 301 of this Act) is further amended by adding at the end  
7 the following new part:

8                           **“PART B—INDIAN AND ALASKA NATIVE**

9   **EDUCATION**

10                                   **“Subpart 1—Indian Education**

11   **“SEC. 3201. FINDINGS.**

12           “Congress finds that—

13                   “(1) the Federal Government has a special re-  
14                   sponsibility to ensure that educational programs for  
15                   all American Indian and Alaska Native children and  
16                   adults—

17                           “(A) are based on high-quality, inter-  
18                           nationally competitive content standards and  
19                           student performance standards and build on In-  
20                           dian culture and the Indian community;

21                           “(B) assist local educational agencies, In-  
22                           dian tribes, and other entities and individuals in  
23                           providing Indian students the opportunity to  
24                           achieve such standards; and

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1           “(C) meet the unique educational and cul-  
2           turally related academic needs of American In-  
3           dian and Alaska Native students;

4           “(2) since the date of the enactment of the ini-  
5           tial Indian Education Act in 1972, the level of in-  
6           volvement of Indian parents in the planning, devel-  
7           opment, and implementation of educational pro-  
8           grams that affect such parents and their children  
9           has increased significantly, and schools should con-  
10          tinue to foster such involvement;

11          “(3) although the number of Indian teachers,  
12          administrators, and university professors has in-  
13          creased since 1972, teacher training programs are  
14          not recruiting, training, or retraining a sufficient  
15          number of Indian individuals as educators to meet  
16          the needs of a growing Indian student population in  
17          elementary, secondary, vocational, adult, and higher  
18          education;

19          “(4) the dropout rate for Indian students is un-  
20          acceptably high; 9 percent of Indian students who  
21          were eighth graders in 1988 had dropped out of  
22          school by 1990;

23          “(5) during the period from 1980 to 1990, the  
24          percentage of Indian individuals living at or below  
25          the poverty level increased from 24 percent to 31

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1 percent, and the readiness of Indian children to  
2 learn is hampered by the high incidence of poverty,  
3 unemployment, and health problems among Indian  
4 children and their families; and

5 “(6) research related specifically to the edu-  
6 cation of Indian children and adults is very limited,  
7 and much of the research is of poor quality or is fo-  
8 cused on limited local or regional issues.

9 **“SEC. 3202. PURPOSE.**

10 “(a) PURPOSE.—It is the purpose of this subpart to  
11 support the efforts of local educational agencies, Indian  
12 tribes and organizations, postsecondary institutions, and  
13 other entities to meet the unique educational and cul-  
14 turally related academic needs of American Indians and  
15 Alaska Natives, so that such students can achieve to the  
16 same challenging State performance standards expected of  
17 all other students.

18 “(b) PROGRAMS.—this subpart carries out the pur-  
19 pose described in subsection (a) by authorizing programs  
20 of direct assistance for—

21 “(1) meeting the unique educational and cul-  
22 turally related academic needs of American Indians  
23 and Alaska Natives;

24 “(2) the education of Indian children and  
25 adults;

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1           “(3) the training of Indian persons as educators  
2           and counselors, and in other professions serving In-  
3           dian people; and

4           “(4) research, evaluation, data collection, and  
5           technical assistance.

6           **“CHAPTER I—FORMULA GRANTS TO**  
7           **LOCAL EDUCATIONAL AGENCIES**

8           **“SEC. 3211. PURPOSE.**

9           “‘It is the purpose of this chapter to support local  
10          educational agencies in their efforts to reform elementary  
11          and secondary school programs that serve Indian students  
12          in order to ensure that such programs—

13                 “(1) are based on challenging State content  
14                 standards and State student performance standards  
15                 that are used for all students; and

16                 “(2) are designed to assist Indian students in  
17                 meeting those standards and assist the Nation in  
18                 reaching the National Education Goals.

19          **“SEC. 3212. GRANTS TO LOCAL EDUCATIONAL AGENCIES.**

20                 “(a) IN GENERAL.—

21                         “(1) ENROLLMENT REQUIREMENTS.—A local  
22                         educational agency shall be eligible for a grant under  
23                         this chapter for any fiscal year if the number of In-  
24                         dian children eligible under section 3217 and who  
25                         were enrolled in the schools of the agency, and to

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1 whom the agency provided free public education,  
2 during the preceding fiscal year—

3 “(A) was at least 10; or

4 “(B) constituted not less than 25 percent  
5 of the total number of individuals enrolled in  
6 the schools of such agency.

7 “(2) EXCLUSION.—The requirement of para-  
8 graph (1) shall not apply in Alaska, California, or  
9 Oklahoma, or with respect to any local educational  
10 agency located on, or in proximity to, a reservation.

11 “(b) INDIAN TRIBES.—

12 “(1) IN GENERAL.—If a local educational agen-  
13 cy that is eligible for a grant under this chapter does  
14 not establish a parent committee under section  
15 3214(c)(4) for such grant, an Indian tribe that rep-  
16 resents not less than one-half of the eligible Indian  
17 children who are served by such local educational  
18 agency may apply for such grant.

19 “(2) SPECIAL RULE.—The Secretary shall treat  
20 each Indian tribe applying for a grant pursuant to  
21 paragraph (1) as if such Indian tribe were a local  
22 educational agency for purposes of this chapter, ex-  
23 cept that any such tribe is not subject to section  
24 3214(c)(4), section 3218(c), or section 3219.

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1 **“SEC. 3213. AMOUNT OF GRANTS.**

2 “(a) AMOUNT OF GRANT AWARDS.—

3 “(1) IN GENERAL.—Except as provided in sub-  
4 section (b) and paragraph (2), the Secretary shall  
5 allocate to each local educational agency which has  
6 an approved application under this chapter an  
7 amount equal to the product of—8 “(A) the number of Indian children who  
9 are eligible under section 3217 and served by  
10 such agency; and

11 “(B) the greater of—

12 “(i) the average per pupil expenditure  
13 of the State in which such agency is lo-  
14 cated; or15 “(ii) 80 percent of the average per  
16 pupil expenditure in the United States.17 “(2) REDUCTION.—The Secretary shall reduce  
18 the amount of each allocation determined under  
19 paragraph (1) in accordance with subsection (e).

20 “(b) MINIMUM GRANT.—

21 “(1) IN GENERAL.—Notwithstanding subsection  
22 (e), a local educational agency or an Indian tribe (as  
23 authorized under section 3212(b)) that is eligible for  
24 a grant under section 3212, and a school that is op-  
25 erated or supported by the Bureau of Indian Affairs  
26 that is eligible for a grant under subsection (d), that

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1 submits an application that is approved by the Sec-  
2 retary, shall, subject to appropriations, receive a  
3 grant under this chapter in an amount that is not  
4 less than \$3,000.

5 “(2) CONSORTIA.—Local educational agencies  
6 may form a consortium for the purpose of obtaining  
7 grants under this chapter.

8 “(3) INCREASE.—The Secretary may increase  
9 the minimum grant under paragraph (1) to not  
10 more than \$4,000 for all grantees if the Secretary  
11 determines such increase is necessary to ensure the  
12 quality of the programs provided.

13 “(c) DEFINITION.—For the purpose of this section,  
14 the term ‘average per pupil expenditure of a State’ means  
15 an amount equal to—

16 “(1) the sum of the aggregate current expendi-  
17 tures of all the local educational agencies in the  
18 State, plus any direct current expenditures by the  
19 State for the operation of such agencies, without re-  
20 gard to the sources of funds from which such local  
21 or State expenditures were made, during the second  
22 fiscal year preceding the fiscal year for which the  
23 computation is made; divided by

24 “(2) the aggregate number of children who  
25 were included in average daily attendance for whom

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1 such agencies provided free public education during  
2 such preceding fiscal year.

3 “(d) SCHOOLS OPERATED OR SUPPORTED BY THE  
4 BUREAU OF INDIAN AFFAIRS.—(1) Subject to subsection  
5 (e), in addition to the grants awarded under subsection  
6 (a), the Secretary shall allocate to the Secretary of the  
7 Interior an amount equal to the product of—

8 “(A) the total number of Indian children en-  
9 rolled in schools that are operated by—

10 “(i) the Bureau of Indian Affairs; or

11 “(ii) an Indian tribe, or an organization  
12 controlled or sanctioned by an Indian tribal  
13 government, for the children of that tribe under  
14 a contract with, or grant from, the Department  
15 of the Interior under the Indian Self-Deter-  
16 mination Act or the Tribally Controlled Schools  
17 Act of 1988; and

18 “(B) the greater of—

19 “(i) the average per pupil expenditure of  
20 the State in which the school is located; or

21 “(ii) 80 percent of the average per pupil  
22 expenditure in the United States.

23 “(2) Any school described in paragraph (1)(A) that  
24 wishes to receive an allocation under this chapter shall  
25 submit an application in accordance with section 3214,



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1 and shall otherwise be treated as a local educational agen-  
2 cy for the purpose of this chapter, except that such school  
3 shall not be subject to section 3214(c)(4), section 3218(c),  
4 or section 3219.

5 “(e) **RATABLE REDUCTIONS.**—If the sums appro-  
6 priated for any fiscal year under section 3252(a) are insuf-  
7 ficient to pay in full the amounts determined for local edu-  
8 cational agencies under subsection (a)(1) and for the Sec-  
9 retary of the Interior under subsection (d), each of those  
10 amounts shall be ratably reduced.

11 **“SEC. 3214. APPLICATIONS.**

12 “(a) **APPLICATION REQUIRED.**—Each local edu-  
13 cational agency that desires to receive a grant under this  
14 chapter shall submit an application to the Secretary at  
15 such time, in such manner, and containing such informa-  
16 tion as the Secretary may reasonably require.

17 “(b) **COMPREHENSIVE PROGRAM REQUIRED.**—Each  
18 application submitted under subsection (a) shall include  
19 a comprehensive program for meeting the needs of Indian  
20 children served by the local educational agency, including  
21 the language and cultural needs of the children, that—

22 “(1) provides programs and activities to meet  
23 the culturally related academic needs of American  
24 Indian and Alaska Native students;

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1           “(2)(A) is consistent with State and local plans  
2           under other provisions of this Act; and

3           “(B) includes academic content and student  
4           performance goals for such children, and bench-  
5           marks for attaining such goals, that are based on  
6           the challenging State standards under title I;

7           “(3) explains how Federal, State, and local pro-  
8           grams, especially under title I, will meet the needs  
9           of such students;

10          “(4) demonstrates how funds made available  
11          under this chapter will be used for activities de-  
12          scribed in section 3215;

13          “(5) describes the professional development op-  
14          portunities that will be provided, as needed, to en-  
15          sure that—

16                 “(A) teachers and other school profes-  
17                 sionals who are new to the Indian community  
18                 are prepared to work with Indian children; and

19                 “(B) all teachers who will be involved in  
20                 programs assisted under this chapter have been  
21                 properly trained to carry out such programs;  
22                 and

23          “(6) describes how the local educational  
24          agency—

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1           “(A) will periodically assess the progress of  
2 all Indian children enrolled in the schools of the  
3 local educational agency, including Indian chil-  
4 dren who do not participate in programs as-  
5 sisted under this chapter, in meeting the goals  
6 described in paragraph (2);

7           “(B) will provide the results of each as-  
8 sessment referred to in subparagraph (A) to—

9                   “(i) the committee of parents de-  
10 scribed in subsection (c)(4); and

11                   “(ii) the community served by the  
12 local educational agency; and

13           “(C) is responding to findings of any pre-  
14 vious assessments that are similar to the as-  
15 sements described in subparagraph (A).

16           “(c) ASSURANCES.—Each application submitted  
17 under subsection (a) shall include assurances that—

18                   “(1) the local educational agency will use funds  
19 received under this chapter only to supplement the  
20 level of funds that, in the absence of the Federal  
21 funds made available under this chapter, such agen-  
22 cy would make available for the education of Indian  
23 children, and not to supplant such funds;

24                   “(2) the local educational agency will submit  
25 such reports to the Secretary, in such form and con-

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1       taining such information, as the Secretary may re-  
2       quire to—

3               “(A) carry out the functions of the Sec-  
4       retary under this chapter; and

5               “(B) determine the extent to which funds  
6       provided to the local educational agency under  
7       this chapter are effective in improving the edu-  
8       cational achievement of Indian students served  
9       by such agency;

10              “(3) the program for which assistance is  
11      sought—

12              “(A) is based on a comprehensive local as-  
13      sessment and prioritization of the unique edu-  
14      cational and culturally related academic needs  
15      of the American Indian and Alaska Native stu-  
16      dents to whom the local educational agency is  
17      providing an education;

18              “(B) will use the best available talents and  
19      resources, including individuals from the Indian  
20      community; and

21              “(C) was developed by such agency in open  
22      consultation with parents of Indian children  
23      and teachers, and, if appropriate, Indian stu-  
24      dents from secondary schools, including public  
25      hearings held by such agency to provide the in-

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1 individuals described in this subparagraph a full  
2 opportunity to understand the program and to  
3 offer recommendations regarding the program;  
4 and

5 “(4) the local educational agency developed the  
6 program with the participation and written approval  
7 of a committee—

8 “(A) that is composed of, and selected  
9 by—

10 “(i) parents of Indian children in the  
11 local educational agency’s schools and  
12 teachers; and

13 “(ii) if appropriate, Indian students  
14 attending secondary schools;

15 “(B) a majority of whose members are  
16 parents of Indian children;

17 “(C) that sets forth such policies and pro-  
18 cedures, including policies and procedures relat-  
19 ing to the hiring of personnel, as will ensure  
20 that the program for which assistance is sought  
21 will be operated and evaluated in consultation  
22 with, and with the involvement of, parents of  
23 the children, and representatives of the area, to  
24 be served;

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1           “(D) with respect to an application de-  
2           scribing a schoolwide program in accordance  
3           with section 3215(c), that has—

4                   “(i) reviewed in a timely fashion the  
5                   program; and

6                   “(ii) determined that the program will  
7                   not diminish the availability of culturally  
8                   related activities for American Indian and  
9                   Alaskan Native students; and

10           “(E) that has adopted reasonable bylaws  
11           for the conduct of the activities of the com-  
12           mittee and abides by such bylaws.

13   **“SEC. 3215. AUTHORIZED SERVICES AND ACTIVITIES.**

14           “(a) **GENERAL REQUIREMENTS.**—Each local edu-  
15           cational agency that receives a grant under this chapter  
16           shall use the grant funds, in a manner consistent with the  
17           purpose specified in section 3211, for services and activi-  
18           ties that—

19                   “(1) are designed to carry out the comprehen-  
20                   sive program of the local educational agency for In-  
21                   dian students, and described in the application of  
22                   the local educational agency submitted to the Sec-  
23                   retary under section 3214(b);

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1           “(2) are designed with special regard for the  
2           language and cultural needs of the Indian students;  
3           and

4           “(3) supplement and enrich the regular school  
5           program of such agency.

6           “(b) PARTICULAR ACTIVITIES.—The services and ac-  
7           tivities referred to in subsection (a) may include—

8           “(1) culturally related activities that support  
9           the program described in the application submitted  
10          by the local educational agency;

11          “(2) early childhood and family programs that  
12          emphasize school readiness;

13          “(3) enrichment programs that focus on prob-  
14          lem solving and cognitive skills development and di-  
15          rectly support the attainment of challenging State  
16          content standards and State student performance  
17          standards;

18          “(4) integrated educational services in combina-  
19          tion with other programs that meet the needs of In-  
20          dian children and their families;

21          “(5) career preparation activities to enable In-  
22          dian students to participate in programs such as the  
23          programs supported by the Carl D. Perkins Voca-  
24          tional and Technical Education Act of 1998, includ-

1 ing programs for tech-prep, mentoring, and appren-  
2 ticeship;

3 “(6) activities to educate individuals concerning  
4 substance abuse and to prevent substance abuse;

5 “(7) the acquisition of equipment, but only if  
6 the acquisition of the equipment is essential to meet  
7 the purposes described in section 3211; and

8 “(8) family literacy services.

9 “(c) SCHOOLWIDE PROGRAMS.—Notwithstanding  
10 any other provision of law, a local educational agency may  
11 use funds made available to such agency under this chap-  
12 ter to support a schoolwide program under section 1114  
13 if—

14 “(1) the committee composed of parents estab-  
15 lished pursuant to section 3214(c)(4) approves the  
16 use of the funds for the schoolwide program; and

17 “(2) the schoolwide program is consistent with  
18 the purposes described in section 3211.

19 “(d) LIMITATION ON ADMINISTRATIVE COSTS.—Not  
20 more than 5 percent of the funds provided to a grantee  
21 under this chapter for any fiscal year may be used for  
22 administrative purposes.

23 **“SEC. 3216. INTEGRATION OF SERVICES AUTHORIZED.**

24 “(a) PLAN.—An entity receiving funds under this  
25 chapter may submit a plan to the Secretary for the inte-



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1 gration of education and related services provided to In-  
2 dian students.

3       “(b) COORDINATION OF PROGRAMS.—Upon the re-  
4 ceipt of an acceptable plan, the Secretary, in cooperation  
5 with each Federal agency providing grants for the provi-  
6 sion of education and related services to the applicant,  
7 shall authorize the applicant to coordinate, in accordance  
8 with such plan, its federally funded education and related  
9 services programs, or portions thereof, serving Indian stu-  
10 dents in a manner that integrates the program services  
11 involved into a single, coordinated, comprehensive pro-  
12 gram and reduces administrative costs by consolidating  
13 administrative functions.

14       “(c) PROGRAMS AFFECTED.—The funds that may be  
15 consolidated in a demonstration project under any such  
16 plan referred to in subsection (b) shall include funds for  
17 any Federal program exclusively serving Indian children  
18 or the funds reserved under any program to exclusively  
19 serve Indian children under which the applicant is eligible  
20 for receipt of funds under a statutory or administrative  
21 formula for the purposes of providing education and re-  
22 lated services which would be used to serve Indian stu-  
23 dents.

24       “(d) PLAN REQUIREMENTS.—For a plan to be ac-  
25 ceptable pursuant to subsection (b), it shall—

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1           “(1) identify the programs or funding sources  
2           to be consolidated;

3           “(2) be consistent with the purposes of this sec-  
4           tion authorizing the services to be integrated in a  
5           demonstration project;

6           “(3) describe a comprehensive strategy which  
7           identifies the full range of potential educational op-  
8           portunities and related services to be provided to as-  
9           sist Indian students to achieve the goals set forth in  
10          this chapter;

11          “(4) describe the way in which services are to  
12          be integrated and delivered and the results expected  
13          from the plan;

14          “(5) identify the projected expenditures under  
15          the plan in a single budget;

16          “(6) identify the local, State, or tribal agency  
17          or agencies to be involved in the delivery of the serv-  
18          ices integrated under the plan;

19          “(7) identify any statutory provisions, regula-  
20          tions, policies, or procedures that the applicant be-  
21          lieves need to be waived in order to implement its  
22          plan;

23          “(8) set forth measures of student achievement  
24          and performance goals designed to be met within a  
25          specified period of time; and

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1           “(9) be approved by a parent committee formed  
2           in accordance with section 3214(c)(4), if such a  
3           committee exists.

4           “(e) PLAN REVIEW.—Upon receipt of the plan from  
5           an eligible entity, the Secretary shall consult with the Sec-  
6           retary of each Federal department providing funds to be  
7           used to implement the plan, and with the entity submit-  
8           ting the plan. The parties so consulting shall identify any  
9           waivers of statutory requirements or of Federal depart-  
10          mental regulations, policies, or procedures necessary to en-  
11          able the applicant to implement its plan. Notwithstanding  
12          any other provision of law, the Secretary of the affected  
13          department or departments shall have the authority to  
14          waive any regulation, policy, or procedure promulgated by  
15          that department that has been so identified by the appli-  
16          cant or department, unless the Secretary of the affected  
17          department determines that such a waiver is inconsistent  
18          with the intent of this chapter or those provisions of the  
19          statute from which the program involved derives its au-  
20          thority which are specifically applicable to Indian stu-  
21          dents.

22          “(f) PLAN APPROVAL.—Within 90 days after the re-  
23          ceipt of an applicant’s plan by the Secretary, the Secretary  
24          shall inform the applicant, in writing, of the Secretary’s  
25          approval or disapproval of the plan. If the plan is dis-

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1 approved, the applicant shall be informed, in writing, of  
2 the reasons for the disapproval and shall be given an op-  
3 portunity to amend its plan or to petition the Secretary  
4 to reconsider such disapproval.

5 “(g) RESPONSIBILITIES OF DEPARTMENT OF EDU-  
6 CATION.—Not later than 180 days after the date of the  
7 enactment of the No Child Left Behind Act of 2001, the  
8 Secretary of Education, the Secretary of the Interior, and  
9 the head of any other Federal department or agency iden-  
10 tified by the Secretary of Education, shall enter into an  
11 interdepartmental memorandum of agreement providing  
12 for the implementation of the demonstration projects au-  
13 thorized under this section. The lead agency head for a  
14 demonstration program under this section shall be—

15 “(1) the Secretary of the Interior, in the case  
16 of applicant meeting the definition of contract or  
17 grant school under title XI of the Education Amend-  
18 ments of 1978; or

19 “(2) the Secretary of Education, in the case of  
20 any other applicant.

21 “(h) RESPONSIBILITIES OF LEAD AGENCY.—The re-  
22 sponsibilities of the lead agency shall include—

23 “(1) the use of a single report format related  
24 to the plan for the individual project which shall be

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1 used by an eligible entity to report on the activities  
2 undertaken under the project;

3 “(2) the use of a single report format related  
4 to the projected expenditures for the individual  
5 project which shall be used by an eligible entity to  
6 report on all project expenditures;

7 “(3) the development of a single system of Fed-  
8 eral oversight for the project, which shall be imple-  
9 mented by the lead agency; and

10 “(4) the provision of technical assistance to an  
11 eligible entity appropriate to the project, except that  
12 an eligible entity shall have the authority to accept  
13 or reject the plan for providing such technical assist-  
14 ance and the technical assistance provider.

15 “(i) REPORT REQUIREMENTS.—A single report for-  
16 mat shall be developed by the Secretary, consistent with  
17 the requirements of this section. Such report format, to-  
18 gether with records maintained on the consolidated pro-  
19 gram at the local level, shall contain such information as  
20 will allow a determination that the eligible entity has com-  
21 plied with the requirements incorporated in its approved  
22 plan, including the demonstration of student achievement,  
23 and will provide assurances to each Secretary that the eli-  
24 gible entity has complied with all directly applicable statu-

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1 tory requirements and with those directly applicable regu-  
2 latory requirements which have not been waived.

3 “(j) NO REDUCTION IN AMOUNTS.—In no case shall  
4 the amount of Federal funds available to an eligible entity  
5 involved in any demonstration project be reduced as a re-  
6 sult of the enactment of this section.

7 “(k) INTERAGENCY FUND TRANSFERS AUTHOR-  
8 IZED.—The Secretary is authorized to take such action  
9 as may be necessary to provide for an interagency transfer  
10 of funds otherwise available to an eligible entity in order  
11 to further the purposes of this section.

12 “(l) ADMINISTRATION OF FUNDS.—

13 “(1) IN GENERAL.—Program funds shall be ad-  
14 ministered in such a manner as to allow for a deter-  
15 mination that funds from specific a program or pro-  
16 grams are spent on allowable activities authorized  
17 under such program, except that the eligible entity  
18 shall determine the proportion of the funds granted  
19 which shall be allocated to such program.

20 “(2) SEPARATE RECORDS NOT REQUIRED.—  
21 Nothing in this section shall be construed as requir-  
22 ing the eligible entity to maintain separate records  
23 tracing any services or activities conducted under its  
24 approved plan to the individual programs under  
25 which funds were authorized, nor shall the eligible

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1       entity be required to allocate expenditures among  
2       such individual programs.

3       “(m) OVERAGE.—All administrative costs may be  
4 commingled and participating entities shall be entitled to  
5 the full amount of such costs (under each program or de-  
6 partment’s regulations), and no overage shall be counted  
7 for Federal audit purposes, provided that the overage is  
8 used for the purposes provided for under this section.

9       “(n) FISCAL ACCOUNTABILITY.—Nothing in this  
10 subpart shall be construed so as to interfere with the abil-  
11 ity of the Secretary or the lead agency to fulfill the respon-  
12 sibilities for the safeguarding of Federal funds pursuant  
13 to the Single Audit Act of 1984.

14       “(o) REPORT ON STATUTORY OBSTACLES TO PRO-  
15 GRAM INTEGRATION.—

16               “(1) PRELIMINARY REPORT.—Not later than 2  
17 years after the date of the enactment of the No  
18 Child Left Behind Act of 2001, the Secretary of  
19 Education shall submit a preliminary report to the  
20 Committee on Health, Education, Labor, and Pen-  
21 sions of the Senate and the Committee on Education  
22 and the Workforce of the House of Representatives  
23 on the status of the implementation of the dem-  
24 onstration program authorized under this section.

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1           “(2) FINAL REPORT.—Not later than 5 years  
2 after the date of the enactment of the No Child Left  
3 Behind Act of 2001, the Secretary of Education  
4 shall submit a report to the Committee on Health,  
5 Education, Labor, and Pensions of the Senate and  
6 the Committee on Education and the Workforce of  
7 the House of Representatives on the results of the  
8 implementation of the demonstration program au-  
9 thorized under this section. Such report shall iden-  
10 tify statutory barriers to the ability of participants  
11 to integrate more effectively their education and re-  
12 lated services to Indian students in a manner con-  
13 sistent with the purposes of this section.

14           “(p) DEFINITIONS.—For the purposes of this section,  
15 the term ‘Secretary’ means—

16           “(1) the Secretary of the Interior, in the case  
17 of applicant meeting the definition of contract or  
18 grant school under title XI of the Education Amend-  
19 ments of 1978; or

20           “(2) the Secretary of Education, in the case of  
21 any other applicant.

22 **“SEC. 3217. STUDENT ELIGIBILITY FORMS.**

23           “(a) IN GENERAL.—The Secretary shall require that,  
24 as part of an application for a grant under this chapter,  
25 each applicant shall maintain a file, with respect to each



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1 Indian child for whom the local educational agency pro-  
2 vides a free public education, that contains a form that  
3 sets forth information establishing the status of the child  
4 as an Indian child eligible for assistance under this chap-  
5 ter and that otherwise meets the requirements of subsec-  
6 tion (b).

7 “(b) FORMS.—

8 “(1) IN GENERAL.—The form described in sub-  
9 section (a) shall include—

10 “(A) either—

11 “(i)(I) the name of the tribe or band  
12 of Indians (as described in section  
13 3251(3)) with respect to which the child  
14 claims membership;

15 “(II) the enrollment number estab-  
16 lishing the membership of the child (if  
17 readily available); and

18 “(III) the name and address of the  
19 organization that maintains updated and  
20 accurate membership data for such tribe or  
21 band of Indians; or

22 “(ii) if the child is not a member of  
23 a tribe or band of Indians, the name, the  
24 enrollment number (if readily available),  
25 and the organization (and address thereof)

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1 responsible for maintaining updated and  
2 accurate membership rolls of the tribe of  
3 any parent or grandparent of the child  
4 from whom the child claims eligibility;

5 “(B) a statement of whether the tribe or  
6 band of Indians with respect to which the child,  
7 parent, or grandparent of the child claims mem-  
8 bership is federally recognized;

9 “(C) the name and address of the parent  
10 or legal guardian of the child;

11 “(D) a signature of the parent or legal  
12 guardian of the child that verifies the accuracy  
13 of the information supplied; and

14 “(E) any other information that the Sec-  
15 retary considers necessary to provide an accu-  
16 rate program profile.

17 “(2) MINIMUM INFORMATION.—In order for a  
18 child to be eligible to be counted for the purpose of  
19 computing the amount of a grant award made under  
20 section 3213, an eligibility form prepared pursuant  
21 to this section for a child shall include—

22 “(A) the name of the child;

23 “(B) the name of the tribe or band of Indi-  
24 ans (as described in section 3251(3)) with re-  
25 spect to which the child claims eligibility; and

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1           “(C) the dated signature of the parent or  
2           guardian of the child.

3           “(3) FAILURE.—The failure of an applicant to  
4           furnish any information described in this subsection  
5           other than the information described in paragraph  
6           (2) with respect to any child shall have no bearing  
7           on the determination of whether the child is an eligi-  
8           ble Indian child for the purposes of determining the  
9           amount of a grant award made under section 3213.

10          “(c) STATUTORY CONSTRUCTION.—Nothing in this  
11          section shall be construed to affect a definition contained  
12          in section 3251.

13          “(d) FORMS AND STANDARDS OF PROOF.—The  
14          forms and the standards of proof (including the standard  
15          of good faith compliance) that were in use during the  
16          1985–1986 academic year to establish the eligibility of a  
17          child for entitlement under the Indian Elementary and  
18          Secondary School Assistance Act shall be the forms and  
19          standards of proof used—

20                 “(1) to establish such eligibility; and

21                 “(2) to meet the requirements of subsection (a).

22          “(e) DOCUMENTATION.—For purposes of deter-  
23          mining whether a child is eligible to be counted for the  
24          purpose of computing the amount of a grant under section  
25          3213, the membership of the child, or any parent or

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1 grandparent of the child, in a tribe or band of Indians  
2 may be established by proof other than an enrollment  
3 number, notwithstanding the availability of an enrollment  
4 number for a member of such tribe or band. Nothing in  
5 subsection (b) shall be construed to require the furnishing  
6 of an enrollment number.

7 “(f) MONITORING AND EVALUATION REVIEW.—

8 “(1) IN GENERAL.—(A) For each fiscal year, in  
9 order to provide such information as is necessary to  
10 carry out the responsibility of the Secretary to pro-  
11 vide technical assistance under this chapter, the Sec-  
12 retary shall conduct a monitoring and evaluation re-  
13 view of a sampling of the recipients of grants under  
14 this chapter. The sampling conducted under this  
15 subparagraph shall take into account the size of the  
16 local educational agency and the geographic location  
17 of such agency.

18 “(B) A local educational agency may not be  
19 held liable to the United States or be subject to any  
20 penalty, by reason of the findings of an audit that  
21 relates to the date of completion, or the date of sub-  
22 mission, of any forms used to establish, before April  
23 28, 1988, the eligibility of a child for entitlement  
24 under the Indian Elementary and Secondary School  
25 Assistance Act.

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1           “(2) FALSE INFORMATION.—Any local edu-  
2           cational agency that provides false information in an  
3           application for a grant under this chapter shall—

4                   “(A) be ineligible to apply for any other  
5                   grant under this subpart; and

6                   “(B) be liable to the United States for any  
7                   funds that have not been expended.

8           “(3) EXCLUDED CHILDREN.—A student who  
9           provides false information for the form required  
10           under subsection (a) shall not be counted for the  
11           purpose of computing the amount of a grant under  
12           section 3213.

13           “(g) TRIBAL GRANT AND CONTRACT SCHOOLS.—  
14           Notwithstanding any other provision of this section, in  
15           awarding funds under this chapter to a tribal school that  
16           receives a grant or contract from the Bureau of Indian  
17           Affairs, the Secretary shall use only one of the following,  
18           as selected by the school:

19                   “(1) A count of the number of students in those  
20                   schools certified by the Bureau.

21                   “(2) A count of the number of students for  
22                   whom the school has eligibility forms that comply  
23                   with this section.

24           “(h) TIMING OF CHILD COUNTS.—For purposes of  
25           determining the number of children to be counted in calcu-

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1 lating the amount of a local educational agency's grant  
2 under this chapter (other than in the case described in  
3 subsection (g)(1)), the local educational agency shall—

4           “(1) establish a date on, or a period not longer  
5           than 31 consecutive days during which, the agency  
6           counts those children, so long as that date or period  
7           occurs before the deadline established by the Sec-  
8           retary for submitting an application under section  
9           3214; and

10           “(2) determine that each such child was en-  
11           rolled, and receiving a free public education, in a  
12           school of the agency on that date or during that pe-  
13           riod, as the case may be.

14 **“SEC. 3218. PAYMENTS.**

15           “(a) IN GENERAL.—Subject to subsections (b) and  
16 (c), the Secretary shall pay to each local educational agen-  
17 cy that submits an application that is approved by the Sec-  
18 retary under this chapter the amount determined under  
19 section 3213. The Secretary shall notify the local edu-  
20 cational agency of the amount of the payment not later  
21 than June 1 of the year for which the Secretary makes  
22 the payment.

23           “(b) PAYMENTS TAKEN INTO ACCOUNT BY THE  
24 STATE.—The Secretary may not make a grant under this  
25 chapter to a local educational agency for a fiscal year if,

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1 for such fiscal year, the State in which the local edu-  
2 cational agency is located takes into consideration pay-  
3 ments made under this chapter in determining the eligi-  
4 bility of the local educational agency for State aid, or the  
5 amount of the State aid, with respect to the free public  
6 education of children during such fiscal year or the pre-  
7 ceding fiscal year.

8 “(c) REDUCTION OF PAYMENT FOR FAILURE TO  
9 MAINTAIN FISCAL EFFORT.—

10 “(1) IN GENERAL.—The Secretary may not pay  
11 a local educational agency the full amount of a grant  
12 award determined under section 3213 for any fiscal  
13 year unless the State educational agency notifies the  
14 Secretary, and the Secretary determines that, with  
15 respect to the provision of free public education by  
16 the local educational agency for the preceding fiscal  
17 year, the combined fiscal effort of the local edu-  
18 cational agency and the State, computed on either a  
19 per student or aggregate expenditure basis, was not  
20 less than 90 percent of the amount of the combined  
21 fiscal effort, computed on the same basis, for the  
22 second preceding fiscal year.

23 “(2) FAILURE TO MAINTAIN EFFORT.—If, for  
24 any fiscal year, the Secretary determines that a local  
25 educational agency failed to maintain the fiscal ef-

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1 fort of such agency at the level specified in para-  
2 graph (1), the Secretary shall—

3 “(A) reduce the amount of the grant that  
4 would otherwise be made to such agency under  
5 this chapter in the exact proportion of such  
6 agency’s failure to maintain its fiscal effort at  
7 such level; and

8 “(B) not use the reduced amount of the  
9 agency’s expenditures for the preceding year to  
10 determine compliance with paragraph (1) for  
11 any succeeding fiscal year, but shall use the  
12 amount of expenditures that would have been  
13 required to comply with paragraph (1).

14 “(3) WAIVER.—(A) The Secretary may waive  
15 the requirement of paragraph (1), for not more than  
16 1 year at a time, if the Secretary determines that  
17 the failure to comply with such requirement is due  
18 to exceptional or uncontrollable circumstances, such  
19 as a natural disaster or a precipitous and unforeseen  
20 decline in the agency’s financial resources.

21 “(B) The Secretary shall not use the reduced  
22 amount of such agency’s expenditures for the fiscal  
23 year preceding the fiscal year for which a waiver is  
24 granted to determine compliance with paragraph (1)  
25 for any succeeding fiscal year, but shall use the



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1 amount of expenditures that would have been re-  
2 quired to comply with paragraph (1) in the absence  
3 of the waiver.

4 “(d) REALLOCATIONS.—The Secretary may reallo-  
5 cate, in a manner that the Secretary determines will best  
6 carry out the purpose of this chapter, any amounts that—

7 “(1) based on estimates made by local edu-  
8 cational agencies or other information, the Secretary  
9 determines will not be needed by such agencies to  
10 carry out approved programs under this chapter; or

11 “(2) otherwise become available for reallocation  
12 under this chapter.

13 **“SEC. 3219. STATE EDUCATIONAL AGENCY REVIEW.**

14 “Before submitting an application to the Secretary  
15 under section 3214, a local educational agency shall sub-  
16 mit the application to the State educational agency, which  
17 may comment on such application. If the State educational  
18 agency comments on the application, it shall comment on  
19 all applications submitted by local educational agencies in  
20 the State and shall provide those comments to the respec-  
21 tive local educational agencies, with an opportunity to re-  
22 spond.

1 **“CHAPTER II—SPECIAL PROGRAMS AND**  
2 **PROJECTS TO IMPROVE EDU-**  
3 **CATIONAL OPPORTUNITIES FOR IN-**  
4 **DIAN CHILDREN**

5 **“SEC. 3221. IMPROVEMENT OF EDUCATIONAL OPPORTUNI-**  
6 **TIES FOR INDIAN CHILDREN.**

7 “(a) PURPOSE.—

8 “(1) IN GENERAL.—It is the purpose of this  
9 section to support projects to develop, test, and dem-  
10 onstrate the effectiveness of services and programs  
11 to improve educational opportunities and achieve-  
12 ment of Indian children.

13 “(2) COORDINATION.—The Secretary shall take  
14 such actions as are necessary to achieve the coordi-  
15 nation of activities assisted under this chapter  
16 with—

17 “(A) other programs funded under this  
18 Act; and

19 “(B) other Federal programs operated for  
20 the benefit of American Indian and Alaska Na-  
21 tive children.

22 “(b) ELIGIBLE ENTITIES.—For the purpose of this  
23 section, the term ‘eligible entity’ means a State edu-  
24 cational agency, local educational agency, Indian tribe, In-  
25 dian organization, federally supported elementary and sec-

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1 onday school for Indian students, Indian institution, in-  
2 cluding an Indian institution of higher education, or a con-  
3 sortium of such institutions.

4 “(c) GRANTS AUTHORIZED.—

5 “(1) IN GENERAL.—The Secretary shall award  
6 grants to eligible entities to enable such entities to  
7 carry out activities that meet the purpose specified  
8 in subsection (a)(1), including—

9 “(A) innovative programs related to the  
10 educational needs of educationally disadvan-  
11 taged children;

12 “(B) educational services that are not  
13 available to such children in sufficient quantity  
14 or quality, including remedial instruction, to  
15 raise the achievement of Indian children in one  
16 or more of the core academic subjects of  
17 English, mathematics, science, foreign lan-  
18 guages, art, history, and geography;

19 “(C) bilingual and bicultural programs and  
20 projects;

21 “(D) special health and nutrition services,  
22 and other related activities, that address the  
23 unique health, social, and psychological prob-  
24 lems of Indian children;

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1           “(E) special compensatory and other pro-  
2           grams and projects designed to assist and en-  
3           courage Indian children to enter, remain in, or  
4           reenter school, and to increase the rate of sec-  
5           ondary school graduation;

6           “(F) comprehensive guidance, counseling,  
7           and testing services;

8           “(G) early childhood and kindergarten pro-  
9           grams, including family-based preschool pro-  
10          grams that emphasize school readiness and pa-  
11          rental skills, and the provision of services to In-  
12          dian children with disabilities;

13          “(H) partnership projects between local  
14          educational agencies and institutions of higher  
15          education that allow secondary school students  
16          to enroll in courses at the postsecondary level to  
17          aid such students in the transition from sec-  
18          ondary school to postsecondary education;

19          “(I) partnership projects between schools  
20          and local businesses for career preparation pro-  
21          grams designed to provide Indian youth with  
22          the knowledge and skills such youth need to  
23          make an effective transition from school to a  
24          high-skill, high-wage career;

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1           “(J) programs designed to encourage and  
2           assist Indian students to work toward, and gain  
3           entrance into, an institution of higher edu-  
4           cation;

5           “(K) family literacy services; or

6           “(L) other services that meet the purpose  
7           described in subsection (a)(1).

8           “(2) PROFESSIONAL DEVELOPMENT.—Profes-  
9           sional development of teaching professionals and  
10          paraprofessional may be a part of any program as-  
11          sisted under this section.

12          “(d) GRANT REQUIREMENTS AND APPLICATIONS.—

13           “(1) GRANT REQUIREMENTS.—(A) The Sec-  
14          retary may make multiyear grants under this section  
15          for the planning, development, pilot operation, or  
16          demonstration of any activity described in subsection  
17          (c) for a period not to exceed 5 years.

18           “(B) In making multiyear grants under this  
19          section, the Secretary shall give priority to applica-  
20          tions that present a plan for combining two or more  
21          of the activities described in subsection (c) over a  
22          period of more than 1 year.

23           “(C) The Secretary shall make a grant payment  
24          to an eligible entity after the initial year of the  
25          multiyear grant only if the Secretary determines

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1 that the eligible entity has made substantial progress  
2 in carrying out the activities assisted under the  
3 grant in accordance with the application submitted  
4 under paragraph (2) and any subsequent modifica-  
5 tions to such application.

6 “(D)(i) In addition to awarding the multiyear  
7 grants described in subparagraph (A), the Secretary  
8 may award grants to eligible entities for the dissemi-  
9 nation of exemplary materials or programs assisted  
10 under this section.

11 “(ii) The Secretary may award a dissemination  
12 grant under this subparagraph if, prior to awarding  
13 the grant, the Secretary determines that the mate-  
14 rial or program to be disseminated has been ade-  
15 quately reviewed and has demonstrated—

16 “(I) educational merit; and

17 “(II) the ability to be replicated.

18 “(2) APPLICATION.—(A) Any eligible entity  
19 that desires to receive a grant under this section  
20 shall submit an application to the Secretary at such  
21 time and in such manner as the Secretary may re-  
22 quire.

23 “(B) Each application submitted to the Sec-  
24 retary under subparagraph (A), other than an appli-

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1 cation for a dissemination grant under paragraph  
2 (1)(D), shall contain—

3 “(i) a description of how parents of Indian  
4 children and representatives of Indian tribes  
5 have been, and will be, involved in developing  
6 and implementing the activities for which as-  
7 sistance is sought;

8 “(ii) assurances that the applicant will par-  
9 ticipate, at the request of the Secretary, in any  
10 national evaluation of activities assisted under  
11 this section;

12 “(iii) information demonstrating that the  
13 proposed program is either a research-based  
14 program (which may be a research-based pro-  
15 gram that has been modified to be culturally  
16 appropriate for the students who will be  
17 served);

18 “(iv) a description of how the applicant  
19 will incorporate the proposed services into the  
20 ongoing school program once the grant period is  
21 over; and

22 “(v) such other assurances and informa-  
23 tion as the Secretary may reasonably require.

24 “(e) ADMINISTRATIVE COSTS.—Not more than 5 per-  
25 cent of the funds provided to a grantee under this chapter

1 for any fiscal year may be used for administrative pur-  
2 poses.

3 **“SEC. 3222. PROFESSIONAL DEVELOPMENT FOR TEACHERS**  
4 **AND EDUCATION PROFESSIONALS.**

5 “(a) PURPOSES.—The purposes of this section are—

6 “(1) to increase the number of qualified Indian  
7 individuals in teaching or other education profes-  
8 sions that serve Indian people;

9 “(2) to provide training to qualified Indian indi-  
10 viduals to enable such individuals to become teach-  
11 ers, administrators, teacher aides, social workers,  
12 and ancillary educational personnel; and

13 “(3) to improve the skills of qualified Indian in-  
14 dividuals who serve in the capacities described in  
15 paragraph (2).

16 “(b) ELIGIBLE ENTITIES.—For the purpose of this  
17 section, the term ‘eligible entity’ means—

18 “(1) an institution of higher education, includ-  
19 ing an Indian institution of higher education;

20 “(2) a State or local educational agency, in con-  
21 sortium with an institution of higher education; and

22 “(3) an Indian tribe or organization, in consor-  
23 tium with an institution of higher education.

24 “(c) PROGRAM AUTHORIZED.—The Secretary is au-  
25 thorized to award grants to eligible entities having applica-



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1 tions approved under this section to enable such entities  
2 to carry out the activities described in subsection (d).

3 “(d) AUTHORIZED ACTIVITIES.—

4 “(1) IN GENERAL.—Grant funds under this sec-  
5 tion shall be used to provide support and training  
6 for Indian individuals in a manner consistent with  
7 the purposes of this section. Such activities may in-  
8 clude but are not limited to, continuing programs,  
9 symposia, workshops, conferences, and direct finan-  
10 cial support.

11 “(2) SPECIAL RULES.—(A) For education per-  
12 sonnel, the training received pursuant to a grant  
13 under this section may be inservice or preservice  
14 training.

15 “(B) For individuals who are being trained to  
16 enter any field other than teaching, the training re-  
17 ceived pursuant to a grant under this section shall  
18 be in a program that results in a graduate degree.

19 “(e) APPLICATION.—Each eligible entity desiring a  
20 grant under this section shall submit an application to the  
21 Secretary at such time, in such manner and accompanied  
22 by such information, as the Secretary may reasonably re-  
23 quire.

24 “(f) SPECIAL RULE.—In making grants under this  
25 section, the Secretary—

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1           “(1) shall consider the prior performance of the  
2 eligible entity; and

3           “(2) may not limit eligibility to receive a grant  
4 under this section on the basis of—

5                   “(A) the number of previous grants the  
6 Secretary has awarded such entity; or

7                   “(B) the length of any period during which  
8 such entity received such grants.

9           “(g) GRANT PERIOD.—Each grant under this section  
10 shall be awarded for a period of not more than 5 years.

11           “(h) SERVICE OBLIGATION.—

12                   “(1) IN GENERAL.—The Secretary shall re-  
13 quire, by regulation, that an individual who receives  
14 training pursuant to a grant made under this  
15 section—

16                           “(A) perform work—

17                                   “(i) related to the training received  
18 under this section; and

19                                   “(ii) that benefits Indian people; or

20                   “(B) repay all or a prorated part of the as-  
21 sistance received.

22           “(2) REPORTING.—The Secretary shall estab-  
23 lish, by regulation, a reporting procedure under  
24 which a grant recipient under this section shall, not  
25 later than 12 months after the date of completion of

1 the training, and periodically thereafter, provide in-  
2 formation concerning the compliance of such recipi-  
3 ent with the work requirement under paragraph (1).

4 **“CHAPTER III—NATIONAL RESEARCH**  
5 **ACTIVITIES**

6 **“SEC. 3231. NATIONAL ACTIVITIES.**

7 “(a) AUTHORIZED ACTIVITIES.—The Secretary may  
8 use funds made available under section 3252(b) for each  
9 fiscal year to—

10 “(1) conduct research related to effective ap-  
11 proaches for the education of Indian children and  
12 adults;

13 “(2) evaluate federally assisted education pro-  
14 grams from which Indian children and adults may  
15 benefit;

16 “(3) collect and analyze data on the educational  
17 status and needs of Indians; and

18 “(4) carry out other activities that are con-  
19 sistent with the purpose of this subpart.

20 “(b) ELIGIBILITY.—The Secretary may carry out any  
21 of the activities described in subsection (a) directly or  
22 through grants to, or contracts or cooperative agreements  
23 with Indian tribes, Indian organizations, State educational  
24 agencies, local educational agencies, institutions of higher  
25 education, including Indian institutions of higher edu-

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1 cation, and other public and private agencies and  
2 institutions.

3 “(c) COORDINATION.—Research activities supported  
4 under this section—

5 “(1) shall be carried out in consultation with  
6 the Office of Educational Research and Improve-  
7 ment to assure that such activities are coordinated  
8 with and enhance the research and development ac-  
9 tivities supported by the Office; and

10 “(2) may include collaborative research activi-  
11 ties which are jointly funded and carried out by the  
12 Office of Indian Education Programs and the Office  
13 of Educational Research and Improvement.

14 **“CHAPTER IV—FEDERAL**  
15 **ADMINISTRATION**

16 **“SEC. 3241. NATIONAL ADVISORY COUNCIL ON INDIAN EDU-**  
17 **CATION.**

18 “(a) MEMBERSHIP.—There is established a National  
19 Advisory Council on Indian Education (hereafter in this  
20 section referred to as the ‘Council’), which shall—

21 “(1) consist of 15 Indian members, who shall  
22 be appointed by the President from lists of nominees  
23 furnished, from time-to-time, by Indian tribes and  
24 organizations; and

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1           “(2) represent different geographic areas of the  
2 United States.

3           “(b) DUTIES.—The Council shall—

4           “(1) advise the Secretary concerning the fund-  
5 ing and administration (including the development of  
6 regulations and administrative policies and prac-  
7 tices) of any program, including any program estab-  
8 lished under this subpart—

9           “(A) with respect to which the Secretary  
10 has jurisdiction; and

11           “(B)(i) that includes Indian children or  
12 adults as participants; or

13           “(ii) that may benefit Indian children or  
14 adults;

15           “(2) make recommendations to the Secretary  
16 for filling the position of Director of Indian Edu-  
17 cation whenever a vacancy occurs; and

18           “(3) submit to the Congress, not later than  
19 June 30 of each year, a report on the activities of  
20 the Council, including—

21           “(A) any recommendations that the Coun-  
22 cil considers appropriate for the improvement of  
23 Federal education programs that include Indian  
24 children or adults as participants, or that may  
25 benefit Indian children or adults; and

1           “(B) recommendations concerning the  
2           funding of any program described in subpara-  
3           graph (A).

4   **“SEC. 3242. PEER REVIEW.**

5           “The Secretary may use a peer review process to re-  
6   view applications submitted to the Secretary under chap-  
7   ter II or III.

8   **“SEC. 3243. PREFERENCE FOR INDIAN APPLICANTS.**

9           “In making grants under chapter II or III, the Sec-  
10   retary shall give a preference to Indian tribes, organiza-  
11   tions, and institutions of higher education under any pro-  
12   gram with respect to which Indian tribes, organizations,  
13   and institutions are eligible to apply for grants.

14   **“SEC. 3244. MINIMUM GRANT CRITERIA.**

15           “The Secretary may not approve an application for  
16   a grant under subpart 2 unless the application is for a  
17   grant that is—

18           “(1) of sufficient size, scope, and quality to  
19   achieve the purpose or objectives of such grant; and

20           “(2) based on relevant research findings.

21           **“CHAPTER V—DEFINITIONS;**

22           **AUTHORIZATIONS OF APPROPRIATIONS**

23   **“SEC. 3251. DEFINITIONS.**

24           “For the purposes of this subpart:

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1           “(1) ADULT.—The term ‘adult’ means an indi-  
2           vidual who—

3                   “(A) has attained the age of 16 years; or

4                   “(B) has attained an age that is greater  
5           than the age of compulsory school attendance  
6           under an applicable State law.

7           “(2) FREE PUBLIC EDUCATION.—The term  
8           ‘free public education’ means education that is—

9                   “(A) provided at public expense, under  
10           public supervision and direction, and without  
11           tuition charge; and

12                   “(B) provided as elementary or secondary  
13           education in the applicable State or to preschool  
14           children.

15           “(3) INDIAN.—The term ‘Indian’ means an in-  
16           dividual who is—

17                   “(A) a member of an Indian tribe or band,  
18           as membership is defined by the tribe or band,  
19           including—

20                           “(i) any tribe or band terminated  
21                           since 1940; and

22                           “(ii) any tribe or band recognized by  
23           the State in which the tribe or band re-  
24           sides;

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1           “(B) a descendant, in the first or second  
2 degree, of an individual described in subpara-  
3 graph (A);

4           “(C) considered by the Secretary of the In-  
5 terior to be an Indian for any purpose;

6           “(D) an Eskimo, Aleut, or other Alaska  
7 Native; or

8           “(E) a member of an organized Indian  
9 group that received a grant under the Indian  
10 Education Act of 1988 as it was in effect the  
11 day preceding the date of the enactment of the  
12 Improving America’s Schools Act of 1994.

13 **“SEC. 3252. AUTHORIZATIONS OF APPROPRIATIONS.**

14           “(a) CHAPTER I.—For the purpose of carrying out  
15 chapter I of this subpart, there are authorized to be appro-  
16 priated \$92,800,000 for fiscal year 2002, and such sums  
17 as may be necessary for each of fiscal years 2003 through  
18 2006.

19           “(b) CHAPTERS II AND III.—For the purpose of car-  
20 rying out chapters II and III of this subpart, there are  
21 authorized to be appropriated \$22,700,000 for fiscal year  
22 2002, and such sums as may be necessary for each of the  
23 fiscal years 2003 through 2006.”.

24           (b) SAVINGS PROVISION.—Funds appropriated for  
25 part A of title IX of the Elementary and Secondary Edu-



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1 cation Act of 1965 (as in effect on the day before the date  
2 of the enactment of this Act) shall be available for use  
3 under subpart 1 of part B of title III of such Act, as added  
4 by this section.

5 **SEC. 312. ALASKA NATIVE EDUCATION.**

6 (a) IN GENERAL.—Part B of title III (as added by  
7 section 311 of this Act) is further amended by adding at  
8 the end the following new subpart:

9 **“Subpart 2—Alaska Native Education**

10 **“SEC. 3301. SHORT TITLE.**

11 “This subpart may be cited as the ‘Alaska Native  
12 Educational Equity, Support, and Assistance Act’.

13 **“SEC. 3302. FINDINGS.**

14 “The Congress finds and declares:

15 “(1) The attainment of educational success is  
16 critical to the betterment of the conditions, long-  
17 term well-being and preservation of the culture of  
18 Alaska Natives.

19 “(2) It is the policy of the Federal Government  
20 to encourage the maximum participation by Alaska  
21 Natives in the planning and the management of  
22 Alaska Native education programs.

23 “(3) Alaska Native children enter and exit  
24 school with serious educational handicaps.

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1           “(4) The educational achievement of Alaska  
2 Native children is far below national norms. In addi-  
3 tion to low Native performance on standardized  
4 tests, Native student dropout rates are high, and  
5 Natives are significantly underrepresented among  
6 holders of baccalaureate degrees in the State of  
7 Alaska. As a result, Native students are being de-  
8 nied their opportunity to become full participants in  
9 society by grade school and high school educations  
10 that are condemning an entire generation to an  
11 underclass status and a life of limited choices.

12           “(5) The programs authorized herein, combined  
13 with expanded Head Start, infant learning and early  
14 childhood education programs, and parent education  
15 programs are essential if educational handicaps are  
16 to be overcome.

17           “(6) The sheer magnitude of the geographic  
18 barriers to be overcome in delivering educational  
19 services in rural and village Alaska should be ad-  
20 dressed through the development and implementa-  
21 tion of innovative, model programs in a variety of  
22 areas.

23           “(7) Congress finds that Native children should  
24 be afforded the opportunity to begin their formal  
25 education on a par with their non-Native peers. The

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1 Federal Government should lend support to efforts  
2 developed by and undertaken within the Alaska Na-  
3 tive community to improve educational opportunity  
4 for all students.

5 **“SEC. 3303. PURPOSE.**

6 “It is the purpose of this subpart to—

7 “(1) recognize the unique educational needs of  
8 Alaska Natives;

9 “(2) authorize the development of supplemental  
10 educational programs to benefit Alaska Natives;

11 “(3) supplement existing programs and authori-  
12 ties in the area of education to further the purposes  
13 of this subpart; and

14 “(4) provide direction and guidance to appro-  
15 priate Federal, State and local agencies to focus re-  
16 sources, including resources made available under  
17 this subpart, on meeting the educational needs of  
18 Alaska Natives.

19 **“SEC. 3304. PROGRAM AUTHORIZED.**

20 “(a) GENERAL AUTHORITY.—

21 “(1) PROGRAM AUTHORIZED.—The Secretary is  
22 authorized to make grants to, or enter into contracts  
23 with, Alaska Native organizations, educational enti-  
24 ties with experience in developing or operating Alas-  
25 ka Native programs or programs of instruction con-

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1 ducted in Alaska Native languages, and consortia of  
2 such organizations and entities to carry out pro-  
3 grams that meet the purpose of this subpart.

4 “(2) PERMISSIBLE ACTIVITIES.—Programs  
5 under this subpart may include—

6 “(A) the development and implementation  
7 of plans, methods, and strategies to improve the  
8 education of Alaska Natives;

9 “(B) the development of curricula and edu-  
10 cational programs that address the educational  
11 needs of Alaska Native students, including—

12 “(i) curriculum materials that reflect  
13 the cultural diversity or the contributions  
14 of Alaska Natives;

15 “(ii) instructional programs that make  
16 use of Native Alaskan languages; and

17 “(iii) networks that introduce success-  
18 ful programs, materials, and techniques to  
19 urban and rural schools;

20 “(C) professional development activities for  
21 educators, including—

22 “(i) programs to prepare teachers to  
23 address the cultural diversity and unique  
24 needs of Alaska Native students;

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1                   “(ii) in-service programs to improve  
2                   the ability of teachers to meet the unique  
3                   needs of Alaska Native students; and

4                   “(iii) recruiting and preparing teach-  
5                   ers who are Alaska Natives, reside in com-  
6                   munities with high concentrations of Alas-  
7                   ka Native students, or are likely to succeed  
8                   as teachers in isolated, rural communities  
9                   and engage in cross-cultural instruction;

10                  “(D) the development and operation of  
11                  home instruction programs for Alaska Native  
12                  preschool children, the purpose of which is to  
13                  ensure the active involvement of parents in  
14                  their children’s education from the earliest  
15                  ages;

16                  “(E) family literacy services;

17                  “(F) the development and operation of stu-  
18                  dent enrichment programs in science and math-  
19                  ematics that—

20                         “(i) are designed to prepare Alaska  
21                         Native students from rural areas, who are  
22                         preparing to enter high school, to excel in  
23                         science and math; and

24                         “(ii) provide appropriate support serv-  
25                         ices to the families of such students that

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1 are needed to enable such students to ben-  
2 efit from the program;

3 “(G) research and data collection activities  
4 to determine the educational status and needs  
5 of Alaska Native children and adults;

6 “(H) other research and evaluation activi-  
7 ties related to programs under this subpart;  
8 and

9 “(I) other activities, consistent with the  
10 purposes of this subpart, to meet the edu-  
11 cational needs of Alaska Native children and  
12 adults.

13 “(3) HOME INSTRUCTION PROGRAMS.—Home  
14 instruction programs for Alaska Native preschool  
15 children under paragraph (2)(D) may include—

16 “(A) programs for parents and their in-  
17 fants, from prenatal through age three;

18 “(B) preschool programs; and

19 “(C) training, education, and support for  
20 parents in such areas as reading readiness, ob-  
21 servation, story-telling, and critical thinking.

22 “(b) LIMITATION ON ADMINISTRATIVE COSTS.—Not  
23 more than 5 percent of funds provided to a grantee under  
24 this section for any fiscal year may be used for administra-  
25 tive purposes.

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1       “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated \$15,000,000 for fiscal  
3 year 2002, and such sums as may be necessary for each  
4 of the fiscal years 2003 through 2006 to carry out this  
5 subpart.

6       **“SEC. 3305. ADMINISTRATIVE PROVISIONS.**

7       “(a) APPLICATION REQUIRED.—No grant may be  
8 made under this subpart, nor any contract be entered into  
9 under this subpart, unless an application is submitted to  
10 the Secretary in such form, in such manner, and con-  
11 taining such information as the Secretary may determine  
12 necessary to carry out the provisions of this subpart.

13       “(b) APPLICATIONS.—State and local educational  
14 agencies may apply for an award under this subpart only  
15 as subpart of a consortium involving an Alaska Native or-  
16 ganization. This consortium may include other eligible ap-  
17 plicants.

18       “(c) CONSULTATION REQUIRED.—Each applicant for  
19 funding shall provide for ongoing advice from and con-  
20 sultation with representatives of the Alaska Native com-  
21 munity.

22       “(d) LOCAL EDUCATIONAL AGENCY COORDINA-  
23 TION.—Each applicant for an award under this subpart  
24 shall inform each local educational agency serving stu-

1 dents who would participate in the project about its appli-  
2 cation.

3 **“SEC. 3306. DEFINITIONS.**

4 “For purposes of this subpart—

5 “(1) the term ‘Alaska Native’ has the same  
6 meaning as the term ‘Native’ has in section 3(b) of  
7 the Alaska Native Claims Settlement Act; and

8 “(2) the term ‘Alaska Native organization’  
9 means a federally recognized tribe, consortium of  
10 tribes, regional nonprofit Native association, and  
11 other Alaska Native organizations that—

12 “(A) has or commits to acquire expertise  
13 in the education of Alaska Natives; and

14 “(B) has Alaska Natives in substantive  
15 and policy-making positions within the organi-  
16 zation.”.

17 (b) SAVINGS PROVISION.—Funds appropriated for  
18 part C of title IX of the Elementary and Secondary Edu-  
19 cation Act of 1965 (as in effect on the day before the date  
20 of the enactment of this Act) shall be available for use  
21 under subpart 2 of part B of title III of such Act, as added  
22 by this section.



1 **SEC. 313. AMENDMENTS TO THE EDUCATION AMENDMENTS**  
2 **OF 1978.**

3 Part B of title XI of the Education Amendments of  
4 1978 (25 U.S.C. 2001 et seq.) is amended to read as fol-  
5 lows:

6 **“PART B—BUREAU OF INDIAN AFFAIRS**  
7 **PROGRAMS**

8 **“SEC. 1120. FINDING AND POLICY.**

9 “(a) FINDING.—Congress finds and recognizes that  
10 the Federal Government has the sole responsibility for the  
11 operation and financial support of the Bureau of Indian  
12 Affairs funded school system that it has established on  
13 or near Indian reservations and Indian trust lands  
14 throughout the Nation for Indian children.

15 “(b) POLICY.—It is the policy of the United States  
16 to work in full cooperation with Indian tribes toward the  
17 goal of assuring that the programs of the Bureau of In-  
18 dian Affairs funded school system are of the highest qual-  
19 ity and meet the unique educational and cultural needs  
20 of Indian children.

21 **“SEC. 1121. ACCREDITATION AND STANDARDS FOR THE**  
22 **BASIC EDUCATION OF INDIAN CHILDREN IN**  
23 **BUREAU OF INDIAN AFFAIRS SCHOOLS.**

24 “(a) PURPOSE.—The purpose of the standards imple-  
25 mented under this section shall be to afford Indian stu-  
26 dents being served by a school funded by the Bureau of

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1 Indian Affairs the same opportunities as all other students  
2 in the United States to achieve the same challenging State  
3 performance standards expected of all students.

4 “(b) STUDIES AND SURVEYS RELATING TO STAND-  
5 ARDS.—Not later than 1 year after the date of the enact-  
6 ment of the No Child Left Behind Act of 2001, the Sec-  
7 retary, in consultation with the Secretary of Education,  
8 consortia of education organizations, and Indian organiza-  
9 tions and tribes, and making the fullest use possible of  
10 other existing studies, surveys, and plans, shall carry out  
11 by contract with an Indian organization, studies and sur-  
12 veys to establish and revise standards for the basic edu-  
13 cation of Indian children attending Bureau funded  
14 schools. Such studies and surveys shall take into account  
15 factors such as academic needs, local cultural differences,  
16 type and level of language skills, geographic isolation, and  
17 appropriate teacher-student ratios for such children, and  
18 shall be directed toward the attainment of equal edu-  
19 cational opportunity for such children.

20 “(c) REVISION OF MINIMUM ACADEMIC STAND-  
21 ARDS.—

22 “(1) IN GENERAL.—Not later than 2 years  
23 after the date of the enactment of the No Child Left  
24 Behind Act of 2001, the Secretary shall—

1           “(A) propose revisions to the minimum  
2 academic standards published in the Federal  
3 Register on September 9, 1995 (50 Fed. Reg.  
4 174) for the basic education of Indian children  
5 attending Bureau funded schools in accordance  
6 with the purpose described in subsection (a)  
7 and the findings of the studies and surveys con-  
8 ducted under subsection (b);

9           “(B) publish such proposed revisions to  
10 such standards in the Federal Register for the  
11 purpose of receiving comments from the tribes,  
12 tribal school boards, Bureau funded schools,  
13 and other interested parties; and

14           “(C) consistent with the provisions of this  
15 section and section 1131, take such actions as  
16 are necessary to coordinate standards imple-  
17 mented under this section with the Comprehen-  
18 sive School Reform Plan developed by the Bu-  
19 reau and—

20           “(i) with the standards of the im-  
21 provement plans for the States in which  
22 any school operated by the Bureau of In-  
23 dian Affairs is located; or

24           “(ii) in the case where schools oper-  
25 ated by the Bureau are within the bound-

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1           aries of reservation land of one tribe but  
2           within the boundaries of more than one  
3           State, with the standards of the State im-  
4           provement plan of one such State selected  
5           by the tribe.

6           “(2) FURTHER REVISIONS.—Not later than 6  
7           months after the close of the comment period, the  
8           Secretary shall establish final standards, distribute  
9           such standards to all tribes and publish such final  
10          standards in the Federal Register. The Secretary  
11          shall revise such standards periodically as necessary.  
12          Prior to any revision of such final standards, the  
13          Secretary shall distribute such proposed revision to  
14          all the tribes, and publish such proposed revision in  
15          the Federal Register, for the purpose of receiving  
16          comments from the tribes and other interested par-  
17          ties.

18          “(3) APPLICABILITY OF STANDARDS.—Except  
19          as provided in subsection (e), the final standards  
20          published under paragraph (2) shall apply to all Bu-  
21          reau funded schools not accredited under subsection  
22          (f), and may also serve as a model for educational  
23          programs for Indian children in public schools.

24          “(4) CONSIDERATIONS WHEN ESTABLISHING  
25          AND REVISING STANDARDS.—In establishing and re-

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1 vising such standards, the Secretary shall take into  
2 account the unique needs of Indian students and  
3 support and reinforcement of the specific cultural  
4 heritage of each tribe.

5 “(d) ALTERNATIVE OR MODIFIED STANDARDS.—The  
6 Secretary shall provide alternative or modified standards  
7 in lieu of the standards established under subsection (c),  
8 where necessary, so that the programs of each school are  
9 in compliance with the minimum accreditation standards  
10 required for schools in the State or region where the school  
11 is located.

12 “(e) WAIVER OF STANDARDS; ALTERNATIVE STAND-  
13 ARDS.—A tribal governing body, or the local school board  
14 so designated by the tribal governing body, shall have the  
15 local authority to waive, in part or in whole, the standards  
16 established under subsections (c) and (d) if such standards  
17 are deemed by such body to be inappropriate. The tribal  
18 governing body or designated school board shall, not later  
19 than 60 days after a waiver under this subsection, submit  
20 to the Secretary a proposal for alternative standards that  
21 take into account the specific needs of the tribe’s children.  
22 Such alternative standards shall be established by the Sec-  
23 retary unless specifically rejected by the Secretary for  
24 good cause and in writing to the affected tribes or local

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1 school board, which rejection shall be final and not subject  
2 to review.

3 “(f) ACCREDITATION AND IMPLEMENTATION OF  
4 STANDARDS.—

5 “(1) DEADLINE FOR MEETING STANDARDS.—

6 Not later the second academic year after publication  
7 of the standards, to the extent necessary funding is  
8 provided, all Bureau funded schools shall meet the  
9 standards established under subsections (c) and (d)  
10 or shall be accredited—

11 “(A) by a tribal accrediting body, if the ac-  
12 creditation standards of the tribal accrediting  
13 body have been accepted by formal action of the  
14 tribal governing body and are equal to or ex-  
15 ceed the accreditation standards of the State or  
16 region in which the school is located;

17 “(B) by a regional accreditation agency; or

18 “(C) by State accreditation standards for  
19 the State in which it is located.

20 “(2) DETERMINATION OF STANDARDS TO BE  
21 APPLIED.—The accreditation type or standards ap-  
22 plied for each school shall be determined by the  
23 school board of the school, in consultation with the  
24 Administrator of the school, provided that in the  
25 case where the School Board and the Administrator

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1 fail to agree on the type of accreditation and stand-  
2 ards to apply, the decision of the school board with  
3 the approval of the tribal governing body shall be  
4 final.

5 “(3) ASSISTANCE TO SCHOOL BOARDS.—The  
6 Secretary, through contracts and grants, shall assist  
7 school boards of contract or grant schools in imple-  
8 mentation of the standards established under sub-  
9 sections (c) and (d), if the school boards request  
10 that such standards, in part or in whole, be imple-  
11 mented.

12 “(4) FISCAL CONTROL AND FUND ACCOUNTING  
13 STANDARDS.—The Bureau shall, either directly or  
14 through contract with an Indian organization, estab-  
15 lish a consistent system of reporting standards for  
16 fiscal control and fund accounting for all contract  
17 and grant schools. Such standards shall provide data  
18 comparable to those used by Bureau operated  
19 schools.

20 “(g) ANNUAL PLAN FOR MEETING OF STAND-  
21 ARDS.—Except as provided in subsections (e) and (f), the  
22 Secretary shall begin to implement the standards estab-  
23 lished under this section immediately upon the date of  
24 their establishment. On an annual basis, the Secretary  
25 shall submit to the appropriate committees of Congress,

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1 all Bureau funded schools, and the tribal governing bodies  
2 of such schools a detailed plan to bring all Bureau schools  
3 and contract or grant schools up to the level required by  
4 the applicable standards established under this section.  
5 Such plan shall include detailed information on the status  
6 of each school's educational program in relation to the ap-  
7 plicable standards established under this section, specific  
8 cost estimates for meeting such standards at each school  
9 and specific timelines for bringing each school up to the  
10 level required by such standards.

11 “(h) CLOSURE OR CONSOLIDATION OF SCHOOLS.—

12 “(1) IN GENERAL.—Except as specifically re-  
13 quired by statute, no school or peripheral dormitory  
14 operated by the Bureau on or after January 1,  
15 1992, may be closed or consolidated or have its pro-  
16 gram substantially curtailed unless done according  
17 to the requirements of this subsection.

18 “(2) EXCEPTIONS.—This subsection shall not  
19 apply—

20 “(A) in those cases where the tribal gov-  
21 erning body, or the local school board concerned  
22 (if so designated by the tribal governing body),  
23 requests closure or consolidation; or

24 “(B) when a temporary closure, consolida-  
25 tion, or substantial curtailment is required by



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1           plant conditions which constitute an immediate  
2           hazard to health and safety.

3           “(3) REGULATIONS.—The Secretary shall, by  
4           regulation, promulgate standards and procedures for  
5           the closure, transfer to another authority, consolida-  
6           tion, or substantial curtailment of Bureau schools, in  
7           accordance with the requirements of this subsection.

8           “(4) NOTICE.—Whenever closure, transfer to  
9           another authority, consolidation, or substantial cur-  
10          tailment of a school is under active consideration or  
11          review by any division of the Bureau or the Depart-  
12          ment of the Interior, the affected tribe, tribal gov-  
13          erning body, and designated local school board, will  
14          be notified immediately, kept fully and currently in-  
15          formed, and afforded an opportunity to comment  
16          with respect to such consideration or review. When  
17          a formal decision is made to close, transfer to an-  
18          other authority, consolidate, or substantially curtail  
19          a school, the affected tribe, tribal governing body,  
20          and designated school board shall be notified at least  
21          6 months prior to the end of the school year pre-  
22          ceding the proposed closure date. Copies of any such  
23          notices and information shall be transmitted prompt-  
24          ly to the appropriate committees of Congress and  
25          published in the Federal Register.

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1           “(5) REPORT.—The Secretary shall make a re-  
2           port to the appropriate committees of Congress, the  
3           affected tribe, and the designated school board de-  
4           scribing the process of the active consideration or re-  
5           view referred to in paragraph (4). The report shall  
6           include a study of the impact of such action on the  
7           student population, identify those students with par-  
8           ticular educational and social needs, and ensure that  
9           alternative services are available to such students.  
10          Such report shall include the description of the con-  
11          sultation conducted between the potential service  
12          provider, current service provider, parents, tribal  
13          representatives and the tribe or tribes involved, and  
14          the Director of the Office of Indian Education Pro-  
15          grams within the Bureau regarding such students.

16          “(6) LIMITATION ON CERTAIN ACTIONS.—No  
17          irrevocable action may be taken in furtherance of  
18          any such proposed school closure, transfer to an-  
19          other authority, consolidation, or substantial curtail-  
20          ment (including any action which would prejudice  
21          the personnel or programs of such school) prior to  
22          the end of the first full academic year after such re-  
23          port is made.

24          “(7) TRIBAL GOVERNING BODY APPROVAL RE-  
25          QUIRED FOR CERTAIN ACTIONS.—The Secretary may

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1 terminate, contract, transfer to any other authority,  
2 consolidate, or substantially curtail the operation or  
3 facilities of—

4 “(A) any Bureau funded school that is op-  
5 erated on or after of January 1, 1999;

6 “(B) any program of such a school that is  
7 operated on or after January 1, 1999; or

8 “(C) any school board of a school operated  
9 under a grant under the Tribally Controlled  
10 Schools Act of 1988,

11 only if the tribal governing body approves such ac-  
12 tion.

13 “(i) APPLICATION FOR CONTRACTS OR GRANTS FOR  
14 NON-BUREAU FUNDED SCHOOLS OR EXPANSION OF BU-  
15 REAU FUNDED SCHOOLS.—

16 “(1) IN GENERAL.—(A)(i) The Secretary shall  
17 only consider the factors described in subparagraph  
18 (B) in reviewing—

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

22 “(II) applications from any tribe or school  
23 board of any Bureau funded school for—

24 “(aa) a school which is not a Bureau  
25 funded school; or

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

5           “(ii) With respect to applications described in  
6           this subparagraph, the Secretary shall give consider-  
7           ation to all the factors described in subparagraph  
8           (B), but no such application shall be denied based  
9           primarily upon the geographic proximity of com-  
10          parable public education.

11          “(B) With respect to applications described in  
12          subparagraph (A) the Secretary shall consider the  
13          following factors relating to the program and serv-  
14          ices that are the subject of the application:

15               “(i) The adequacy of the facilities or the  
16               potential to obtain or provide adequate facili-  
17               ties.

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

20               “(iii) The adequacy of the applicant’s pro-  
21               gram plans or, in the case of a Bureau funded  
22               school, of projected needs analysis done either  
23               by the tribe or the Bureau.

24               “(iv) Geographic proximity of comparable  
25               public education.

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1           “(v) The stated needs of all affected par-  
2           ties, including students, families, tribal govern-  
3           ments at both the central and local levels, and  
4           school organizations.

5           “(vi) Adequacy and comparability of pro-  
6           grams already available.

7           “(vii) Consistency of available programs  
8           with tribal educational codes or tribal legisla-  
9           tion on education.

10          “(viii) The history and success of these  
11          services for the proposed population to be  
12          served, as determined from all factors, including  
13          but not limited to standardized examination  
14          performance.

15          “(2) DETERMINATION ON APPLICATION.—(A)  
16          The Secretary shall make a determination of wheth-  
17          er to approve any application described in paragraph  
18          (1)(A) not later than 180 days after such applica-  
19          tion is submitted to the Secretary.

20          “(B) If the Secretary fails to make the deter-  
21          mination with respect to an application by the date  
22          described in subparagraph (A), the application shall  
23          be treated as having been approved by the Secretary.

24          “(3) REQUIREMENTS FOR APPLICATIONS.—(A)  
25          Notwithstanding paragraph (2)(B), an application

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1 described in paragraph (1)(A) may be approved by  
2 the Secretary only if—

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

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

9 “(B) Each application described in paragraph  
10 (1)(A) shall provide information concerning each of  
11 the factors described in paragraph (1)(B).

12 “(4) DENIAL OF APPLICATIONS.—Whenever the  
13 Secretary makes a determination to deny approval of  
14 any application described in paragraph (1)(A), the  
15 Secretary shall—

16 “(A) state the objections in writing to the  
17 applicant not later 180 days after the applica-  
18 tion is submitted to the Secretary;

19 “(B) provide assistance to the applicant to  
20 overcome stated objections; and

21 “(C) provide the applicant a hearing,  
22 under the same rules and regulations pertaining  
23 to the Indian Self-Determination and Education  
24 Assistance Act and an opportunity to appeal  
25 the objections raised by the Secretary.

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1           “(5) EFFECTIVE DATE OF A SUBJECT APPLICA-  
2           TION.—(A) Except as otherwise provided in this  
3           paragraph, the action which is the subject of any ap-  
4           plication described in paragraph (1)(A) that is ap-  
5           proved by the Secretary shall become effective at the  
6           beginning of the academic year following the fiscal  
7           year in which the application is approved, or at an  
8           earlier date determined by the Secretary.

9           “(B) If an application is treated as having been  
10          approved by the Secretary under paragraph (2)(B),  
11          the action that is the subject of the application shall  
12          become effective on the date that is 18 months after  
13          the date on which the application is submitted to the  
14          Secretary, or at an earlier date determined by the  
15          Secretary.

16          “(6) STATUTORY CONSTRUCTION.—Nothing in  
17          this section shall be read so as to preclude the ex-  
18          pansion of grades and related facilities at a Bureau  
19          funded school where such expansion and the mainte-  
20          nance of such expansion is occasioned or paid for  
21          with non-Bureau funds.

22          “(j) GENERAL USE OF FUNDS.—Funds received by  
23          Bureau funded schools from the Bureau of Indian Affairs  
24          and under any program from the Department of Edu-  
25          cation or any other Federal agency for the purpose of pro-

## IIIB-72

1 viding education or related services may be used for  
2 schoolwide projects to improve the educational program  
3 for all Indian students.

4 “(k) STUDY ON ADEQUACY OF FUNDS AND FOR-  
5 MULAS.—The Comptroller General shall conduct a study,  
6 in consultation with Indian tribes and local school boards,  
7 to determine the adequacy of funding, and formulas used  
8 by the Bureau to determine funding, for programs oper-  
9 ated by Bureau funded schools, taking into account unique  
10 circumstances applicable to Bureau funded schools, as well  
11 as expenditures for comparable purposes in public schools  
12 nationally. Upon completion of the study, the Secretary  
13 of the Interior shall take such action as necessary to en-  
14 sure distribution of the findings of the study to all affected  
15 Indian tribes, local school boards, and associations of local  
16 school boards.

17 **“SEC. 1122. NATIONAL CRITERIA FOR HOME-LIVING SITUA-**  
18 **TIONS.**

19 “(a) IN GENERAL.—The Secretary, in consultation  
20 with the Secretary of Education, Indian organizations and  
21 tribes, and Bureau funded schools, shall revise the na-  
22 tional standards for home-living (dormitory) situations to  
23 include such factors as heating, lighting, cooling, adult-  
24 child ratios, needs for counselors (including special needs  
25 related to off-reservation home-living (dormitory) situa-



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1 tions), therapeutic programs, space, and privacy. Such  
2 standards shall be implemented in Bureau operated  
3 schools, and shall serve as minimum standards for con-  
4 tract or grant schools. Once established, any revisions of  
5 such standards shall be developed according to the re-  
6 quirements established under section 1138A.

7       “(b) IMPLEMENTATION.—The Secretary shall imple-  
8 ment the revised standards established under this section  
9 immediately upon their completion.

10       “(c) PLAN.—At the time of each annual budget sub-  
11 mission for Bureau educational services is presented, the  
12 Secretary shall submit to the appropriate committees of  
13 Congress, the tribes, and the affected schools, and publish  
14 in the Federal Register, a detailed plan to bring all Bu-  
15 reau funded schools that provide home-living (dormitory)  
16 situations up to the standards established under this sec-  
17 tion. Such plan shall include a statement of the relative  
18 needs of each Bureau funded home-living (dormitory)  
19 school, projected future needs of each Bureau funded  
20 home-living (dormitory) school, detailed information on  
21 the status of each school in relation to the standards es-  
22 tablished under this section, specific cost estimates for  
23 meeting each standard for each such school, aggregate  
24 cost estimates for bringing all such schools into compli-  
25 ance with the criteria established under this section, and

1 specific timelines for bringing each school into compliance  
2 with such standards.

3 “(d) WAIVER.—The criteria established under this  
4 section may be waived in the same manner as the stand-  
5 ards provided under section 1121(c) may be waived.

6 “(e) CLOSURE FOR FAILURE TO MEET STANDARDS  
7 PROHIBITED.—No school in operation on or before Janu-  
8 ary 1, 1987 (regardless of compliance or noncompliance  
9 with the criteria established under this section), may be  
10 closed, transferred to another authority, consolidated, or  
11 have its program substantially curtailed for failure to meet  
12 the criteria.

13 **“SEC. 1123. CODIFICATION OF REGULATIONS.**

14 “(a) PART 32 OF TITLE 25 OF CODE OF FEDERAL  
15 REGULATIONS.—The provisions of part 32 of title 25 of  
16 the Code of Federal Regulations, as in effect on January  
17 1, 1987, are incorporated into this Act and shall be treat-  
18 ed as though such provisions are set forth in this sub-  
19 section. Such provisions may be altered only by means of  
20 an Act of Congress. To the extent that such provisions  
21 of part 32 do not conform with this Act or any statutory  
22 provision of law enacted before November 1, 1978, the  
23 provisions of this Act and the provisions of such other  
24 statutory law shall govern.

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1       “(b) REGULATION DEFINED.—For purposes of this  
2 part, the term ‘regulation’ means any rules, regulations,  
3 guidelines, interpretations, orders, or requirements of gen-  
4 eral applicability prescribed by any officer or employee of  
5 the executive branch.

6       **“SEC. 1124. SCHOOL BOUNDARIES.**

7       “(a) ESTABLISHMENT BY SECRETARY.—The Sec-  
8 retary shall establish, by regulation, separate geographical  
9 attendance areas for each Bureau funded school.

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

19       “(c) BOUNDARY REVISIONS.—

20               “(1) IN GENERAL.—On or after July 1, 2001,  
21 no geographical attendance area shall be revised or  
22 established with respect to any Bureau funded  
23 school unless the tribal governing body or the local  
24 school board concerned (if so designated by the trib-  
25 al governing body) has been afforded—

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1           “(A) at least 6 months notice of the inten-  
2           tion of the Bureau to revise or establish such  
3           attendance area; and

4           “(B) the opportunity to propose alternative  
5           boundaries.

6           Any tribe may petition the Secretary for revision of  
7           existing attendance area boundaries. The Secretary  
8           shall accept such proposed alternative or revised  
9           boundaries unless the Secretary finds, after con-  
10          sultation with the affected tribe or tribes, that such  
11          revised boundaries do not reflect the needs of the In-  
12          dian students to be served or do not provide ade-  
13          quate stability to all of the affected programs. The  
14          Secretary shall cause such revisions to be published  
15          in the Federal Register.

16          “(2) TRIBAL RESOLUTION DETERMINATION.—  
17          Nothing in this section shall be interpreted as deny-  
18          ing a tribal governing body the authority, on a con-  
19          tinuing basis, to adopt a tribal resolution allowing  
20          parents the choice of the Bureau funded school their  
21          children may attend, regardless of the attendance  
22          boundaries established under this section.

23          “(d) FUNDING RESTRICTIONS.—The Secretary shall  
24          not deny funding to a Bureau funded school for any eligi-  
25          ble Indian student attending the school solely because that

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1 student's home or domicile is outside of the geographical  
2 attendance area established for that school under this sec-  
3 tion. No funding shall be made available without tribal au-  
4 thorization to enable a school to provide transportation for  
5 any student to or from the school and a location outside  
6 the approved attendance area of the school.

7       “(e) RESERVATION AS BOUNDARY.—In any case  
8 where there is only one Bureau funded program located  
9 on an Indian reservation, the attendance area for the pro-  
10 gram shall be the boundaries (established by treaty, agree-  
11 ment, legislation, court decisions, or executive decisions  
12 and as accepted by the tribe) of the reservation served,  
13 and those students residing near the reservation shall also  
14 receive services from such program.

15       “(f) OFF-RESERVATION HOME-LIVING (DORMITORY)  
16 SCHOOLS.—Notwithstanding any geographical attendance  
17 areas, attendance at off-reservation home-living (dor-  
18 mitory) schools shall include students requiring special  
19 emphasis programs to be implemented at each off-reserva-  
20 tion home-living (dormitory) school. Such attendance shall  
21 be coordinated between education line officers, the family,  
22 and the referring and receiving programs.

23 **“SEC. 1125. FACILITIES CONSTRUCTION.**

24       “(a) COMPLIANCE WITH HEALTH AND SAFETY  
25 STANDARDS.—The Secretary shall immediately begin to

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1 bring all schools, dormitories, and other Indian education-  
2 related facilities operated by the Bureau or under contract  
3 or grant with the Bureau into compliance with all applica-  
4 ble tribal, Federal, or State health and safety standards,  
5 whichever provides greater protection (except that the  
6 tribal standards to be applied shall be no greater than any  
7 otherwise applicable Federal or State standards), with sec-  
8 tion 504 of the Rehabilitation Act of 1973, and with the  
9 Americans with Disabilities Act of 1990. Nothing in this  
10 section shall require termination of the operations of any  
11 facility which does not comply with such provisions and  
12 which is in use on the date of the enactment of the No  
13 Child Left Behind Act of 2001.

14       “(b) COMPLIANCE PLAN.—At the time that the an-  
15 nual budget request for Bureau educational services is  
16 presented, the Secretary shall submit to the appropriate  
17 committees of Congress a detailed plan to bring all facili-  
18 ties covered under subsection (a) of this section into com-  
19 pliance with the standards referred to in subsection (a).  
20 Such plan shall include detailed information on the status  
21 of each facility’s compliance with such standards, specific  
22 cost estimates for meeting such standards at each school,  
23 and specific timelines for bringing each school into compli-  
24 ance with such standards.

25       “(c) CONSTRUCTION PRIORITIES.—

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1           “(1) SYSTEM TO ESTABLISH PRIORITIES.—On  
2           an annual basis the Secretary shall submit to the  
3           appropriate committees of Congress and cause to be  
4           published in the Federal Register, the system used  
5           to establish priorities for replacement and construc-  
6           tion projects for Bureau funded schools and home-  
7           living schools, including boarding schools and dor-  
8           mitories. At the time any budget request for edu-  
9           cation is presented, the Secretary shall publish in  
10          the Federal Register and submit with the budget re-  
11          quest the current list of all Bureau funded school  
12          construction priorities.

13           “(2) LONG-TERM CONSTRUCTION AND RE-  
14          PLACEMENT LIST.—In addition to the plan sub-  
15          mitted under subsection (b), the Secretary shall—

16                   “(A) not later than 18 months after the  
17                   date of the enactment of the No Child Left Be-  
18                   hind Act of 2001, establish a long-term con-  
19                   struction and replacement list for all Bureau  
20                   funded schools;

21                   “(B) using the list prepared under sub-  
22                   paragraph (A), propose a list for the orderly re-  
23                   placement of all Bureau funded education-re-  
24                   lated facilities over a period of 40 years to en-

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1           able planning and scheduling of budget re-  
2           quests;

3           “(C) cause the list prepared under sub-  
4           section (B) to be published in the Federal Reg-  
5           ister and allow a period of not less than 120  
6           days for public comment;

7           “(D) make such revisions to the list pre-  
8           pared under subparagraph (B) as are appro-  
9           priate based on the comments received; and

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

12          “(3) EFFECT ON OTHER LIST.—Nothing in this  
13          section shall be construed as interfering with or  
14          changing in any way the construction priority list as  
15          it exists on the date of the enactment of the No  
16          Child Left Behind Act of 2001.

17          “(d) HAZARDOUS CONDITION AT BUREAU  
18          SCHOOL.—

19          “(1) CLOSURE OR CONSOLIDATION.—A Bureau  
20          funded school may be closed or consolidated, and the  
21          programs of a Bureau funded school may be sub-  
22          stantially curtailed by reason of plant conditions  
23          that constitute an immediate hazard to health and  
24          safety only if a health and safety officer of the Bu-



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1       reau determines that such conditions exist at the  
2       Bureau funded school.

3           “(2) INSPECTION.—(A) After making a deter-  
4       mination described in paragraph (1), the Bureau  
5       health and safety officer shall conduct an inspection  
6       of the condition of such plant accompanied by an ap-  
7       propriate tribal, county, municipal, or State health  
8       and safety officer in order to determine whether con-  
9       ditions at such plant constitute an immediate hazard  
10      to health and safety. Such inspection shall be com-  
11      pleted by not later than the date that is 30 days  
12      after the date on which the action described in para-  
13      graph (1) is taken. No further negative action may  
14      be taken unless the findings are concurred in by the  
15      second, non-Bureau of Indian Affairs inspector.

16           “(B) If the health and safety officer conducting  
17      the inspection of a plant required under subpara-  
18      graph (A) determines that conditions at the plant do  
19      not constitute an immediate hazard to health and  
20      safety, any consolidation or curtailment that was  
21      made under paragraph (1) shall immediately cease  
22      and any school closed by reason of conditions at the  
23      plant shall be reopened immediately.

24           “(C) If a Bureau funded school is temporarily  
25      closed or consolidated or the programs of a Bureau

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1 funded school are substantially curtailed under this  
2 subsection and the Secretary determines that the  
3 closure, consolidation, or curtailment will exceed 1  
4 year, the Secretary shall submit to the Congress, by  
5 not later than 6 months after the date on which the  
6 closure, consolidation, or curtailment was initiated, a  
7 report which sets forth the reasons for such tem-  
8 porary actions, the actions the Secretary is taking to  
9 eliminate the conditions that constitute the hazard,  
10 and an estimated date by which such actions will be  
11 concluded.

12 “(e) FUNDING REQUIREMENT.—

13 “(1) DISTRIBUTION OF FUNDS.—Beginning  
14 with the fiscal year following the year of the date of  
15 the enactment of the No Child Left Behind Act of  
16 2001, all funds appropriated for the operations and  
17 maintenance of Bureau funded schools shall be dis-  
18 tributed by formula to the schools. No funds from  
19 this account may be retained or segregated by the  
20 Bureau to pay for administrative or other costs of  
21 any facilities branch or office, at any level of the Bu-  
22 reau.

23 “(2) REQUIREMENTS FOR CERTAIN USES.—No  
24 funds shall be withheld from the distribution to the  
25 budget of any school operated under contract or

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1 grant by the Bureau for maintenance or any other  
2 facilities or road related purpose, unless such school  
3 has consented, as a modification to the contract or  
4 in writing for grants schools, to the withholding of  
5 such funds, including the amount thereof, the pur-  
6 pose for which the funds will be used, and the  
7 timeline for the services to be provided. The school  
8 may, at the end of any fiscal year, cancel an agree-  
9 ment under this paragraph upon giving the Bureau  
10 30 days notice of its intent to do so.

11 “(f) NO REDUCTION IN FEDERAL FUNDING.—Noth-  
12 ing in this section shall be construed to diminish any Fed-  
13 eral funding due to the receipt by the school of funding  
14 for facilities improvement or construction from a State or  
15 any other source.

16 **“SEC. 1126. BUREAU OF INDIAN AFFAIRS EDUCATION FUNC-**  
17 **TIONS.**

18 “(a) FORMULATION AND ESTABLISHMENT OF POL-  
19 ICY AND PROCEDURE; SUPERVISION OF PROGRAMS AND  
20 EXPENDITURES.—The Secretary shall vest in the Assist-  
21 ant Secretary for Indian Affairs all functions with respect  
22 to formulation and establishment of policy and procedure  
23 and supervision of programs and expenditures of Federal  
24 funds for the purpose of Indian education administered  
25 by the Bureau. The Assistant Secretary shall carry out

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1 such functions through the Director of the Office of Indian  
2 Education Programs.

3       “(b) DIRECTION AND SUPERVISION OF PERSONNEL  
4 OPERATIONS.—Not later than 6 months after the date of  
5 the enactment of the No Child Left Behind Act of 2001,  
6 the Director of the Office of Indian Education Programs  
7 shall direct and supervise the operations of all personnel  
8 directly and substantially involved in the provision of edu-  
9 cation services by the Bureau, including school or institu-  
10 tion custodial or maintenance personnel, facilities manage-  
11 ment, contracting, procurement, and finance personnel.  
12 The Assistant Secretary for Indian Affairs shall coordi-  
13 nate the transfer of functions relating to procurement,  
14 contracts, operation, and maintenance of schools and  
15 other support functions to the Director.

16       “(c) EVALUATION OF PROGRAMS; SERVICES AND  
17 SUPPORT FUNCTIONS; TECHNICAL AND COORDINATING  
18 ASSISTANCE.—Education personnel who are under the di-  
19 rection and supervision of the Director of the Office of  
20 Indian Education Programs in accordance with the first  
21 sentence of subsection (b) shall—

22               “(1) monitor and evaluate Bureau education  
23 programs;

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1           “(2) provide all services and support functions  
2 for education programs with respect to personnel  
3 matters involving staffing actions and functions; and

4           “(3) provide technical and coordinating assist-  
5 ance in areas such as procurement, contracting,  
6 budgeting, personnel, curriculum, and operation and  
7 maintenance of school facilities.

8           “(d) CONSTRUCTION, IMPROVEMENT, OPERATION,  
9 AND MAINTENANCE OF FACILITIES.—

10           “(1) PLAN FOR CONSTRUCTION.—The Assistant  
11 Secretary shall submit in the annual budget a  
12 plan—

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

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

20           “(C) for capital improvements to be made  
21 over the five succeeding years.

22           “(2) PROGRAM FOR OPERATION AND MAINTEN-  
23 NANCE.—

24           “(A) ESTABLISHMENT.—The Assistant  
25 Secretary shall establish a program, including

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1 the distribution of appropriated funds, for the  
2 operation and maintenance of education facili-  
3 ties. Such program shall include—

4 “(i) a method of computing the  
5 amount necessary for each educational fa-  
6 cility;

7 “(ii) similar treatment of all Bureau  
8 funded schools;

9 “(iii) a notice of an allocation of ap-  
10 propriated funds from the Director of the  
11 Office of Indian Education Programs di-  
12 rectly to the education line officers and ap-  
13 propriate school officials;

14 “(iv) a method for determining the  
15 need for, and priority of, facilities repair  
16 and maintenance projects, both major and  
17 minor. In making such determination, the  
18 Assistant Secretary shall cause to be con-  
19 ducted a series of meetings at the agency  
20 and area level with representatives of the  
21 Bureau funded schools in those areas and  
22 agencies to receive comment on the lists  
23 and prioritization of such projects; and

24 “(v) a system for the conduct of rou-  
25 tine preventive maintenance.

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1           “(B) LOCAL SUPERVISORS.—The appro-  
2           priate education line officers shall make ar-  
3           rangements for the maintenance of education  
4           facilities with the local supervisors of the Bu-  
5           reau maintenance personnel. The local super-  
6           visors of Bureau maintenance personnel shall  
7           take appropriate action to implement the deci-  
8           sions made by the appropriate education line of-  
9           ficers, except that no funds under this chapter  
10          may be authorized for expenditure unless such  
11          appropriate education line officer is assured  
12          that the necessary maintenance has been, or  
13          will be, provided in a reasonable manner.

14          “(3) IMPLEMENTATION.—The requirements of  
15          this subsection shall be implemented as soon as  
16          practicable after the date of the enactment of the No  
17          Child Left Behind Act of 2001.

18          “(e) ACCEPTANCE OF GIFTS AND BEQUESTS.—Not-  
19          withstanding any other provision of law, the Director shall  
20          promulgate guidelines for the establishment of mecha-  
21          nisms for the acceptance of gifts and bequests for the use  
22          and benefit of particular schools or designated Bureau op-  
23          erated education programs, including, where appropriate,  
24          the establishment and administration of trust funds.  
25          When a Bureau operated program is the beneficiary of

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1 such a gift or bequest, the Director shall make provisions  
2 for monitoring its use and shall report to the appropriate  
3 committees of Congress the amount and terms of such gift  
4 or bequest, the manner in which such gift or bequest shall  
5 be used, and any results achieved by such action.

6 “(f) FUNCTIONS CLARIFIED.—For the purpose of  
7 this section, the term ‘functions’ includes powers and du-  
8 ties.

9 **“SEC. 1127. ALLOTMENT FORMULA.**

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

12 “(1) FORMULA.—The Secretary shall establish,  
13 by regulation adopted in accordance with section  
14 1138A, a formula for determining the minimum an-  
15 nual amount of funds necessary to sustain each Bu-  
16 reau funded school. In establishing such formula,  
17 the Secretary shall consider—

18 “(A) the number of eligible Indian stu-  
19 dents served and total student population of the  
20 school;

21 “(B) special cost factors, such as—

22 “(i) the isolation of the school;

23 “(ii) the need for special staffing,  
24 transportation, or educational programs;

25 “(iii) food and housing costs;



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1                   “(iv) maintenance and repair costs as-  
2                   sociated with the physical condition of the  
3                   educational facilities;

4                   “(v) special transportation and other  
5                   costs of isolated and small schools;

6                   “(vi) the costs of home-living (dor-  
7                   mitory) arrangements, where determined  
8                   necessary by a tribal governing body or  
9                   designated school board;

10                  “(vii) costs associated with greater  
11                  lengths of service by education personnel;

12                  “(viii) the costs of therapeutic pro-  
13                  grams for students requiring such pro-  
14                  grams; and

15                  “(ix) special costs for gifted and tal-  
16                  ented students;

17                  “(C) the cost of providing academic serv-  
18                  ices which are at least equivalent to those pro-  
19                  vided by public schools in the State in which  
20                  the school is located; and

21                  “(D) such other relevant factors as the  
22                  Secretary determines are appropriate.

23                  “(2) REVISION OF FORMULA.—Upon the estab-  
24                  lishment of the standards required in sections 1121  
25                  and 1122, the Secretary shall revise the formula es-

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1        established under this subsection to reflect the cost of  
2        funding such standards. Not later than January 1,  
3        2003, the Secretary shall review the formula estab-  
4        lished under this section and shall take such steps  
5        as are necessary to increase the availability of coun-  
6        seling and therapeutic programs for students in off-  
7        reservation home-living (dormitory) schools and  
8        other Bureau operated residential facilities. Concur-  
9        rent with such action, the Secretary shall review the  
10       standards established under section 1122 to be cer-  
11       tain that adequate provision is made for parental no-  
12       tification regarding, and consent for, such counseling  
13       and therapeutic programs.

14       “(b) PRO RATA ALLOTMENT.—Notwithstanding any  
15       other provision of law, Federal funds appropriated for the  
16       general local operation of Bureau funded schools shall be  
17       allotted pro rata in accordance with the formula estab-  
18       lished under subsection (a).

19       “(c) ANNUAL ADJUSTMENT; RESERVATION OF  
20       AMOUNT FOR SCHOOL BOARD ACTIVITIES.—

21                “(1) ANNUAL ADJUSTMENT.—For fiscal year  
22       2003, and for each subsequent fiscal year, the Sec-  
23       retary shall adjust the formula established under  
24       subsection (a) to ensure that the formula does the  
25       following:

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1           “(A) Uses a weighted unit of 1.2 for each  
2 eligible Indian student enrolled in the seventh  
3 and eighth grades of the school in considering  
4 the number of eligible Indian students served  
5 by the school.

6           “(B) Considers a school with an enroll-  
7 ment of less than 50 eligible Indian students as  
8 having an average daily attendance of 50 eligi-  
9 ble Indian students for purposes of imple-  
10 menting the adjustment factor for small  
11 schools.

12           “(C) Takes into account the provision of  
13 residential services on less than a 9-month basis  
14 at a school when the school board and super-  
15 visor of the school determine that a less than  
16 9-month basis will be implemented for the  
17 school year involved.

18           “(D) Uses a weighted unit of 2.0 for each  
19 eligible Indian student that—

20                   “(i) is gifted and talented; and

21                   “(ii) is enrolled in the school on a full-  
22 time basis,

23 in considering the number of eligible Indian  
24 students served by the school.

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1           “(E) Uses a weighted unit of 0.25 for each  
2 eligible Indian student who is enrolled in a  
3 yearlong credit course in an Indian or Native  
4 language as part of the regular curriculum of a  
5 school, in considering the number of eligible In-  
6 dian students served by such school. The ad-  
7 justment required under this subparagraph  
8 shall be used for such school after—

9           “(i) the certification of the Indian or  
10 Native language curriculum by the school  
11 board of such school to the Secretary, to-  
12 gether with an estimate of the number of  
13 full-time students expected to be enrolled  
14 in the curriculum in the second school year  
15 for which the certification is made; and

16           (ii) the funds appropriated for allot-  
17 ment under this section are designated by  
18 the appropriations Act appropriating such  
19 funds as the amount necessary to imple-  
20 ment such adjustment at such school with-  
21 out reducing allotments made under this  
22 section to any school by virtue of such ad-  
23 justment.

24           “(2) RESERVATION OF AMOUNT.—

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1           “(A) IN GENERAL.—From the funds allot-  
2           ted in accordance with the formula established  
3           under subsection (a) for each Bureau school,  
4           the local school board of such school may re-  
5           serve an amount which does not exceed the  
6           greater of—

7                     “(i) \$8,000; or

8                     “(ii) the lesser of—

9                             “(I) \$15,000; or

10                            “(II) 1 percent of such allotted  
11                            funds,

12           for school board activities for such school, in-  
13           cluding (notwithstanding any other provision of  
14           law) meeting expenses and the cost of member-  
15           ship in, and support of, organizations engaged  
16           in activities on behalf of Indian education.

17           “(B) TRAINING.—Each school board shall  
18           see that each new member of the school board  
19           receives, within 12 months of the individual’s  
20           assuming a position on the school board, 40  
21           hours of training relevant to that individual’s  
22           service on the board. Such training may include  
23           legal issues pertaining to schools funded by the  
24           Bureau, legal issues pertaining to school

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1 boards, ethics, and other topics deemed appro-  
2 priate by the school board.

3 “(d) RESERVATION OF AMOUNT FOR EMER-  
4 GENCIES.—The Secretary shall reserve from the funds  
5 available for distribution for each fiscal year under this  
6 section an amount which, in the aggregate, shall equal 1  
7 percent of the funds available for such purpose for that  
8 fiscal year. Such funds shall be used, at the discretion of  
9 the Director of the Office of Indian Education Programs,  
10 to meet emergencies and unforeseen contingencies affect-  
11 ing the education programs funded under this section.  
12 Funds reserved under this subsection may only be ex-  
13 pended for education services or programs, including  
14 emergency repairs of educational facilities, at a schoolsite  
15 (as defined by section 5204(c)(2) of the Tribally Con-  
16 trolled Schools Act of 1988). Funds reserved under this  
17 subsection shall remain available without fiscal year limi-  
18 tation until expended. However, the aggregate amount  
19 available from all fiscal years may not exceed 1 percent  
20 of the current year funds. Whenever, the Secretary makes  
21 funds available under this subsection, the Secretary shall  
22 report such action to the appropriate committees of Con-  
23 gress within the annual budget submission.

24 “(e) SUPPLEMENTAL APPROPRIATIONS.—Supple-  
25 mental appropriations enacted to meet increased pay costs

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1 attributable to school level personnel shall be distributed  
2 under this section.

3 “(f) ELIGIBLE INDIAN STUDENT DEFINED.—For the  
4 purpose of this section, the term ‘eligible Indian student’  
5 means a student who—

6 “(1) is a member of or is at least one-fourth de-  
7 gree Indian blood descendant of a member of an In-  
8 dian tribe which is eligible for the special programs  
9 and services provided by the United States through  
10 the Bureau because of their status as Indians; and

11 “(2) resides on or near an Indian reservation or  
12 meets the criteria for attendance at a Bureau off-  
13 reservation home-living (dormitory) school.

14 “(g) TUITION.—

15 “(1) IN GENERAL.—An eligible Indian student  
16 may not be charged tuition for attendance at a Bu-  
17 reau school or contract or grant school. A student  
18 attending a Bureau school under paragraph (2)(C)  
19 may not be charged tuition for attendance at such  
20 a school.

21 “(2) ATTENDANCE OF NON-INDIAN STUDENTS  
22 AT BUREAU SCHOOLS.—The Secretary may permit  
23 the attendance at a Bureau school of a student who  
24 is not an eligible Indian student if—

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1           “(A) the Secretary determines that the  
2 student’s attendance will not adversely affect  
3 the school’s program for eligible Indian stu-  
4 dents because of cost, overcrowding, or violation  
5 of standards or accreditation;

6           “(B) the school board consents;

7           “(C) the student is a dependent of a Bu-  
8 reau, Indian Health Service, or tribal govern-  
9 ment employee who lives on or near the  
10 schoolsite; or

11           “(D) a tuition is paid for the student that  
12 is not more than that charged by the nearest  
13 public school district for out-of-district stu-  
14 dents, and shall be in addition to the school’s  
15 allocation under this section.

16           “(3) ATTENDANCE OF NON-INDIAN STUDENTS  
17 AT CONTRACT AND GRANT SCHOOLS.—The school  
18 board of a contract or grant school may permit stu-  
19 dents who are not eligible Indian students under this  
20 subsection to attend its contract school or grant  
21 school and any tuition collected for those students  
22 shall be in addition to funding received under this  
23 section.

24           “(h) FUNDS AVAILABLE WITHOUT FISCAL YEAR  
25 LIMITATION.—Notwithstanding any other provision of



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1 law, at the election of the school board of a Bureau school  
2 made at any time during the fiscal year, a portion equal  
3 to not more than 15 percent of the funds allocated with  
4 respect to a school under this section for any fiscal year  
5 shall remain available to the school for expenditure with-  
6 out fiscal year limitation. The Assistant Secretary shall  
7 take steps as may be necessary to implement this provi-  
8 sion.

9 “(i) STUDENTS AT RICHFIELD DORMITORY, RICH-  
10 FIELD, UTAH.—Tuition for out-of-State Indian students  
11 in home-living (dormitory) arrangements at the Richfield  
12 dormitory in Richfield, Utah, who attend Sevier County  
13 high schools in Richfield, Utah, shall be paid from the In-  
14 dian school equalization program funds authorized in this  
15 section and section 1130 at a rate not to exceed the  
16 amounts per weighted student unit for that year for the  
17 instruction of such students. No additional administrative  
18 cost funds shall be added to the grant.

19 **“SEC. 1128. ADMINISTRATIVE COST GRANTS.**

20 “(a) GRANTS; EFFECT UPON APPROPRIATED  
21 AMOUNTS.—

22 “(1) GRANTS.—Subject to the availability of  
23 appropriated funds, the Secretary shall provide  
24 grants to each tribe or tribal organization operating  
25 a contract school or grant school in the amount de-

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1       terminated under this section with respect to the tribe  
2       or tribal organization for the purpose of paying the  
3       administrative and indirect costs incurred in oper-  
4       ating contract or grant schools, provided that no  
5       school operated as a stand-alone institution shall re-  
6       ceive less than \$200,000 per year for these pur-  
7       poses, in order to—

8               “(A) enable tribes and tribal organizations  
9               operating such schools, without reducing direct  
10              program services to the beneficiaries of the pro-  
11              gram, to provide all related administrative over-  
12              head services and operations necessary to meet  
13              the requirements of law and prudent manage-  
14              ment practice; and

15              “(B) carry out other necessary support  
16              functions which would otherwise be provided by  
17              the Secretary or other Federal officers or em-  
18              ployees, from resources other than direct pro-  
19              gram funds, in support of comparable Bureau  
20              operated programs.

21              “(2)     EFFECT     UPON     APPROPRIATED  
22              AMOUNTS.—Amounts appropriated to fund the  
23              grants provided under this section shall be in addi-  
24              tion to, and shall not reduce, the amounts appro-

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1        priated for the program being administered by the  
2        contract or grant school.

3        “(b) DETERMINATION OF GRANT AMOUNT.—

4               “(1) IN GENERAL.—The amount of the grant  
5        provided to each tribe or tribal organization under  
6        this section for each fiscal year shall be determined  
7        by applying the administrative cost percentage rate  
8        of the tribe or tribal organization to the aggregate  
9        of the Bureau elementary and secondary functions  
10       operated by the tribe or tribal organization for which  
11       funds are received from or through the Bureau. The  
12       administrative cost percentage rate determined  
13       under subsection (c) does not apply to other pro-  
14       grams operated by the tribe or tribal organization.

15               “(2) DIRECT COST BASE FUNDS.—The Sec-  
16       retary shall—

17                       “(A) reduce the amount of the grant deter-  
18       mined under paragraph (1) to the extent that  
19       payments for administrative costs are actually  
20       received by an Indian tribe or tribal organiza-  
21       tion under any Federal education program in-  
22       cluded in the direct cost base of the tribe or  
23       tribal organization; and

24                       “(B) take such actions as may be nec-  
25       essary to be reimbursed by any other depart-

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1           ment or agency of the Federal Government for  
2           the portion of grants made under this section  
3           for the costs of administering any program for  
4           Indians that is funded by appropriations made  
5           to such other department or agency.

6           “(c) ADMINISTRATIVE COST PERCENTAGE RATE.—

7           “(1) IN GENERAL.—For purposes of this sec-  
8           tion, the administrative cost percentage rate for a  
9           contract or grant school for a fiscal year is equal to  
10          the percentage determined by dividing—

11                   “(A) the sum of—

12                           “(i) the amount equal to—

13                                   “(I) the direct cost base of the  
14                                   tribe or tribal organization for the fis-  
15                                   cal year, multiplied by

16                                   “(II) the minimum base rate;  
17                                   plus

18                           “(ii) the amount equal to—

19                                   “(I) the standard direct cost  
20                                   base; multiplied by

21                                   “(II) the maximum base rate; by

22                   “(B) the sum of—

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

25                           “(ii) the standard direct cost base.

## IIIB-101

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

4           “(d) COMBINING FUNDS.—

5           “(1) IN GENERAL.—Funds received by a tribe  
6           or contract or grant school as grants under this sec-  
7           tion for tribal elementary or secondary educational  
8           programs may be combined by the tribe or contract  
9           or grant school into a single administrative cost ac-  
10          count without the necessity of maintaining separate  
11          funding source accounting.

12          “(2) INDIRECT COST FUNDS.—Indirect cost  
13          funds for programs at the school which share com-  
14          mon administrative services with tribal elementary  
15          or secondary educational programs may be included  
16          in the administrative cost account described in para-  
17          graph (1).

18          “(e) AVAILABILITY OF FUNDS.—Funds received as  
19          grants under this section with respect to tribal elementary  
20          or secondary education programs shall remain available to  
21          the contract or grant school without fiscal year limitation  
22          and without diminishing the amount of any grants other-  
23          wise payable to the school under this section for any fiscal  
24          year beginning after the fiscal year for which the grant  
25          is provided.

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1       “(f) TREATMENT OF FUNDS.—Funds received as  
2 grants under this section for Bureau funded programs op-  
3 erated by a tribe or tribal organization under a contract  
4 or agreement shall not be taken into consideration for pur-  
5 poses of indirect cost underrecovery and overrecovery de-  
6 terminations by any Federal agency for any other funds,  
7 from whatever source derived.

8       “(g) TREATMENT OF ENTITY OPERATING OTHER  
9 PROGRAMS.—In applying this section and section 105 of  
10 the Indian Self-Determination and Education Assistance  
11 Act with respect to an Indian tribe or tribal organization  
12 that—

13               “(1) receives funds under this section for ad-  
14 ministrative costs incurred in operating a contract or  
15 grant school or a school operated under the Tribally  
16 Controlled Schools Act of 1988; and

17               “(2) operates one or more other programs  
18 under a contract or grant provided under the Indian  
19 Self-Determination and Education Assistance Act,  
20 the Secretary shall ensure that the Indian tribe or tribal  
21 organization is provided with the full amount of the ad-  
22 ministrative costs that are associated with operating the  
23 contract or grant school, and of the indirect costs, that  
24 are associated with all of such other programs, provided  
25 that funds appropriated for implementation of this section

1 shall be used only to supply the amount of the grant re-  
2 quired to be provided by this section.

3 “(h) DEFINITIONS.—For purposes of this section:

4 “(1) ADMINISTRATIVE COST.—(A) The term  
5 ‘administrative cost’ means the costs of necessary  
6 administrative functions which—

7 “(i) the tribe or tribal organization incurs  
8 as a result of operating a tribal elementary or  
9 secondary educational program;

10 “(ii) are not customarily paid by com-  
11 parable Bureau operated programs out of direct  
12 program funds; and

13 “(iii) are either—

14 “(I) normally provided for comparable  
15 Bureau programs by Federal officials  
16 using resources other than Bureau direct  
17 program funds; or

18 “(II) are otherwise required of tribal  
19 self-determination program operators by  
20 law or prudent management practice.

21 “(B) The term ‘administrative cost’ may  
22 include—

23 “(i) contract or grant (or other agreement)  
24 administration;

1           “(ii) executive, policy, and corporate lead-  
2           ership and decisionmaking;

3           “(iii) program planning, development, and  
4           management;

5           “(iv) fiscal, personnel, property, and pro-  
6           curement management;

7           “(v) related office services and record  
8           keeping; and

9           “(vi) costs of necessary insurance, audit-  
10          ing, legal, safety and security services.

11          “(2) BUREAU ELEMENTARY AND SECONDARY  
12          FUNCTIONS.—The term ‘Bureau elementary and sec-  
13          ondary functions’ means—

14               “(A) all functions funded at Bureau  
15               schools by the Office;

16               “(B) all programs—

17                       “(i) funds for which are appropriated  
18                       to other agencies of the Federal Govern-  
19                       ment; and

20                       “(ii) which are administered for the  
21                       benefit of Indians through Bureau schools;  
22                       and

23               “(C) all operation, maintenance, and repair  
24               funds for facilities and government quarters  
25               used in the operation or support of elementary



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1           and secondary education functions for the ben-  
2           efit of Indians, from whatever source derived.

3           “(3) DIRECT COST BASE.—(A) Except as other-  
4           wise provided in subparagraph (B), the direct cost  
5           base of a tribe or tribal organization for the fiscal  
6           year is the aggregate direct cost program funding  
7           for all tribal elementary or secondary educational  
8           programs operated by the tribe or tribal organization  
9           during—

10                   “(i) the second fiscal year preceding such  
11                   fiscal year; or

12                   “(ii) if such programs have not been oper-  
13                   ated by the tribe or tribal organization during  
14                   the two preceding fiscal years, the first fiscal  
15                   year preceding such fiscal year.

16           “(B) In the case of Bureau elementary or sec-  
17           ondary education functions which have not pre-  
18           viously been operated by a tribe or tribal organiza-  
19           tion under contract, grant, or agreement with the  
20           Bureau, the direct cost base for the initial year shall  
21           be the projected aggregate direct cost program fund-  
22           ing for all Bureau elementary and secondary func-  
23           tions to be operated by the tribe or tribal organiza-  
24           tion during that fiscal year.

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1           “(4) MAXIMUM BASE RATE.—The term ‘max-  
2           imum base rate’ means 50 percent.

3           “(5) MINIMUM BASE RATE.—The term ‘min-  
4           imum base rate’ means 11 percent.

5           “(6) STANDARD DIRECT COST BASE.—The term  
6           ‘standard direct cost base’ means \$600,000.

7           “(7) TRIBAL ELEMENTARY OR SECONDARY  
8           EDUCATIONAL PROGRAMS.—The term ‘tribal elemen-  
9           tary or secondary educational programs’ means all  
10          Bureau elementary and secondary functions, to-  
11          gether with any other Bureau programs or portions  
12          of programs (excluding funds for social services that  
13          are appropriated to agencies other than the Bureau  
14          and are expended through the Bureau, funds for  
15          major subcontracts, construction, and other major  
16          capital expenditures, and unexpended funds carried  
17          over from prior years) which share common adminis-  
18          trative cost functions, that are operated directly by  
19          a tribe or tribal organization under a contract,  
20          grant, or agreement with the Bureau.

21          “(i) STUDIES FOR DETERMINATION OF FACTORS AF-  
22          FFECTING COSTS; BASE RATES LIMITS; STANDARD DI-  
23          RECT COST BASE; REPORT TO CONGRESS.—

24                 “(1) STUDIES.—Not later than 120 days after  
25                 the date of the enactment of the No Child Left Be-

1 hind Act of 2001, the Director of the Office of In-  
2 dian Education Programs shall—

3 “(A) conduct such studies as may be need-  
4 ed to establish an empirical basis for deter-  
5 mining relevant factors substantially affecting  
6 required administrative costs of tribal elemen-  
7 tary and secondary education programs, using  
8 the formula set forth in subsection (c); and

9 “(B) conduct a study to determine—

10 “(i) a maximum base rate which ensures  
11 that the amount of the grants provided under  
12 this section will provide adequate (but not ex-  
13 cessive) funding of the administrative costs of  
14 the smallest tribal elementary or secondary edu-  
15 cational programs;

16 “(ii) a minimum base rate which ensures  
17 that the amount of the grants provided under  
18 this section will provide adequate (but not ex-  
19 cessive) funding of the administrative costs of  
20 the largest tribal elementary or secondary edu-  
21 cational programs; and

22 “(iii) a standard direct cost base which is  
23 the aggregate direct cost funding level for which  
24 the percentage determined under subsection (c)  
25 will—

1                   “(I) be equal to the median between  
2                   the maximum base rate and the minimum  
3                   base rate; and

4                   “(II) ensure that the amount of the  
5                   grants provided under this section will pro-  
6                   vide adequate (but not excessive) funding  
7                   of the administrative costs of tribal ele-  
8                   mentary or secondary educational pro-  
9                   grams closest to the size of the program.

10                   “(2) GUIDELINES.—The studies required under  
11                   paragraph (1) shall—

12                   “(A) be conducted in full consultation (in  
13                   accordance with section 1131) with—

14                   “(i) the tribes and tribal organizations  
15                   that are affected by the application of the  
16                   formula set forth in subsection (c); and

17                   “(ii) all national and regional Indian  
18                   organizations of which such tribes and  
19                   tribal organizations are typically members;

20                   “(B) be conducted onsite with a represent-  
21                   ative statistical sample of the tribal elementary  
22                   or secondary educational programs under a con-  
23                   tract entered into with a nationally reputable  
24                   public accounting and business consulting firm;

1           “(C) take into account the availability of  
2 skilled labor; commodities, business and auto-  
3 matic data processing services, related Indian  
4 preference and Indian control of education re-  
5 quirements, and any other market factors found  
6 substantially to affect the administrative costs  
7 and efficiency of each such tribal elementary or  
8 secondary educational program studied in order  
9 to assure that all required administrative activi-  
10 ties can reasonably be delivered in a cost effec-  
11 tive manner for each such program, given an  
12 administrative cost allowance generated by the  
13 values, percentages, or other factors found in  
14 the studies to be relevant in such formula;

15           “(D) identify, and quantify in terms of  
16 percentages of direct program costs, any gen-  
17 eral factors arising from geographic isolation,  
18 or numbers of programs administered, inde-  
19 pendent of program size factors used to com-  
20 pute a base administrative cost percentage in  
21 such formula; and

22           “(E) identify any other incremental cost  
23 factors substantially affecting the costs of re-  
24 quired administrative cost functions at any of  
25 the tribal elementary or secondary educational

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1 programs studied and determine whether the  
2 factors are of general applicability to other such  
3 programs, and (if so) how the factors may ef-  
4 fectively be incorporated into such formula.

5 “(3) CONSULTATION WITH INSPECTOR GEN-  
6 ERAL.—In carrying out the studies required under  
7 this subsection, the Director shall obtain the input  
8 of, and afford an opportunity to participate to, the  
9 Inspector General of the Department of the Interior.

10 “(4) CONSIDERATION OF DELIVERY OF ADMIN-  
11 ISTRATIVE SERVICES.—Determinations described in  
12 paragraph (2)(C) shall be based on what is prac-  
13 ticable at each location studied, given prudent man-  
14 agement practice, irrespective of whether required  
15 administrative services were actually or fully deliv-  
16 ered at these sites, or whether other services were  
17 delivered instead, during the period of the study.

18 “(5) REPORT.—Upon completion of the studies  
19 conducted under paragraph (1), the Director shall  
20 submit to Congress a report on the findings of the  
21 studies, together with determinations based upon  
22 such studies that would affect the definitions set  
23 forth under subsection (e) that are used in the for-  
24 mula set forth in subsection (c).

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1           “(6) PROJECTION OF COSTS.—The Secretary  
2 shall include in the Bureau’s justification for each  
3 appropriations request beginning in the first fiscal  
4 year after the completion of the studies conducted  
5 under paragraph (1), a projection of the overall  
6 costs associated with the formula set forth in sub-  
7 section (c) for all tribal elementary or secondary  
8 education programs which the Secretary expects to  
9 be funded in the fiscal year for which the appropria-  
10 tions are sought.

11           “(7) DETERMINATION OF PROGRAM SIZE.—For  
12 purposes of this subsection, the size of tribal elemen-  
13 tary or secondary educational programs is deter-  
14 mined by the aggregate direct cost program funding  
15 level for all Bureau funded programs which share  
16 common administrative cost functions.

17           “(j) AUTHORIZATION OF APPROPRIATIONS.—

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

21           “(2) REDUCTIONS.—If the total amount of  
22 funds necessary to provide grants to tribes and trib-  
23 al organizations in the amounts determined under  
24 subsection (b) for a fiscal year exceeds the amount  
25 of funds appropriated to carry out this section for

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1 such fiscal year, the Secretary shall reduce the  
2 amount of each grant determined under subsection  
3 (b) for such fiscal year by an amount that bears the  
4 same relationship to such excess as the amount of  
5 such grants determined under subsection (b) bears  
6 to the total of all grants determined under sub-  
7 section (b) section for all tribes and tribal organiza-  
8 tions for such fiscal year.

9 “(k) APPLICABILITY TO SCHOOLS OPERATING  
10 UNDER TRIBALLY CONTROLLED SCHOOLS ACT OF  
11 1988.—The provisions of this section shall also apply to  
12 those schools operating under the Tribally Controlled  
13 Schools Act of 1988.

14 **“SEC. 1129. DIVISION OF BUDGET ANALYSIS.**

15 “(a) ESTABLISHMENT.—Not later than 12 months  
16 after the date of the enactment of the No Child Left Be-  
17 hind Act of 2001, the Secretary shall establish within the  
18 Office of Indian Education Programs a Division of Budget  
19 Analysis (hereinafter referred to as the ‘Division’). Such  
20 Division shall be under the direct supervision and control  
21 of the Director of the Office.

22 “(b) FUNCTIONS.—In consultation with the tribal  
23 governing bodies and tribal school boards, the Director of  
24 the Office, through the Division, shall conduct studies,  
25 surveys, or other activities to gather demographic informa-



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1 tion on Bureau funded schools and project the amount  
2 necessary to provide Indian students in such schools the  
3 educational program set forth in this part.

4 “(c) ANNUAL REPORTS.—Not later than the date  
5 that the Assistant Secretary for Indian Affairs makes the  
6 annual budget submission, for each fiscal year after the  
7 date of the enactment of the No Child Left Behind Act  
8 of 2001, the Director of the Office shall submit to the  
9 appropriate committees of Congress (including the Appro-  
10 priations committees), all Bureau funded schools, and the  
11 tribal governing bodies of such schools, a report which  
12 shall contain—

13 “(1) projections, based upon the information  
14 gathered pursuant to subparagraph (b) and any  
15 other relevant information, of amounts necessary to  
16 provide Indian students in Bureau funded schools  
17 the educational program set forth in this part;

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

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

23 “(d) USE OF REPORTS.—The Director of the Office  
24 and the Assistant Secretary for Indian Affairs shall use

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1 the annual report required by subsection (c) when pre-  
2 paring their annual budget submissions.

3 **“SEC. 1130. UNIFORM DIRECT FUNDING AND SUPPORT.**

4 “(a) ESTABLISHMENT OF SYSTEM AND FORWARD  
5 FUNDING.—

6 “(1) IN GENERAL.—The Secretary shall estab-  
7 lish, by regulation adopted in accordance with sec-  
8 tion 1138, a system for the direct funding and sup-  
9 port of all Bureau funded schools. Such system shall  
10 allot funds in accordance with section 1127. All  
11 amounts appropriated for distribution under this  
12 section may be made available under paragraph (2).

13 “(2) TIMING FOR USE OF FUNDS.—(A) For the  
14 purposes of affording adequate notice of funding  
15 available pursuant to the allotments made under sec-  
16 tion 1127, amounts appropriated in an appropria-  
17 tions Act for any fiscal year shall become available  
18 for obligation by the affected schools on July 1 of  
19 the fiscal year in which such amounts are appro-  
20 priated without further action by the Secretary, and  
21 shall remain available for obligation through the suc-  
22 ceeding fiscal year.

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

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1           “(i) publish, not later than July 1 of the  
2 fiscal year for which the funds are appro-  
3 priated, allotments to each affected school made  
4 under section 1127 of 85 percent of such ap-  
5 propriation; and

6           “(ii) publish, not later than September 30  
7 of such fiscal year, the allotments to be made  
8 under section 1127 of the remaining 15 percent  
9 of such appropriation, adjusted to reflect the  
10 actual student attendance.

11           “(3) LIMITATION.—(A) Notwithstanding any  
12 other provision of law or regulation, the supervisor  
13 of a Bureau funded school may expend an aggregate  
14 of not more than \$50,000 of the amount allotted the  
15 school under section 1127 to acquire materials, sup-  
16 plies, equipment, services, operation, and mainte-  
17 nance for the school without competitive bidding if—

18           “(i) the cost for any single item purchased  
19 does not exceed \$15,000;

20           “(ii) the school board approves the pro-  
21 curement;

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

24           “(iv) the documents relating to the pro-  
25 curement executed by the supervisor or other

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1 school staff cite this paragraph as authority for  
2 the procurement; and

3 “(v) the transaction is documented in a  
4 journal maintained at the school clearly identi-  
5 fying when the transaction occurred, what was  
6 acquired and from whom, the price paid, the  
7 quantities acquired, and any other information  
8 the supervisor or school board considers rel-  
9 evant.

10 “(B) Not later than 6 months after the date of  
11 the enactment of the No Child Left Behind Act of  
12 2001, the Secretary shall cause to be sent to each  
13 supervisor of a Bureau operated program and school  
14 board chairperson, the education line officer or offi-  
15 cers of each agency and area, and the Bureau Divi-  
16 sion in charge of procurement, at both the local and  
17 national levels, notice of this paragraph.

18 “(C) The Director shall be responsible for de-  
19 termining the application of this paragraph, includ-  
20 ing the authorization of specific individuals to carry  
21 out this paragraph, and shall be responsible for the  
22 provision of guidelines on the use of this paragraph  
23 and adequate training on such guidelines.

24 “(4) EFFECT OF SEQUESTRATION ORDER.—If a  
25 sequestration order issued under the Balanced

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1 Budget and Emergency Deficit Control Act of 1985  
2 reduces the amount of funds available for allotment  
3 under section 1127 for any fiscal year by more than  
4 7 percent of the amount of funds available for allot-  
5 ment under such section during the preceding fiscal  
6 year—

7 “(A) to fund allotments under section  
8 1127, the Secretary, notwithstanding any other  
9 law, may use—

10 “(i) funds appropriated for the oper-  
11 ation of any Bureau school that is closed  
12 or consolidated; and

13 “(ii) funds appropriated for any pro-  
14 gram that has been curtailed at any Bu-  
15 reau school; and

16 “(B) the Secretary may waive the applica-  
17 tion of the provisions of section 1121(h) with  
18 respect to the closure or consolidation of a  
19 school, or the curtailment of a program at a  
20 school, during such fiscal year if the funds de-  
21 scribed in clauses (i) and (ii) of subparagraph  
22 (A) with respect to such school are used to fund  
23 allotments made under section 1127 for such  
24 fiscal year.

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

3               “(1) PLAN REQUIRED.—In the case of all Bu-  
4 reau operated schools, allotted funds shall be ex-  
5 pended on the basis of local financial plans which  
6 ensure meeting the accreditation requirements or  
7 standards for the school established pursuant to sec-  
8 tion 1121 and which shall be prepared by the local  
9 school supervisor in active consultation with the local  
10 school board for each school. The local school board  
11 for each school shall have the authority to ratify, re-  
12 ject, or amend such financial plan, and expenditures  
13 thereunder, and, on its own determination or in re-  
14 sponse to the supervisor of the school, to revise such  
15 financial plan to meet needs not foreseen at the time  
16 of preparation of the financial plan.

17               “(2) The supervisor—

18                       “(A) shall put into effect the decisions of  
19 the school board;

20                       “(B) shall provide the appropriate local  
21 union representative of the education employees  
22 with copies of proposed draft financial plans  
23 and all amendments or modifications thereto, at  
24 the same time such copies are submitted to the  
25 local school board; and

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1           “(C) may appeal any such action of the  
2           local school board to the appropriate education  
3           line officer of the Bureau agency by filing a  
4           written statement describing the action and the  
5           reasons the supervisor believes such action  
6           should be overturned. A copy of such statement  
7           shall be submitted to the local school board and  
8           such board shall be afforded an opportunity to  
9           respond, in writing, to such appeal. After re-  
10          viewing such written appeal and response, the  
11          appropriate education line officer may, for good  
12          cause, overturn the action of the local school  
13          board. The appropriate education line officer  
14          shall transmit the determination of such appeal  
15          in the form of a written opinion to such board  
16          and to such supervisor identifying the reasons  
17          for overturning such action.

18          “(c) USE OF SELF-DETERMINATION GRANTS  
19          FUNDS.—Funds for self-determination grants under sec-  
20          tion 103(a)(2) of the Indian Self-Determination and Edu-  
21          cation Assistance Act shall not be used for providing tech-  
22          nical assistance and training in the field of education by  
23          the Bureau unless such services are provided in accord-  
24          ance with a plan, agreed to by the tribe or tribes affected  
25          and the Bureau, under which control of education pro-

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1 grams is intended to be transferred to such tribe or tribes  
2 within a specific period of time negotiated under such  
3 agreement. The Secretary may approve applications for  
4 funding tribal divisions of education and development of  
5 tribal codes of education from funds appropriated pursu-  
6 ant to section 104(a) of such Act.

7 “(d) TECHNICAL ASSISTANCE AND TRAINING.—In  
8 the exercise of its authority under this section, a local  
9 school board may request technical assistance and training  
10 from the Secretary, and the Secretary shall, to the great-  
11 est extent possible, provide such services, and make appro-  
12 priate provisions in the budget of the Office for such serv-  
13 ices.

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

16 “(1) IN GENERAL.—A financial plan under sub-  
17 section (b) for a school may include, at the discre-  
18 tion of the local administrator and the school board  
19 of such school, a provision for a summer program of  
20 academic and support services for students of the  
21 school. Any such program may include activities re-  
22 lated to the prevention of alcohol and substance  
23 abuse. The Assistant Secretary for Indian Affairs  
24 shall provide for the utilization of any such school



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1 facility during any summer in which such utilization  
2 is requested.

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

10 “(3) TECHNICAL ASSISTANCE AND PROGRAM  
11 COORDINATION.—The Assistant Secretary for Indian  
12 Affairs, acting through the Director of the Office,  
13 shall provide technical assistance and coordination  
14 for any program described in paragraph (1) and  
15 shall, to the extent possible, encourage the coordina-  
16 tion of such programs with any other summer pro-  
17 grams that might benefit Indian youth, regardless of  
18 the funding source or administrative entity of any  
19 such program.

20 “(f) COOPERATIVE AGREEMENTS.—

21 “(1) IN GENERAL.—From funds allotted to a  
22 Bureau school under section 1127, the Secretary  
23 shall, if specifically requested by the tribal governing  
24 body (as defined in section 1141), implement any co-  
25 operative agreement entered into between the tribe,

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1 the Bureau school board, and the local public school  
2 district which meets the requirements of paragraph  
3 (2) and involves the school. The tribe, the Bureau  
4 school board, and the local public school district  
5 shall determine the terms of the agreement. Such  
6 agreement may encompass coordination of all or any  
7 part of the following:

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

12 “(B) Support services, including procure-  
13 ment and facilities maintenance.

14 “(C) Transportation.

15 “(2) EQUAL BENEFIT AND BURDEN.—Each  
16 agreement entered into pursuant to the authority  
17 provided in paragraph (1) shall confer a benefit  
18 upon the Bureau school commensurate with the bur-  
19 den assumed, though this requirement shall not be  
20 construed so as to require equal expenditures or an  
21 exchange of similar services.

22 “(g) PRODUCT OR RESULT OF STUDENT  
23 PROJECTS.—Notwithstanding any other provision of law,  
24 where there is agreement on action between the super-  
25 intendent and the school board of a Bureau funded school,

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1 the product or result of a project conducted in whole or  
2 in major part by a student may be given to that student  
3 upon the completion of such project.

4 “(h) NOT CONSIDERED FEDERAL FUNDS FOR  
5 MATCHING REQUIREMENTS.—Notwithstanding any other  
6 provision of law, funds received by a Bureau funded school  
7 under this part shall not be considered Federal funds for  
8 the purposes of meeting a matching funds requirement for  
9 any Federal program.

10 **“SEC. 1131. POLICY FOR INDIAN CONTROL OF INDIAN EDU-**  
11 **CATION.**

12 “(a) FACILITATION OF INDIAN CONTROL.—It shall  
13 be the policy of the Secretary and the Bureau, in carrying  
14 out the functions of the Bureau, to facilitate tribal control  
15 of Indian affairs in all matters relating to education.

16 “(b) CONSULTATION WITH TRIBES.—

17 “(1) IN GENERAL.—All actions under this Act  
18 shall be done with active consultation with tribes.

19 “(2) REQUIREMENTS.—The consultation re-  
20 quired under paragraph (1) means a process involv-  
21 ing the open discussion and joint deliberation of all  
22 options with respect to potential issues or changes  
23 between the Bureau and all interested parties. Dur-  
24 ing such discussions and joint deliberations, inter-  
25 ested parties (including tribes and school officials)

1 shall be given an opportunity to present issues in-  
2 cluding proposals regarding changes in current prac-  
3 tices or programs which will be considered for future  
4 action by the Bureau. All interested parties shall be  
5 given an opportunity to participate and discuss the  
6 options presented or to present alternatives, with the  
7 views and concerns of the interested parties given ef-  
8 fect unless the Secretary determines, from informa-  
9 tion available from or presented by the interested  
10 parties during one or more of the discussions and  
11 deliberations, that there is a substantial reason for  
12 another course of action. The Secretary shall submit  
13 to any Member of Congress, within 18 days of the  
14 receipt of a written request by such Member, a writ-  
15 ten explanation of any decision made by the Sec-  
16 retary which is not consistent with the views of the  
17 interested parties.

18 **“SEC. 1132. INDIAN EDUCATION PERSONNEL.**

19 “(a) IN GENERAL.—Chapter 51, subchapter III of  
20 chapter 53, and chapter 63 of title 5, United States Code,  
21 relating to classification, pay and leave, respectively, and  
22 the sections of such title relating to the appointment, pro-  
23 motion, hours of work, and removal of civil service employ-  
24 ees, shall not apply to educators or to education positions  
25 (as defined in subsection (p)).

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1       “(b) REGULATIONS.—Not later than 60 days after  
2 the date of the enactment of the No Child Left Behind  
3 Act of 2001, the Secretary shall prescribe regulations to  
4 carry out this section. Such regulations shall include—

5               “(1) the establishment of education positions;

6               “(2) the establishment of qualifications for edu-  
7 cators and education personnel;

8               “(3) the fixing of basic compensation for edu-  
9 cators and education positions;

10              “(4) the appointment of educators;

11              “(5) the discharge of educators;

12              “(6) the entitlement of educators to compensa-  
13 tion;

14              “(7) the payment of compensation to educators;

15              “(8) the conditions of employment of educators;

16              “(9) the leave system for educators;

17              “(10) the annual leave and sick leave for edu-  
18 cators; and

19              “(11) such matters as may be appropriate.

20       “(c) QUALIFICATIONS OF EDUCATORS.—

21              “(1) REQUIREMENTS.—In prescribing regula-  
22 tions to govern the qualifications of educators, the  
23 Secretary shall require—

24                      “(A)(i) that lists of qualified and inter-  
25 viewed applicants for education positions be

1 maintained in each agency and area office of  
2 the Bureau from among individuals who have  
3 applied at the agency or area level for an edu-  
4 cation position or who have applied at the na-  
5 tional level and have indicated in such applica-  
6 tion an interest in working in certain areas or  
7 agencies; and

8 “(ii) that a list of qualified and interviewed  
9 applicants for education positions be main-  
10 tained in the Office from among individuals  
11 who have applied at the national level for an  
12 education position and who have expressed in-  
13 terest in working in an education position any-  
14 where in the United States;

15 “(B) that a local school board shall have  
16 the authority to waive on a case-by-case basis,  
17 any formal education or degree qualifications  
18 established by regulation pursuant to subsection  
19 (b)(2), in order for a tribal member to be hired  
20 in an education position to teach courses on  
21 tribal culture and language and that subject to  
22 subsection (e)(2), a determination by a school  
23 board that such a person be hired shall be insti-  
24 tuted supervisor; and

1           “(C) that it shall not be a prerequisite to  
2           the employment of an individual in an edu-  
3           cation position at the local level that such indi-  
4           vidual’s name appear on the national list main-  
5           tained pursuant to subparagraph (A)(ii) or that  
6           such individual has applied at the national level  
7           for an education position.

8           “(2) EXCEPTION FOR CERTAIN TEMPORARY EM-  
9           PLOYMENT.—The Secretary may authorize the tem-  
10          porary employment in an education position of an  
11          individual who has not met the certification stand-  
12          ards established pursuant to regulations, if the Sec-  
13          retary determines that failure to do so would result  
14          in that position remaining vacant.

15          “(d) HIRING OF EDUCATORS.—

16                 “(1) REQUIREMENTS.—In prescribing regula-  
17                 tions to govern the appointment of educators, the  
18                 Secretary shall require—

19                         “(A)(i) that educators employed in a Bu-  
20                         reau operated school (other than the supervisor  
21                         of the school) shall be hired by the supervisor  
22                         of the school. In cases where there are no quali-  
23                         fied applicants available, such supervisor may  
24                         consult the national list maintained pursuant to  
25                         subsection (c)(1)(A)(ii);

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1           “(ii) each school supervisor shall be hired  
2 by the education line officer of the agency office  
3 of the Bureau in which the school is located;

4           “(iii) educators employed in an agency of-  
5 fice of the Bureau shall be hired by the super-  
6 intendent for education of the agency office;  
7 and

8           “(iv) each education line officer and edu-  
9 cators employed in the Office of the Director of  
10 Indian Education Programs shall be hired by  
11 the Director;

12           “(B) that before an individual is employed  
13 in an education position in a school by the su-  
14 pervisor of a school (or with respect to the posi-  
15 tion of supervisor, by the appropriate agency  
16 education line officer), the local school board  
17 for the school shall be consulted. A determina-  
18 tion by such school board that such individual  
19 should or should not be so employed shall be in-  
20 stituted by the supervisor (or with respect to  
21 the position of supervisor, by the agency super-  
22 intendent for education);

23           “(C) that before an individual may be em-  
24 ployed in an education position at the agency  
25 level, the appropriate agency school board shall



1 be consulted, and that a determination by such  
2 school board that such individual should or  
3 should not be employed shall be instituted by  
4 the agency superintendent for education; and

5 “(D) that before an individual may be em-  
6 ployed in an education position in the Office of  
7 the Director (other than the position of Direc-  
8 tor), the national school boards representing all  
9 Bureau schools shall be consulted.

10 “(2) INFORMATION REGARDING APPLICATION  
11 AT NATIONAL LEVEL.—Any individual who applies  
12 at the local level for an education position shall state  
13 on such individual’s application whether or not such  
14 individual has applied at the national level for an  
15 education position in the Bureau. If such individual  
16 is employed at the local level, such individual’s name  
17 shall be immediately forwarded to the Secretary,  
18 who shall, as soon as practicable but in no event in  
19 more than 30 days, ascertain the accuracy of the  
20 statement made by such individual pursuant to the  
21 first sentence of this paragraph. Notwithstanding  
22 subsection (e), if the individual’s statement is found  
23 to have been false, such individual, at the Sec-  
24 retary’s discretion, may be disciplined or discharged.  
25 If the individual has applied at the national level for

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1 an education position in the Bureau, the appoint-  
2 ment of such individual at the local level shall be  
3 conditional for a period of 90 days, during which pe-  
4 riod the Secretary may appoint a more qualified in-  
5 dividual (as determined by the Secretary) from the  
6 list maintained at the national level pursuant to sub-  
7 section (c)(1)(A)(ii) to the position to which such in-  
8 dividual was appointed.

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

15 “(e) DISCHARGE AND CONDITIONS OF EMPLOYMENT  
16 OF EDUCATORS.—

17 “(1) REGULATIONS.—In prescribing regulations  
18 to govern the discharge and conditions of employ-  
19 ment of educators, the Secretary shall require—

20 “(A) that procedures be established for the  
21 rapid and equitable resolution of grievances of  
22 educators;

23 “(B) that no educator may be discharged  
24 without notice of the reasons therefore and op-  
25 portunity for a hearing under procedures that

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1           comport with the requirements of due process;  
2           and

3                   “(C) that educators employed in Bureau  
4           schools be notified 30 days prior to the end of  
5           the school year whether their employment con-  
6           tract will be renewed for the following year.

7                   “(2) PROCEDURES FOR DISCHARGE.—The su-  
8           pervisor of a Bureau school may discharge (subject  
9           to procedures established under paragraph (1)(B))  
10          for cause (as determined under regulations pre-  
11          scribed by the Secretary) any educator employed in  
12          such school. Upon giving notice of proposed dis-  
13          charge to an educator, the supervisor involved shall  
14          immediately notify the local school board for the  
15          school of such action. A determination by the local  
16          school board that such educator shall not be dis-  
17          charged shall be followed by the supervisor. The su-  
18          pervisor shall have the right to appeal such action  
19          to the education line officer of the appropriate agen-  
20          cy office of the Bureau. Upon such an appeal, the  
21          agency education line officer may, for good cause  
22          and in writing to the local school board, overturn the  
23          determination of the local school board with respect  
24          to the employment of such individual.

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1           “(3) RECOMMENDATIONS OF SCHOOL BOARDS  
2           FOR DISCHARGE.—Each local school board for a Bu-  
3           reau school shall have the right—

4                   “(A) to recommend to the supervisor of  
5                   such school that an educator employed in the  
6                   school be discharged; and

7                   “(B) to recommend to the education line  
8                   officer of the appropriate agency office of the  
9                   Bureau and to the Director of the Office, that  
10                  the supervisor of the school be discharged.

11          “(f) APPLICABILITY OF INDIAN PREFERENCE  
12          LAWS.—

13                  “(1) IN GENERAL.—Notwithstanding any provi-  
14                  sion of the Indian preference laws, such laws shall  
15                  not apply in the case of any personnel action under  
16                  this section respecting an applicant or employee not  
17                  entitled to Indian preference if each tribal organiza-  
18                  tion concerned grants a written waiver of the appli-  
19                  cation of such laws with respect to such personnel  
20                  action and states that such waiver is necessary. This  
21                  paragraph shall not relieve the Bureau’s responsi-  
22                  bility to issue timely and adequate announcements  
23                  and advertisements concerning any such personnel  
24                  action if such action is intended to fill a vacancy (no  
25                  matter how such vacancy is created).

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1           “(2) TRIBAL ORGANIZATION DEFINED.—For  
2 purposes of this subsection, the term ‘tribal organi-  
3 zation’ means—

4           “(A) the recognized governing body of any  
5 Indian tribe, band, nation, pueblo, or other or-  
6 ganized community, including a Native village  
7 (as defined in section 3(c) of the Alaska Native  
8 Claims Settlement Act); or

9           “(B) in connection with any personnel ac-  
10 tion referred to in this subsection, any local  
11 school board as defined in section 1141 which  
12 has been delegated by such governing body the  
13 authority to grant a waiver under this sub-  
14 section with respect to personnel action.

15           “(3) INDIAN PREFERENCE LAW DEFINED.—The  
16 term ‘Indian preference laws’ means section 12 of  
17 the Act of June 18, 1934, or any other provision of  
18 law granting a preference to Indians in promotions  
19 and other personnel actions. Such term shall not in-  
20 clude section 7(b) of the Indian Self-Determination  
21 and Education Assistance Act.

22           “(g) COMPENSATION OR ANNUAL SALARY.—

23           “(1) IN GENERAL.—(A) Except as otherwise  
24 provided in this section, the Secretary shall fix the  
25 basic compensation for educators and education po-

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1       sitions at rates in effect under the General Schedule  
2       for individuals with comparable qualifications, and  
3       holding comparable positions, to whom chapter 51 of  
4       title 5, United States Code, is applicable or on the  
5       basis of the Federal Wage System schedule in effect  
6       for the locality, and for the comparable positions,  
7       the rates of compensation in effect for the senior ex-  
8       ecutive service.

9           “(B) The Secretary shall establish the rate of  
10       basic compensation, or annual salary rates, for the  
11       positions of teachers and counselors (including dor-  
12       mitory counselors and home-living counselors) at the  
13       rates of basic compensation applicable (on the date  
14       of the enactment of the No Child Left Behind Act  
15       of 2001 and thereafter) to comparable positions in  
16       the overseas schools under the Defense Department  
17       Overseas Teachers Pay Act. The Secretary shall  
18       allow the local school boards authority to implement  
19       only the aspects of the Defense Department Over-  
20       seas Teacher pay provisions that are considered es-  
21       sential for recruitment and retention. Implementa-  
22       tion of such provisions shall not be construed to re-  
23       quire the implementation of the Act in its entirety.

24           “(C)(i) Beginning with the fiscal year following  
25       the date of the enactment of the No Child Left Be-

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1 hind Act of 2001, each school board may set the  
2 rate of compensation or annual salary rate for teach-  
3 ers and counselors (including academic counselors)  
4 who are new hires at the school and who have not  
5 worked at the school on the date of implementation  
6 of this provision, at rates consistent with the rates  
7 paid for individuals in the same positions, with the  
8 same tenure and training, in any other school within  
9 whose boundaries the Bureau school lies. In in-  
10 stances where the adoption of such rates cause a re-  
11 duction in the payment of compensation from that  
12 which was in effect for the fiscal year following the  
13 date of the enactment of the No Child Left Behind  
14 Act of 2001, the new rate may be applied to the  
15 compensation of employees of the school who worked  
16 at the school on of the date of the enactment of that  
17 Act by applying those rates to each contract renewal  
18 such that the reduction takes effect in three equal  
19 installments. Where adoption of such rates lead to  
20 an increase in the payment of compensation from  
21 that which was in effect for the fiscal year following  
22 the date of the enactment of the No Child Left Be-  
23 hind Act of 2001, the school board may make such  
24 rates applicable at the next contract renewal such  
25 that either—

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1           “(I) the increase occurs in its entirety; or

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

4           “(ii) The establishment of rates of basic com-  
5           pensation and annual salary rates under subpara-  
6           graphs (B) and (C) shall not preclude the use of  
7           regulations and procedures used by the Bureau prior  
8           to April 28, 1988, in making determinations regard-  
9           ing promotions and advancements through levels of  
10          pay that are based on the merit, education, experi-  
11          ence, or tenure of the educator.

12          “(D) The establishment of rates of basic com-  
13          pensation and annual salary rates under subpara-  
14          graphs (B) and (C) shall not affect the continued  
15          employment or compensation of an educator who  
16          was employed in an education position on October  
17          31, 1979, and who did not make an election under  
18          subsection (p) is in effect on January 1, 1990.

19          “(2) POST-DIFFERENTIAL RATES.—(A) The  
20          Secretary may pay a post-differential rate not to ex-  
21          ceed 25 percent of the rate of basic compensation,  
22          on the basis of conditions of environment or work  
23          which warrant additional pay as a recruitment and  
24          retention incentive.



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1           “(B)(i) Upon the request of the supervisor and  
2           the local school board of a Bureau school, the Sec-  
3           retary shall grant the supervisor of the school au-  
4           thorization to provide one or more post-differentials  
5           under subparagraph (A) unless the Secretary deter-  
6           mines for clear and convincing reasons (and advises  
7           the board in writing of those reasons) that certain  
8           of the requested post-differentials should be dis-  
9           approved or decreased because there is no disparity  
10          of compensation for the involved employees or posi-  
11          tions in the Bureau school, as compared with the  
12          nearest public school, that is either—

13                   “(I) at least 5 percent; or

14                   “(II) less than 5 percent and affects the  
15                  recruitment or retention of employees at the  
16                  school.

17           “(ii) A request under clause (i) shall be deemed  
18           granted at the end of the 60th day after the request  
19           is received in the Central Office of the Bureau un-  
20           less before that time the request is approved, ap-  
21           proved with modification, or disapproved by the Sec-  
22           retary.

23           “(iii) The Secretary or the supervisor of a Bu-  
24           reau school may discontinue or decrease a post-dif-

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1 differential authorized under this subparagraph at the  
2 beginning of a school year if—

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

6 “(II) the Secretary or the supervisor deter-  
7 mines for clear and convincing reasons (and ad-  
8 vises the board in writing of those reasons) that  
9 there is no disparity of compensation that  
10 would affect the recruitment or retention of em-  
11 ployees at the school after the differential is  
12 discontinued or decreased.

13 “(iv) On or before February 1 of each year, the  
14 Secretary shall submit to Congress a report describ-  
15 ing the requests and grants of authority under this  
16 subparagraph during the previous year and listing  
17 the positions contracted under those grants of au-  
18 thority.

19 “(h) LIQUIDATION OF REMAINING LEAVE UPON  
20 TERMINATION.—Upon termination of employment with  
21 the Bureau, any annual leave remaining to the credit of  
22 an individual within the purview of this section shall be  
23 liquidated in accordance with sections 5551(a) and 6306  
24 of title 5, United States Code, except that leave earned

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1 or accrued under regulations prescribed pursuant to sub-  
2 section (b)(10) of this section shall not be so liquidated.

3 “(i) TRANSFER OF REMAINING SICK LEAVE UPON  
4 TRANSFER, PROMOTION, OR REEMPLOYMENT.—In the  
5 case of any educator who is transferred, promoted, or re-  
6 appointed, without break in service, to a position in the  
7 Federal Government under a different leave system, any  
8 remaining leave to the credit of such person earned or  
9 credited under the regulations prescribed pursuant to sub-  
10 section (b)(10) shall be transferred to such person’s credit  
11 in the employing agency on an adjusted basis in accord-  
12 ance with regulations which shall be prescribed by the Of-  
13 fice of Personnel Management.

14 “(j) INELIGIBILITY FOR EMPLOYMENT OF VOLUN-  
15 TARILY TERMINATED EDUCATORS.—An educator who vol-  
16 untarily terminates employment with the Bureau before  
17 the expiration of the existing employment contract be-  
18 tween such educator and the Bureau shall not be eligible  
19 to be employed in another education position in the Bu-  
20 reau during the remainder of the term of such contract.

21 “(k) DUAL COMPENSATION.—In the case of any edu-  
22 cator employed in an education position described in sub-  
23 section (l)(1)(A) who—

24 “(1) is employed at the close of a school year;

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1           “(2) agrees in writing to serve in such position  
2           for the next school year; and

3           “(3) is employed in another position during the  
4           recess period immediately preceding such next school  
5           year, or during such recess period receives additional  
6           compensation referred to in section 5533 of title 5,  
7           United States Code, relating to dual compensation,  
8           shall not apply to such educator by reason of any such  
9           employment during a recess period for any receipt of addi-  
10          tional compensation.

11          “(l) VOLUNTARY SERVICES.—Notwithstanding sec-  
12          tion 1342 of title 31, United States Code, the Secretary  
13          may, subject to the approval of the local school board con-  
14          cerned, accept voluntary services on behalf of Bureau  
15          schools. Nothing in this part shall be construed to require  
16          Federal employees to work without compensation or to  
17          allow the use of volunteer services to displace or replace  
18          Federal employees. An individual providing volunteer serv-  
19          ices under this section is a Federal employee only for pur-  
20          poses of chapter 81 of title 5, United States Code, and  
21          chapter 171 of title 28, United States Code.

22          “(m) PRORATION OF PAY.—

23                 “(1) ELECTION OF EMPLOYEE.—Notwith-  
24                 standing any other provision of law, including laws  
25                 relating to dual compensation, the Secretary, at the

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1 election of the employee, shall prorate the salary of  
2 an employee employed in an education position for  
3 the academic school year over the entire 12-month  
4 period. Each educator employed for the academic  
5 school year shall annually elect to be paid on a 12-  
6 month basis or for those months while school is in  
7 session. No educator shall suffer a loss of pay or  
8 benefits, including benefits under unemployment or  
9 other Federal or federally assisted programs, be-  
10 cause of such election.

11 “(2) CHANGE OF ELECTION.—During the  
12 course of such year the employee may change elec-  
13 tion once.

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

18 “(4) DEFINITIONS.—For purposes of this sub-  
19 section, the terms ‘educator’ and ‘education position’  
20 have the meanings contained in paragraphs (1) and  
21 (2) of subsection (o). This subsection applies to  
22 those individuals employed under the provisions of  
23 section 1132 of this title or title 5, United States  
24 Code.

25 “(n) EXTRACURRICULAR ACTIVITIES.—

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1           “(1) STIPEND.—Notwithstanding any other  
2           provision of law, the Secretary may provide, for each  
3           Bureau area, a stipend in lieu of overtime premium  
4           pay or compensatory time off. Any employee of the  
5           Bureau who performs additional activities to provide  
6           services to students or otherwise support the school’s  
7           academic and social programs may elect to be com-  
8           pensated for all such work on the basis of the sti-  
9           pend. Such stipend shall be paid as a supplement to  
10          the employee’s base pay.

11          “(2) ELECTION NOT TO RECEIVE STIPEND.—If  
12          an employee elects not to be compensated through  
13          the stipend established by this subsection, the appro-  
14          priate provisions of title 5, United States Code, shall  
15          apply.

16          “(3) APPLICABILITY OF SUBSECTION.—This  
17          subsection applies to all Bureau employees, whether  
18          employed under section 1132 of this title or title 5,  
19          United States Code.

20          “(o) DEFINITIONS.—For the purpose of this  
21          section—

22                 “(1) EDUCATION POSITION.—The term ‘edu-  
23                 cation position’ means a position in the Bureau the  
24                 duties and responsibilities of which—

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1           “(A) are performed on a school-year basis  
2           principally in a Bureau school and involve—  
3                   “(i) classroom or other instruction or  
4                   the supervision or direction of classroom or  
5                   other instruction;  
6                   “(ii) any activity (other than teach-  
7                   ing) which requires academic credits in  
8                   educational theory and practice equal to  
9                   the academic credits in educational theory  
10                  and practice required for a bachelor’s de-  
11                  gree in education from an accredited insti-  
12                  tution of higher education;  
13                  “(iii) any activity in or related to the  
14                  field of education notwithstanding that  
15                  academic credits in educational theory and  
16                  practice are not a formal requirement for  
17                  the conduct of such activity; or  
18                  “(iv) support services at, or associated  
19                  with, the site of the school; or  
20                  “(B) are performed at the agency level of  
21                  the Bureau and involve the implementation of  
22                  education-related programs other than the posi-  
23                  tion for agency superintendent for education.







1 shall include opportunities for acquiring work experience  
2 prior to actual work assignment.

3 **“SEC. 1136. BIENNIAL REPORT; AUDITS.**

4 “(a) BIENNIAL REPORTS.—The Secretary shall sub-  
5 mit to each appropriate committee of Congress, all Bureau  
6 funded schools, and the tribal governing bodies of such  
7 schools, a detailed biennial report on the state of education  
8 within the Bureau and any problems encountered in In-  
9 dian education during the 2-year period covered by the  
10 report. Such report shall contain suggestions for the im-  
11 provement of the Bureau educational system and for in-  
12 creasing tribal or local Indian control of such system. Such  
13 report shall also include the current status of tribally con-  
14 trolled community colleges. The annual budget submission  
15 for the Bureau’s education programs shall include—

16 “(1) information on the funds provided to pre-  
17 viously private schools under section 208 of the In-  
18 dian Self-Determination and Education Assistance  
19 Act, and recommendations with respect to the future  
20 use of such funds;

21 “(2) the needs and costs of operations and  
22 maintenance of tribally controlled community col-  
23 leges eligible for assistance under the Tribally Con-  
24 trolled Community College Assistance Act of 1978

1 and recommendations with respect to meeting such  
2 needs and costs; and

3 “(3) the plans required by sections 1121 (g),  
4 1122(c), and 1125(b).

5 “(b) FINANCIAL AND COMPLIANCE AUDITS.—The  
6 Inspector General of the Department of the Interior shall  
7 establish a system to ensure that financial and compliance  
8 audits are conducted of each Bureau operated school at  
9 least once in every 3 years. Audits of Bureau schools shall  
10 be based upon the extent to which such school has com-  
11 plied with its local financial plan under section 1130.

12 **“SEC. 1137. RIGHTS OF INDIAN STUDENTS.**

13 “The Secretary shall prescribe such rules and regula-  
14 tions as are necessary to ensure the constitutional and civil  
15 rights of Indian students attending Bureau funded  
16 schools, including such students’ right to privacy under  
17 the laws of the United States, such students’ right to free-  
18 dom of religion and expression, and such students’ right  
19 to due process in connection with disciplinary actions, sus-  
20 pensions, and expulsions.

21 **“SEC. 1138. REGULATIONS.**

22 “(a) IN GENERAL.—The Secretary is authorized to  
23 issue only such regulations as are necessary to ensure  
24 compliance with the specific provision of this Act. The Sec-  
25 retary shall publish proposed regulations in the Federal

1 Register, shall provide a period of not less than 90 days  
2 for public comment thereon, and shall place in parentheses  
3 after each regulatory section the citation to any statutory  
4 provision providing authority to promulgate such regu-  
5 latory provision.

6 “(b) MISCELLANEOUS.—

7 “(1) CONSTRUCTION.—The provisions of this  
8 Act shall supersede any conflicting provisions of law  
9 (including any conflicting regulations) in effect on  
10 the day before the date of the enactment of this Act  
11 and the Secretary is authorized to repeal any regula-  
12 tion inconsistent with the provisions of this Act.

13 “(2) LEGAL AUTHORITY TO BE STATED.—Reg-  
14 ulations issued to implement this Act shall contain,  
15 immediately following each substantive provision of  
16 such regulations, citations to the particular section  
17 or sections of statutory law or other legal authority  
18 upon which provision is based.

19 **“SEC. 1138A. REGIONAL MEETINGS AND NEGOTIATED**  
20 **RULEMAKING.**

21 “(a) MEETINGS.—

22 “(1) IN GENERAL.—The Secretary shall obtain  
23 tribal involvement in the development of proposed  
24 regulations under this part and the Tribally Con-  
25 trolled Schools Act of 1988. The Secretary shall ob-

1       tain the advice of and recommendations from rep-  
2       representatives of Indian tribes with Bureau funded  
3       schools on their reservations, Indian tribes whose  
4       children attend Bureau funded off-reservation board-  
5       ing schools, school boards, administrators or employ-  
6       ees of Bureau funded schools, and parents and  
7       teachers of students enrolled in Bureau funded  
8       schools.

9               “(2) ISSUES.—The Secretary shall provide for a  
10       comprehensive discussion and exchange of informa-  
11       tion concerning the implementation of this part and  
12       the Tribally Controlled Schools Act of 1988 through  
13       such mechanisms as regional meetings and electronic  
14       exchanges of information. The Secretary shall take  
15       into account the information received through such  
16       mechanisms in the development of proposed regula-  
17       tions and shall publish a summary of such informa-  
18       tion in the Federal Register together with such pro-  
19       posed regulations.

20       “(b) DRAFT REGULATIONS.—

21               “(1) IN GENERAL.—After obtaining the advice  
22       and recommendations described in subsection (a)(1)  
23       and before publishing proposed regulations in the  
24       Federal Register, the Secretary shall prepare draft  
25       regulations implementing this part and the Tribally

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1       Controlled Schools Act of 1988 and shall submit  
2       such regulations to a negotiated rulemaking process.  
3       Participants in the negotiations process shall be cho-  
4       sen by the Secretary from individuals nominated by  
5       the entities described in subsection (a)(1). To the  
6       maximum extent possible, the Secretary shall ensure  
7       that the tribal representative membership chosen  
8       pursuant to the preceding sentence reflects the pro-  
9       portionate share of students from tribes served by  
10      the Bureau funded school system. The negotiation  
11      process shall be conducted in a timely manner in  
12      order that the final regulations may issued by the  
13      Secretary no later than 18 months after the enact-  
14      ment of this section.

15           “(2) NOTIFICATION TO CONGRESS.—If draft  
16      regulations implementing this part and the Tribally  
17      Controlled Schools Act of 1988 are not issued in  
18      final form by the deadline provided in paragraph  
19      (1), the Secretary shall notify the appropriate com-  
20      mittees of Congress of which draft regulations were  
21      not issued in final form by the deadline and the rea-  
22      son such final regulations were not issued.

23           “(3) EXPANSION OF NEGOTIATED RULE-  
24      MAKING.—All regulations pertaining to this part and  
25      the Tribally Controlled Schools Act of 1988 that are

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1 promulgated after the date of the enactment of this  
2 subsection shall be subject to a negotiated rule-  
3 making (including the selection of the regulations to  
4 be negotiated), unless the Secretary determines that  
5 applying such a requirement with respect to given  
6 regulations is impracticable, unnecessary, or con-  
7 trary to the public interest (within the meaning of  
8 section 553(b)(3)(B) of title 5), and publishes the  
9 basis for such determination in the Federal Register  
10 at the same time as the proposed regulations in  
11 question are first published. All published proposed  
12 regulations shall conform to agreements resulting  
13 from such negotiated rulemaking unless the Sec-  
14 retary reopens the negotiated rulemaking process or  
15 provides a written explanation to the participants in  
16 that process why the Secretary has decided to depart  
17 from such agreements. Such negotiated rulemaking  
18 shall be conducted in accordance with the provisions  
19 of subsection (a), and the Secretary shall ensure  
20 that a clear and reliable record of agreements  
21 reached during the negotiation process is main-  
22 tained.

23 “(c) APPLICABILITY OF FEDERAL ADVISORY COM-  
24 MITTEE ACT.—The Federal Advisory Committee Act shall  
25 apply to activities carried out under this section.

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1 **“SEC. 1139. EARLY CHILDHOOD DEVELOPMENT PROGRAM.**

2       “(a) IN GENERAL.—The Secretary shall provide  
3 grants to tribes, tribal organizations, and consortia of  
4 tribes and tribal organizations to fund early childhood de-  
5 velopment programs that are operated by such tribes, or-  
6 ganizations, or consortia.

7       “(b) AMOUNT OF GRANTS.—

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

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

18                   “(i) such tribe;

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

21                   “(iii) any tribe that—

22                           “(I) is a member of such consor-  
23 tium; or

24                           “(II) authorizes any tribal orga-  
25 nization that is a member of such con-  
26 sortium; bears to



1           “(B) the total number of all children under  
2           6 years of age who are members of any tribe  
3           that—

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

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

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

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

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

14                   “(B) to any tribal organization which is  
15                   authorized—

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

18                           “(ii) by one or more tribes that have  
19                           a combined total membership of less than  
20                           500 members; or

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

25           “(c) APPLICATION.

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

7           “(2) CONTENTS.—Applications submitted under  
8           paragraph (1) shall set forth the early childhood de-  
9           velopment program that the applicant desires to op-  
10          erate.

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

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

18                       “(A) prenatal care;

19                       “(B) nutrition education;

20                       “(C) health education and screening;

21                       “(D) family literacy services;

22                       “(E) educational testing; and

23                       “(F) other educational services;

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

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

3           “(e) COORDINATION OF FAMILY LITERACY PRO-  
4 GRAMS.—Family literacy programs operated under this  
5 section and other family literacy programs operated by the  
6 Bureau of Indian Affairs shall be coordinated with family  
7 literacy programs for Indian children under part B of title  
8 I of the Elementary and Secondary Education Act of 1965  
9 in order to avoid duplication and to encourage the dissemi-  
10 nation of information on quality family literacy programs  
11 serving Indians.

12          “(f) ADMINISTRATIVE COSTS.—The Secretary shall,  
13 out of funds appropriated under subsection (g), include  
14 in the grants provided under subsection (a) amounts for  
15 administrative costs incurred by the tribe, tribal organiza-  
16 tion, or consortium of tribes in establishing and maintain-  
17 ing the early childhood development program.

18          “(g) AUTHORIZATION OF APPROPRIATIONS.—For the  
19 purpose of carrying out the provisions of this section,  
20 there are authorized to be appropriated \$10,000,000 for  
21 fiscal year 2002 and such sums as may be necessary for  
22 each of the fiscal years 2003, 2004, 2005, and 2006.

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1 **“SEC. 1140. TRIBAL DEPARTMENTS OR DIVISIONS OF EDU-**  
2 **CATION.**

3 “(a) IN GENERAL.—Subject to the availability of ap-  
4 propriations, the Secretary shall provide grants and tech-  
5 nical assistance to tribes for the development and oper-  
6 ation of tribal departments of education for the purpose  
7 of planning and coordinating all educational programs of  
8 the tribe.

9 “(b) GRANTS.—Grants provided under this section  
10 shall—

11 “(1) be based on applications from the gov-  
12 erning body of the tribe;

13 “(2) reflect factors such as geographic and pop-  
14 ulation diversity;

15 “(3) facilitate tribal control in all matters relat-  
16 ing to the education of Indian children on Indian  
17 reservations (and on former Indian reservations in  
18 Oklahoma);

19 “(4) provide for the development of coordinated  
20 educational programs on Indian reservations (and on  
21 former Indian reservations in Oklahoma) (including  
22 all preschool, elementary, secondary, and higher or  
23 vocational educational programs funded by tribal,  
24 Federal, or other sources) by encouraging tribal ad-  
25 ministrative support of all Bureau funded edu-  
26 cational programs as well as encouraging tribal co-

1 operation and coordination with all educational pro-  
2 grams receiving financial support from State agen-  
3 cies, other Federal agencies, or private entities;

4 “(5) provide for the development and enforce-  
5 ment of tribal educational codes, including tribal  
6 educational policies and tribal standards applicable  
7 to curriculum, personnel, students, facilities, and  
8 support programs; and

9 “(6) otherwise comply with regulations for  
10 grants under section 103(a) of the Indian Self-De-  
11 termination and Educational Assistance Act that are  
12 in effect on the date that application for such grants  
13 are made.

14 “(c) PRIORITIES.—

15 “(1) IN GENERAL.—In making grants under  
16 this section, the Secretary shall give priority to any  
17 application that—

18 “(A) includes assurances from the majority  
19 of Bureau funded schools located within the  
20 boundaries of the reservation of the applicant  
21 that the tribal department of education to be  
22 funded under this section will provide coordi-  
23 nating services and technical assistance to all of  
24 such schools, including the submission to each  
25 applicable agency of a unified application for

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1 funding for all of such schools which provides  
2 that—

3 “(i) no administrative costs other  
4 than those attributable to the individual  
5 programs of such schools will be associated  
6 with the unified application; and

7 “(ii) the distribution of all funds re-  
8 ceived under the unified application will be  
9 equal to the amount of funds provided by  
10 the applicable agency to which each of  
11 such schools is entitled under law;

12 “(B) includes assurances from the tribal  
13 governing body that the tribal department of  
14 education funded under this section will admin-  
15 ister all contracts or grants (except those cov-  
16 ered by the other provisions of this title and the  
17 Tribally Controlled Community College Assist-  
18 ance Act of 1978) for education programs ad-  
19 ministered by the tribe and will coordinate all  
20 of the programs to the greatest extent possible;

21 “(C) includes assurances for the moni-  
22 toring and auditing by or through the tribal de-  
23 partment of education of all education pro-  
24 grams for which funds are provided by contract

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1 or grant to ensure that the programs meet the  
2 requirements of law; and

3 “(D) provides a plan and schedule for—

4 “(i) the assumption over the term of  
5 the grant by the tribal department of edu-  
6 cation of all assets and functions of the  
7 Bureau agency office associated with the  
8 tribe, insofar as those responsibilities re-  
9 late to education; and

10 “(ii) the termination by the Bureau of  
11 such operations and office at the time of  
12 such assumption,

13 except that when mutually agreeable between  
14 the tribal governing body and the Assistant  
15 Secretary, the period in which such assumption  
16 is to occur may be modified, reduced, or ex-  
17 tended after the initial year of the grant.

18 “(2) TIME PERIOD OF GRANT.—Subject to the  
19 availability of appropriated funds, grants provided  
20 under this section shall be provided for a period of  
21 3 years and the grant may, if performance by the  
22 grantee is satisfactory to the Secretary, be renewed  
23 for additional 3-year terms.

24 “(d) TERMS, CONDITIONS, OR REQUIREMENTS.—The  
25 Secretary shall not impose any terms, conditions, or re-

1 requirements on the provision of grants under this section  
2 that are not specified in this section.

3 “(e) AUTHORIZATION OF APPROPRIATIONS.—For the  
4 purpose of carrying out the provisions of this section,  
5 there are authorized to be appropriated \$2,000,000 for fis-  
6 cal year 2002 and such sums as may be necessary for each  
7 of the fiscal years 2003, 2004, 2005, and 2006.

8 **“SEC. 1141. DEFINITIONS.**

9 “For the purposes of this part, unless otherwise spec-  
10 ified:

11 “(1) AGENCY SCHOOL BOARD.—The term  
12 ‘agency school board’ means a body, the members of  
13 which are appointed by all of the school boards of  
14 the schools located within an agency, including  
15 schools operated under contract or grant, and the  
16 number of such members shall be determined by the  
17 Secretary in consultation with the affected tribes, ex-  
18 cept that, in agencies serving a single school, the  
19 school board of such school shall fulfill these duties,  
20 and in agencies having schools or a school operated  
21 under contract or grant, one such member at least  
22 shall be from such a school.

23 “(2) BUREAU.—The term ‘Bureau’ means the  
24 Bureau of Indian Affairs of the Department of the  
25 Interior.



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1           “(3) BUREAU FUNDED SCHOOL.—The term  
2           ‘Bureau funded school’ means—

3                   “(A) a Bureau school;

4                   “(B) a contract or grant school; or

5                   “(C) a school for which assistance is pro-  
6           vided under the Tribally Controlled Schools Act  
7           of 1988.

8           “(4) BUREAU SCHOOL.—The term ‘Bureau  
9           school’ means a Bureau operated elementary or sec-  
10          ondary day or boarding school or a Bureau operated  
11          dormitory for students attending a school other than  
12          a Bureau school.

13          “(5) CONTRACT OR GRANT SCHOOL.—The term  
14          ‘contract or grant school’ means an elementary or  
15          secondary school or dormitory which receives finan-  
16          cial assistance for its operation under a contract,  
17          grant or agreement with the Bureau under section  
18          102, 103(a), or 208 of the Indian Self-Determina-  
19          tion and Education Assistance Act, or under the  
20          Tribally Controlled Schools Act of 1988.

21          “(6) EDUCATION LINE OFFICER.—The term  
22          ‘education line officer’ means education personnel  
23          under the supervision of the Director, whether lo-  
24          cated in the central, area, or agency offices.

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1           “(7) FAMILY LITERACY SERVICES.—The term  
2           ‘family literacy services’ has the meaning given that  
3           term in section 14101 of the Elementary and Sec-  
4           ondary Education Act of 1965 (20 U.S.C. 8801).

5           “(8) FINANCIAL PLAN.—The term ‘financial  
6           plan’ means a plan of services provided by each Bu-  
7           reau school.

8           “(9) INDIAN ORGANIZATION.—the term ‘Indian  
9           organization’ means any group, association, partner-  
10          ship, corporation, or other legal entity owned or con-  
11          trolled by a federally recognized Indian tribe or  
12          tribes, or a majority of whose members are members  
13          of federally recognized tribes.

14          “(10) LOCAL EDUCATIONAL AGENCY.—The  
15          term ‘local educational agency’ means a board of  
16          education or other legally constituted local school  
17          authority having administrative control and direction  
18          of free public education in a county, township, inde-  
19          pendent, or other school district located within a  
20          State, and includes any State agency which directly  
21          operates and maintains facilities for providing free  
22          public education.

23          “(11) LOCAL SCHOOL BOARD.—The term ‘local  
24          school board’, when used with respect to a Bureau  
25          school, means a body chosen in accordance with the

1 laws of the tribe to be served or, in the absence of  
2 such laws, elected by the parents of the Indian chil-  
3 dren attending the school, except that in schools  
4 serving a substantial number of students from dif-  
5 ferent tribes, the members shall be appointed by the  
6 governing bodies of the tribes affected, and the num-  
7 ber of such members shall be determined by the Sec-  
8 retary in consultation with the affected tribes.

9 “(12) OFFICE.—The term ‘Office’ means the  
10 Office of Indian Education Programs within the Bu-  
11 reau.

12 “(13) SECRETARY.—The term ‘Secretary’  
13 means the Secretary of the Interior.

14 “(14) SUPERVISOR.—The term ‘supervisor’  
15 means the individual in the position of ultimate au-  
16 thority at a Bureau school.

17 “(15) TRIBAL GOVERNING BODY.—The term  
18 ‘tribal governing body’ means, with respect to any  
19 school, the tribal governing body, or tribal governing  
20 bodies, that represent at least 90 percent of the stu-  
21 dents served by such school.

22 “(16) TRIBE.—The term ‘tribe’ means any In-  
23 dian tribe, band, nation, or other organized group or  
24 community, including any Alaska Native village or  
25 regional or village corporation as defined in or estab-

1 lished pursuant to the Alaska Native Claims Settle-  
2 ment Act, which is recognized as eligible for the spe-  
3 cial programs and services provided by the United  
4 States to Indians because of their status as Indi-  
5 ans.”.

6 **SEC. 314. TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.**

7 Sections 5202 through 5212 of Public Law 100-297  
8 (25 U.S.C. 2501 et seq.) are amended to read as follows:

9 **“SEC. 5202. FINDINGS.**

10 “Congress, after careful review of the Federal Gov-  
11 ernment’s historical and special legal relationship with,  
12 and resulting responsibilities to, Indians, finds that—

13 “(1) the Indian Self-Determination and Edu-  
14 cation Assistance Act, which was a product of the le-  
15 gitimate aspirations and a recognition of the inher-  
16 ent authority of Indian nations, was and is a crucial  
17 positive step towards tribal and community control;

18 “(2) the Bureau of Indian Affairs’ administra-  
19 tion and domination of the contracting process  
20 under such Act has not provided the full opportunity  
21 to develop leadership skills crucial to the realization  
22 of self-government and has denied Indians an effec-  
23 tive voice in the planning and implementation of  
24 programs for the benefit of Indians which are re-  
25 sponsive to the true needs of Indian communities;

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1           “(3) Indians will never surrender their desire to  
2           control their relationships both among themselves  
3           and with non-Indian governments, organizations,  
4           and persons;

5           “(4) true self-determination in any society of  
6           people is dependent upon an educational process  
7           which will ensure the development of qualified people  
8           to fulfill meaningful leadership roles;

9           “(5) the Federal administration of education  
10          for Indian children has not effected the desired level  
11          of educational achievement or created the diverse op-  
12          portunities and personal satisfaction that education  
13          can and should provide;

14          “(6) true local control requires the least pos-  
15          sible Federal interference; and

16          “(7) the time has come to enhance the concepts  
17          made manifest in the Indian Self-Determination and  
18          Education Assistance Act.

19   **“SEC. 5203. DECLARATION OF POLICY.**

20          “(a) **RECOGNITION.**—Congress recognizes the obliga-  
21          tion of the United States to respond to the strong expres-  
22          sion of the Indian people for self-determination by assur-  
23          ing maximum Indian participation in the direction of edu-  
24          cational services so as to render such services more re-  
25          sponsive to the needs and desires of those communities.

1       “(b) COMMITMENT.—Congress declares its commit-  
2 ment to the maintenance of the Federal Government’s  
3 unique and continuing trust relationship with and respon-  
4 sibility to the Indian people through the establishment of  
5 a meaningful Indian self-determination policy for edu-  
6 cation which will deter further perpetuation of Federal bu-  
7 reaucratic domination of programs.

8       “(c) NATIONAL GOAL.—Congress declares that a  
9 major national goal of the United States is to provide the  
10 resources, processes, and structure which will enable tribes  
11 and local communities to effect the quantity and quality  
12 of educational services and opportunities which will permit  
13 Indian children to compete and excel in the life areas of  
14 their choice and to achieve the measure of self-determina-  
15 tion essential to their social and economic well-being.

16       “(d) EDUCATIONAL NEEDS.—Congress affirms the  
17 reality of the special and unique educational needs of In-  
18 dian peoples, including the need for programs to meet the  
19 linguistic and cultural aspirations of Indian tribes and  
20 communities. These may best be met through a grant  
21 process.

22       “(e) FEDERAL RELATIONS.—Congress declares its  
23 commitment to these policies and its support, to the full  
24 extent of its responsibility, for Federal relations with the  
25 Indian Nations.

1           “(f) TERMINATION.—Congress hereby repudiates and  
2 rejects House Resolution 108 of the 83d Congress and any  
3 policy of unilateral termination of Federal relations with  
4 any Indian Nation.

5 **“SEC. 5204. GRANTS AUTHORIZED.**

6           “(a) IN GENERAL.—

7               “(1) ELIGIBILITY.—The Secretary shall provide  
8 grants to Indian tribes, and tribal organizations  
9 that—

10                   “(A) operate contract schools under title  
11 XI of the Education Amendments of 1978 and  
12 notify the Secretary of their election to operate  
13 the schools with assistance under this part  
14 rather than continuing as contract school;

15                   “(B) operate other tribally controlled  
16 schools eligible for assistance under this part  
17 and submit applications (which are approved by  
18 their tribal governing bodies) to the Secretary  
19 for such grants; or

20                   “(C) elect to assume operation of Bureau  
21 funded schools with the assistance under this  
22 part and submit applications (which are ap-  
23 proved by their tribal governing bodies) to the  
24 Secretary for such grants.

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1           “(2) DEPOSIT OF FUNDS.—Grants provided  
2           under this part shall be deposited into the general  
3           operating fund of the tribally controlled school with  
4           respect to which the grant is made.

5           “(3) USE OF FUNDS.—(A) Except as otherwise  
6           provided in this paragraph, grants provided under  
7           this part shall be used to defray, at the discretion  
8           of the school board of the tribally controlled school  
9           with respect to which the grant is provided, any ex-  
10          penditures for education related activities for which  
11          any funds that compose the grant may be used  
12          under the laws described in section 5205(a), includ-  
13          ing, but not limited to, expenditures for—

14                 “(i) school operations, academic, edu-  
15                 cational, residential, guidance and counseling,  
16                 and administrative purposes; and

17                 “(ii) support services for the school, includ-  
18                 ing transportation.

19           “(B) Grants provided under this part may, at  
20           the discretion of the school board of the tribally con-  
21           trolled school with respect to which such grant is  
22           provided, be used to defray operations and mainte-  
23           nance expenditures for the school if any funds for  
24           the operation and maintenance of the school are al-



1 located to the school under the provisions of any of  
2 the laws described in section 5205(a).

3 “(b) LIMITATIONS.—

4 “(1) ONE GRANT PER TRIBE OR ORGANIZATION  
5 PER FISCAL YEAR.—Not more than one grant may  
6 be provided under this part with respect to any In-  
7 dian tribe or tribal organization for any fiscal year.

8 “(2) NONSECTARIAN USE.—Funds provided  
9 under any grant made under this part may not be  
10 used in connection with religious worship or sec-  
11 tarian instruction.

12 “(3) ADMINISTRATIVE COSTS LIMITATION.—  
13 Funds provided under any grant under this part  
14 may not be expended for administrative costs (as de-  
15 fined in section 1128(h)(1) of the Education Amend-  
16 ments of 1978) in excess of the amount generated  
17 for such costs under section 1128 of such Act.

18 “(c) LIMITATION ON TRANSFER OF FUNDS AMONG  
19 SCHOOLSITES.—

20 “(1) IN GENERAL.—In the case of a grantee  
21 that operates schools at more than one schoolsite,  
22 the grantee may expend not more than the lesser  
23 of—

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1           “(A) 10 percent of the funds allocated for  
2           such schoolsite under section 1128 of the Edu-  
3           cation Amendments of 1978; or

4           “(B) \$400,000 of such funds, at any other  
5           schoolsite.

6           “(2) DEFINITION OF SCHOOLSITE.—For pur-  
7           poses of this subsection, the term ‘schoolsite’ means  
8           the physical location and the facilities of an elemen-  
9           tary or secondary educational or residential program  
10          operated by, or under contract or grant with, the  
11          Bureau for which a discreet student count is identi-  
12          fied under the funding formula established under  
13          section 1127 of the Education Amendments of 1978.

14          “(d) NO REQUIREMENT TO ACCEPT GRANTS.—  
15          Nothing in this part may be construed—

16                 “(1) to require a tribe or tribal organization to  
17                 apply for or accept; or

18                 “(2) to allow any person to coerce any tribe or  
19                 tribal organization to apply for, or accept,

20          a grant under this part to plan, conduct, and administer  
21          all of, or any portion of, any Bureau program. Such appli-  
22          cations and the timing of such applications shall be strictly  
23          voluntary. Nothing in this part may be construed as allow-  
24          ing or requiring any grant with any entity other than the  
25          entity to which the grant is provided.

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1       “(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—  
2 Grants provided under this part shall not terminate, mod-  
3 ify, suspend, or reduce the responsibility of the Federal  
4 Government to provide a program.

5       “(f) RETROCESSION.—

6           “(1) IN GENERAL.—Whenever a tribal gov-  
7 erning body requests retrocession of any program for  
8 which assistance is provided under this part, such  
9 retrocession shall become effective upon a date speci-  
10 fied by the Secretary that is not later than 120 days  
11 after the date on which the tribal governing body re-  
12 quests the retrocession. A later date as may be spec-  
13 ified if mutually agreed upon by the Secretary and  
14 the tribal governing body. If such a program is  
15 retroceded, the Secretary shall provide to any Indian  
16 tribe served by such program at least the same  
17 quantity and quality of services that would have  
18 been provided under such program at the level of  
19 funding provided under this part prior to the ret-  
20 rocession.

21           “(2) STATUS AFTER RETROCESSION.—The tribe  
22 requesting retrocession shall specify whether the ret-  
23 rocession is to status as a Bureau operated school  
24 or as a school operated under contract under title XI  
25 of the Education Amendments of 1978.

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1           “(3) TRANSFER OF EQUIPMENT AND MATE-  
2           RIALS.—Except as otherwise determined by the Sec-  
3           retary, the tribe or tribal organization operating the  
4           program to be retroceded must transfer to the Sec-  
5           retary (or to the tribe or tribal organization which  
6           will operate the program as a contract school) the  
7           existing equipment and materials which were  
8           acquired—

9                   “(A) with assistance under this part; or

10                   “(B) upon assumption of operation of the  
11                   program under this part if the school was a Bu-  
12                   reau funded school under title XI of the Edu-  
13                   cation Amendments of 1978 before receiving as-  
14                   sistance under this part.

15           “(g) PROHIBITION OF TERMINATION FOR ADMINIS-  
16           TRATIVE CONVENIENCE.—Grants provided under this  
17           part may not be terminated, modified, suspended, or re-  
18           duced solely for the convenience of the administering agen-  
19           cy.

20           **“SEC. 5205. COMPOSITION OF GRANTS.**

21           “(a) IN GENERAL.—The grant provided under this  
22           part to an Indian tribe or tribal organization for any fiscal  
23           year shall consist of—

24                   “(1) the total amount of funds allocated for  
25                   such fiscal year under sections 1127 and 1128 of the

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1 Education Amendments of 1978 with respect to the  
2 tribally controlled schools eligible for assistance  
3 under this part which are operated by such Indian  
4 tribe or tribal organization, including, but not lim-  
5 ited to, funds provided under such sections, or under  
6 any other provision of law, for transportation costs;

7 “(2) to the extent requested by such Indian  
8 tribe or tribal organization, the total amount of  
9 funds provided from operations and maintenance ac-  
10 counts and, notwithstanding section 105 of the In-  
11 dian Self-Determination Act, or any other provision  
12 of law, other facilities accounts for such schools for  
13 such fiscal year (including but not limited to those  
14 referenced under section 1126(d) of the Education  
15 Amendments of 1978 or any other law); and

16 “(3) the total amount of funds that are allo-  
17 cated to such schools for such fiscal year under—

18 “(A) title I of the Elementary and Sec-  
19 ondary Education Act of 1965;

20 “(B) the Individuals with Disabilities Edu-  
21 cation Act; and

22 “(C) any other Federal education law, that  
23 are allocated to such schools for such fiscal  
24 year.

25 “(b) SPECIAL RULES.—

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1           “(1) IN GENERAL.—(A) Funds allocated to a  
2 tribally controlled school by reason of paragraph (1)  
3 or (2) of subsection (a) shall be subject to the provi-  
4 sions of this part and shall not be subject to any ad-  
5 ditional restriction, priority, or limitation that is im-  
6 posed by the Bureau with respect to funds provided  
7 under—

8           “(i) title I of the Elementary and Sec-  
9 ondary Education Act of 1965;

10           “(ii) the Individuals with Disabilities Edu-  
11 cation Act; or

12           “(iii) any Federal education law other than  
13 title XI of the Education Amendments of 1978.

14           “(B) Indian tribes and tribal organizations to  
15 which grants are provided under this part, and trib-  
16 ally controlled schools for which such grants are pro-  
17 vided, shall not be subject to any requirements, obli-  
18 gations, restrictions, or limitations imposed by the  
19 Bureau that would otherwise apply solely by reason  
20 of the receipt of funds provided under any law re-  
21 ferred to in clause (i), (ii), or (iii) of subparagraph  
22 (A).

23           “(2) SCHOOLS CONSIDERED CONTRACT  
24 SCHOOLS.—Tribally controlled schools for which  
25 grants are provided under this part shall be treated

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1 as contract schools for the purposes of allocation of  
2 funds under sections 1126(d), 1127, and 1128 of  
3 the Education Amendments of 1978.

4 “(3) SCHOOLS CONSIDERED BUREAU  
5 SCHOOLS.—Tribally controlled schools for which  
6 grants are provided under this chapter shall be  
7 treated as Bureau schools for the purposes of alloca-  
8 tion of funds provided under—

9 “(A) title I of the Elementary and Sec-  
10 ondary Education Act of 1965;

11 “(B) the Individuals with Disabilities Edu-  
12 cation Act; and

13 “(C) any other Federal education law, that  
14 are distributed through the Bureau.

15 “(4) ACCOUNTS; USE OF CERTAIN FUNDS.—(A)  
16 Notwithstanding section 5204(a)(2), with respect to  
17 funds from facilities improvement and repair, alter-  
18 ation and renovation (major or minor), health and  
19 safety, or new construction accounts included in the  
20 grant under section 5204(a), the grantee shall main-  
21 tain a separate account for such funds. At the end  
22 of the period designated for the work covered by the  
23 funds received, the grantee shall submit to the Sec-  
24 retary a separate accounting of the work done and  
25 the funds expended to the Secretary. Funds received

1 from these accounts may only be used for the pur-  
2 pose for which they were appropriated and for the  
3 work encompassed by the application or submission  
4 under which they were received.

5 “(B) Notwithstanding subparagraph (A), a  
6 school receiving a grant under this part for facilities  
7 improvement and repair may use such grant funds  
8 for new construction if the tribal government or  
9 other organization provides funding for the new con-  
10 struction equal to at least 25 percent of the total  
11 cost of such new construction.

12 “(C) Where the appropriations measure or the  
13 application submission does not stipulate a period  
14 for the work covered by the funds so designated, the  
15 Secretary and the grantee shall consult and deter-  
16 mine such a period prior to the transfer of the  
17 funds. A period so determined may be extended  
18 upon mutual agreement of the Secretary and the  
19 grantee.

20 “(5) ENFORCEMENT OF REQUEST TO INCLUDE  
21 FUNDS.—If the Secretary fails to carry out a re-  
22 quest made under subsection (a)(2) within 180 days  
23 of a request filed by an Indian tribe or tribal organi-  
24 zation to include in such tribe or organization’s  
25 grant the funds described in subsection (a)(2), the



1 Secretary shall be deemed to have approved such re-  
2 quest and the Secretary shall immediately amend  
3 the grant accordingly. Such tribe or organization  
4 may enforce its rights under subsection (a)(2) and  
5 this paragraph, including any denial or failure to act  
6 on such tribe or organization's request, pursuant to  
7 the disputes authority described in section 5209(e).

8 **“SEC. 5206. ELIGIBILITY FOR GRANTS.**

9 “(a) RULES.—

10 “(1) IN GENERAL.—A tribally controlled school  
11 is eligible for assistance under this part if the  
12 school—

13 “(A) on April 28, 1988, was a contract  
14 school under title XI of the Education Amend-  
15 ments of 1978 and the tribe or tribal organiza-  
16 tion operating the school submits to the Sec-  
17 retary a written notice of election to receive a  
18 grant under this part;

19 “(B) was a Bureau operated school under  
20 title XI of the Education Amendments of 1978  
21 and has met the requirements of subsection (b);

22 “(C) is a school for which the Bureau has  
23 not provided funds, but which has met the re-  
24 quirements of subsection (c); or

1           “(D) is a school with respect to which an  
2           election has been made under paragraph (2)  
3           and which has met the requirements of sub-  
4           section (b).

5           “(2) NEW SCHOOLS.—Any application which  
6           has been submitted under the Indian Self-Deter-  
7           mination and Education Assistance Act by an Indian  
8           tribe for a school which is not in operation on the  
9           date of the enactment of the No Child Left Behind  
10          Act of 2001 shall be reviewed under the guidelines  
11          and regulations for applications submitted under the  
12          Indian Self-Determination and Education Assistance  
13          Act that were in effect at the time the application  
14          was submitted, unless the Indian tribe or tribal or-  
15          ganization elects to have the application reviewed  
16          under the provisions of subsection (b).

17          “(b) ADDITIONAL REQUIREMENTS FOR BUREAU  
18          FUNDED SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

19               “(1) BUREAU FUNDED SCHOOLS.—A school  
20               that was a Bureau funded school under title XI of  
21               the Education Amendments of 1978 on the date of  
22               the enactment of the No Child Left Behind Act of  
23               2001, and any school with respect to which an elec-  
24               tion is made under subsection (a)(2), meets the re-  
25               quirements of this subsection if—

1           “(A) the Indian tribe or tribal organization  
2 that operates, or desires to operate, the school  
3 submits to the Secretary an application request-  
4 ing that the Secretary—

5           “(i) transfer operation of the school to  
6 the Indian tribe or tribal organization, if  
7 the Indian tribe or tribal organization is  
8 not already operating the school; and

9           “(ii) make a determination as to  
10 whether the school is eligible for assistance  
11 under this part; and

12           “(B) the Secretary makes a determination  
13 that the school is eligible for assistance under  
14 this part.

15           “(2) CERTAIN ELECTING SCHOOLS.—(A) By  
16 not later than the date that is 120 days after the  
17 date on which an application is submitted to the  
18 Secretary under paragraph (1)(A), the Secretary  
19 shall determine—

20           “(i) in the case of a school which is not  
21 being operated by the Indian tribe or tribal or-  
22 ganization, whether to transfer operation of the  
23 school to the Indian tribe or tribal organization;  
24 and

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1           “(ii) whether the school is eligible for as-  
2           sistance under this part.

3           “(B) In considering applications submitted  
4           under paragraph (1)(A), the Secretary—

5           “(i) shall transfer operation of the school  
6           to the Indian tribe or tribal organization, if the  
7           tribe or tribal organization is not already oper-  
8           ating the school; and

9           “(ii) shall determine that the school is eli-  
10          gible for assistance under this part, unless the  
11          Secretary finds by clear and convincing evidence  
12          that the services to be provided by the Indian  
13          tribe or tribal organization will be deleterious to  
14          the welfare of the Indians served by the school.

15          “(C) In considering applications submitted  
16          under paragraph (1)(A), the Secretary shall consider  
17          whether the Indian tribe or tribal organization would  
18          be deficient in operating the school with respect to—

19                 “(i) equipment;

20                 “(ii) bookkeeping and accounting proce-  
21                 dures;

22                 “(iii) ability to adequately manage a  
23                 school; or

24                 “(iv) adequately trained personnel.

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1       “(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL  
2 WHICH IS NOT A BUREAU FUNDED SCHOOL.—

3           “(1) IN GENERAL.—A school which is not a Bu-  
4 reau funded school under title XI of the Education  
5 Amendments of 1978 meets the requirements of this  
6 subsection if—

7           “(A) the Indian tribe or tribal organization  
8 that operates, or desires to operate, the school  
9 submits to the Secretary an application request-  
10 ing a determination by the Secretary as to  
11 whether the school is eligible for assistance  
12 under this part; and

13           “(B) the Secretary makes a determination  
14 that a school is eligible for assistance under this  
15 part.

16           “(2) DEADLINE FOR DETERMINATION BY SEC-  
17 RETARY.—(A) By not later than the date that is  
18 180 days after the date on which an application is  
19 submitted to the Secretary under paragraph (1)(A),  
20 the Secretary shall determine whether the school is  
21 eligible for assistance under this part.

22           “(B) In making the determination under sub-  
23 paragraph (A), the Secretary shall give equal consid-  
24 eration to each of the following factors:

- 1                   “(i) with respect to the applicant’s  
2                   proposal—  
3                   “(I) the adequacy of facilities or the  
4                   potential to obtain or provide adequate fa-  
5                   cilities;  
6                   “(II) geographic and demographic fac-  
7                   tors in the affected areas;  
8                   “(III) adequacy of the applicant’s pro-  
9                   gram plans;  
10                   “(IV) geographic proximity of com-  
11                   parable public education; and  
12                   “(V) the needs as expressed by all af-  
13                   fected parties, including but not limited to  
14                   students, families, tribal governments at  
15                   both the central and local levels, and  
16                   school organizations; and  
17                   “(ii) with respect to all education services  
18                   already available—  
19                   “(I) geographic and demographic fac-  
20                   tors in the affected areas;  
21                   “(II) adequacy and comparability of  
22                   programs already available;  
23                   “(III) consistency of available pro-  
24                   grams with tribal education codes or tribal  
25                   legislation on education; and

1                   “(IV) the history and success of these  
2                   services for the proposed population to be  
3                   served, as determined from all factors in-  
4                   cluding, if relevant, standardized examina-  
5                   tion performance.

6                   “(C) The Secretary may not make a deter-  
7                   mination under this paragraph that is primarily  
8                   based upon the geographic proximity of com-  
9                   parable public education.

10                  “(D) Applications submitted under para-  
11                  graph (1)(A) shall include information on the  
12                  factors described in subparagraph (B)(i), but  
13                  the applicant may also provide the Secretary  
14                  such information relative to the factors de-  
15                  scribed in subparagraph (B)(ii) as the applicant  
16                  considers appropriate.

17                  “(E) If the Secretary fails to make a de-  
18                  termination under subparagraph (A) with re-  
19                  spect to an application within 180 days after  
20                  the date on which the Secretary received the  
21                  application, the Secretary shall be treated as  
22                  having made a determination that the tribally  
23                  controlled school is eligible for assistance under  
24                  the title and the grant shall become effective 18  
25                  months after the date on which the Secretary

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1 received the application, or on an earlier date,  
2 at the Secretary's discretion.

3 “(d) FILING OF APPLICATIONS AND REPORTS.—

4 “(1) IN GENERAL.—All applications and reports  
5 submitted to the Secretary under this part, and any  
6 amendments to such applications or reports, shall be  
7 filed with the education line officer designated by  
8 the Director of the Office of Indian Education Pro-  
9 grams of the Bureau of Indian Affairs. The date on  
10 which such filing occurs shall, for purposes of this  
11 part, be treated as the date on which the application  
12 or amendment was submitted to the Secretary.

13 “(2) SUPPORTING DOCUMENTATION.—Any ap-  
14 plication that is submitted under this chapter shall  
15 be accompanied by a document indicating the action  
16 taken by the tribal governing body in authorizing  
17 such application.

18 “(e) EFFECTIVE DATE FOR APPROVED APPLICA-  
19 TIONS.—Except as provided by subsection (c)(2)(E), a  
20 grant provided under this part, and any transfer of the  
21 operation of a Bureau school made under subsection (b),  
22 shall become effective beginning the academic year suc-  
23 ceeding the fiscal year in which the application for the  
24 grant or transfer is made, or at an earlier date determined  
25 by the Secretary.



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1 “(f) DENIAL OF APPLICATIONS.—

2 “(1) IN GENERAL.—Whenever the Secretary re-  
3 fuses to approve a grant under this chapter, to  
4 transfer operation of a Bureau school under sub-  
5 section (b), or determines that a school is not eligi-  
6 ble for assistance under this part, the Secretary  
7 shall—

8 “(A) state the objections in writing to the  
9 tribe or tribal organization within the allotted  
10 time;

11 “(B) provide assistance to the tribe or trib-  
12 al organization to overcome all stated objec-  
13 tions.

14 “(C) at the request of the tribe or tribal  
15 organization, provide the tribe or tribal organi-  
16 zation a hearing on the record under the same  
17 rules and regulations that apply under the In-  
18 dian Self-Determination and Education Assist-  
19 ance Act; and

20 “(D) provide an opportunity to appeal the  
21 objection raised.

22 “(2) TIMELINE FOR RECONSIDERATION OF  
23 AMENDED APPLICATIONS.—The Secretary shall re-  
24 consider any amended application submitted under

1       this part within 60 days after the amended applica-  
2       tion is submitted to the Secretary.

3       “(g) REPORT.—The Bureau shall submit an annual  
4 report to the Congress on all applications received, and  
5 actions taken (including the costs associated with such ac-  
6 tions), under this section at the same time that the Presi-  
7 dent is required to submit to Congress the budget under  
8 section 1105 of title 31, United States Code.

9       **“SEC. 5207. DURATION OF ELIGIBILITY DETERMINATION.**

10       “(a) IN GENERAL.—If the Secretary determines that  
11 a tribally controlled school is eligible for assistance under  
12 this part, the eligibility determination shall remain in ef-  
13 fect until the determination is revoked by the Secretary,  
14 and the requirements of subsection (b) or (c) of section  
15 5206, if applicable, shall be considered to have been met  
16 with respect to such school until the eligibility determina-  
17 tion is revoked by the Secretary.

18       “(b) ANNUAL REPORTS.—

19               “(1) IN GENERAL.—Each recipient of a grant  
20 provided under this part shall complete an annual  
21 report which shall be limited to—

22                       “(A) an annual financial statement report-  
23                       ing revenue and expenditures as defined by the  
24                       cost accounting established by the grantee;

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1           “(B) an annual financial audit conducted  
2           pursuant to the standards of the Single Audit  
3           Act of 1984;

4           “(C) an annual submission to the Sec-  
5           retary of the number of students served and a  
6           brief description of programs offered under the  
7           grant; and

8           “(D) a program evaluation conducted by  
9           an impartial evaluation review team, to be  
10          based on the standards established for purposes  
11          of subsection (c)(1)(A)(ii).

12          “(2) EVALUATION REVIEW TEAMS.—Where ap-  
13          propriate, other tribally controlled schools and rep-  
14          resentatives of tribally controlled community colleges  
15          shall make up members of the evaluation review  
16          teams.

17          “(3) EVALUATIONS.—In the case of a school  
18          which is accredited, evaluations will be conducted at  
19          intervals under the terms of accreditation.

20          “(4) SUBMISSION OF REPORT.—

21                 “(A) TO TRIBALLY GOVERNING BODY.—  
22                 Upon completion of the report required under  
23                 paragraph (a), the recipient of the grant shall  
24                 send (via first class mail, return receipt re-  
25                 quested) a copy of such annual report to the

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1 tribal governing body (as defined in section  
2 1132(f) of the Education Amendments of 1978)  
3 of the tribally controlled school.

4 “(B) TO SECRETARY.—Not later than 30  
5 days after receiving written confirmation that  
6 the tribal governing body has received the re-  
7 port send pursuant to subsection (A), the re-  
8 cipient of the grant shall send a copy of the re-  
9 port to the Secretary.

10 “(c) REVOCATION OF ELIGIBILITY.—

11 “(1) IN GENERAL.—(A) The Secretary shall not  
12 revoke a determination that a school is eligible for  
13 assistance under this part if—

14 “(i) the Indian tribe or tribal organization  
15 submits the reports required under subsection  
16 (b) with respect to the school; and

17 “(ii) at least one of the following sub-  
18 clauses applies with respect to the school:

19 “(I) The school is certified or accred-  
20 ited by a State or regional accrediting as-  
21 sociation or is a candidate in good stand-  
22 ing for such accreditation under the rules  
23 of the State or regional accrediting asso-  
24 ciation, showing that credits achieved by  
25 the students within the education pro-

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1           grams are, or will be, accepted at grade  
2           level by a State certified or regionally ac-  
3           credited institution.

4                   “(II) A determination made by the  
5           Secretary that there is a reasonable expect-  
6           tation that the accreditation described in  
7           subclause (I), or the candidacy in good  
8           standing for such accreditation, will be  
9           reached by the school within 3 years and  
10          that the program offered by the school is  
11          beneficial to the Indian students.

12                   “(III) The school is accredited by a  
13          tribal department of education if such ac-  
14          creditation is accepted by a generally rec-  
15          ognized regional or State accreditation  
16          agency.

17                   “(IV) The schools accept the stand-  
18          ards promulgated under section 1121 of  
19          the Education Amendments of 1978 and  
20          an evaluation of performance is conducted  
21          under this section in conformance with the  
22          regulations pertaining to Bureau operated  
23          schools by an impartial evaluator chosen  
24          by the grantee, but no grantee shall be re-  
25          quired to comply with these standards to a

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1 higher degree than a comparable Bureau  
2 operated school.

3 “(V) A positive evaluation of the  
4 school is conducted by an impartial eval-  
5 uator agreed upon by the Secretary and  
6 the grantee every 2 years under standards  
7 adopted by the contractor under a contract  
8 for a school entered into under the Indian  
9 Self-Determination and Education Assist-  
10 ance Act (or revisions of such standards  
11 agreed to by the Secretary and the grant-  
12 ee) prior to the date of the enactment of  
13 this Act. If the Secretary and the grantee  
14 other than the tribal governing body fail to  
15 agree on such an evaluator, the tribal gov-  
16 erning body shall choose the evaluator or  
17 perform the evaluation. If the Secretary  
18 and a grantee which is the tribal governing  
19 body fail to agree on such an evaluator,  
20 this subclause shall not apply.

21 “(B) The choice of standards employed for the  
22 purpose of subparagraph (A)(ii) shall be consistent  
23 with section 1121(e) of the Education Amendments  
24 of 1978.

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1           “(2) NOTICE REQUIREMENTS FOR REVOCA-  
2           TION.—The Secretary shall not revoke a determina-  
3           tion that a school is eligible for assistance under this  
4           part, or reassume control of a school that was a Bu-  
5           reau school prior to approval of an application sub-  
6           mitted under section 5206(b)(1)(A) until the  
7           Secretary—

8                   “(A) provides notice to the tribally con-  
9                   trolled school and the tribal governing body  
10                  (within the meaning of section 1141(14) of the  
11                  Education Amendments of 1978) of the tribally  
12                  controlled school which states—

13                           “(i) the specific deficiencies that led  
14                           to the revocation or resumption determina-  
15                           tion; and

16                           “(ii) the actions that are needed to  
17                           remedy such deficiencies; and

18                           “(B) affords such authority an opportunity  
19                           to effect the remedial actions.

20           “(3) TECHNICAL ASSISTANCE.—The Secretary  
21           shall provide such technical assistance as is prac-  
22           ticable to effect such remedial actions. Such notice  
23           and technical assistance shall be in addition to a  
24           hearing and appeal to be conducted pursuant to the  
25           regulations described in section 5206(f)(1)(C).

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1       “(d) APPLICABILITY OF SECTION PURSUANT TO  
2 ELECTION UNDER SECTION 5209(b).—With respect to a  
3 tribally controlled school which receives assistance under  
4 this part pursuant to an election made under section  
5 5209(b)—

6           “(1) subsection (b) of this section shall apply;  
7       and

8           “(2) the Secretary may not revoke eligibility for  
9       assistance under this part except in conformance  
10       with subsection (c) of this section.

11 **“SEC. 5208. PAYMENT OF GRANTS; INVESTMENT OF FUNDS.**

12       “(a) PAYMENTS.—

13           “(1) IN GENERAL.—Except as otherwise pro-  
14       vided in this subsection, the Secretary shall make  
15       payments to grantees under this part in two pay-  
16       ments, of which—

17           “(A) the first payment shall be made not  
18       later than July 15 of each year in an amount  
19       equal to 85 percent of the amount which the  
20       grantee was entitled to receive during the pre-  
21       ceding academic year; and

22           “(B) the second payment, consisting of the  
23       remainder to which the grantee is entitled for  
24       the academic year, shall be made not later than  
25       December 1 of each year.



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1           “(2) NEWLY FUNDED SCHOOLS.—For any  
2 school for which no payment under this part was  
3 made from Bureau funds in the preceding academic  
4 year, full payment of the amount computed for the  
5 first academic year of eligibility under this part shall  
6 be made not later than December 1 of the academic  
7 year.

8           “(3) LATE FUNDING.—With regard to funds for  
9 grantees that become available for obligation on Oc-  
10 tober 1 of the fiscal year for which such funds are  
11 appropriated, the Secretary shall make payments to  
12 grantees not later than December 1 of the fiscal  
13 year.

14           “(4) APPLICABILITY OF CERTAIN TITLE 31 PRO-  
15 VISIONS.—The provisions of chapter 39 of Title 31,  
16 United States Code, shall apply to the payments re-  
17 quired to be made by paragraphs (1), (2), and (3).

18           “(5) RESTRICTIONS.—Paragraphs (1), (2), and  
19 (3) shall be subject to any restriction on amounts of  
20 payments under this part that are imposed by a con-  
21 tinuing resolution or other Act appropriating the  
22 funds involved.

23           “(b) INVESTMENT OF FUNDS.—

24           “(1) TREATMENT OF INTEREST AND INVEST-  
25 MENT INCOME.—Notwithstanding any other provi-

1 sion of law, any interest or investment income that  
2 accrues to any funds provided under this part after  
3 such funds are paid to the Indian tribe or tribal or-  
4 ganization and before such funds are expended for  
5 the purpose for which such funds were provided  
6 under this part shall be the property of the Indian  
7 tribe or tribal organization and shall not be taken  
8 into account by any officer or employee of the Fed-  
9 eral Government in determining whether to provide  
10 assistance, or the amount of assistance, under any  
11 provision of Federal law. Such interest income shall  
12 be spent on behalf of the school.

13 “(2) PERMISSIBLE INVESTMENTS.—Funds pro-  
14 vided under this part may be invested by the Indian  
15 tribe or tribal organization before such funds are ex-  
16 pended for the purposes of this part so long as such  
17 funds are—

18 “(A) invested by the Indian tribe or tribal  
19 organization only in obligations of the United  
20 States, or in obligations or securities that are  
21 guaranteed or insured by the United States, or  
22 mutual (or other) funds registered with the Se-  
23 curities and Exchange Commission and which  
24 only invest in obligations of the United States,

1 or securities that are guaranteed or insured by  
2 the United States; or

3 “(B) deposited only into accounts that are  
4 insure by and agency or instrumentality of the  
5 United States, or are fully collateralized to en-  
6 sure protection of the funds, even in the event  
7 of a bank failure.

8 “(c) RECOVERIES.—For the purposes of under-  
9 recovery and overrecovery determinations by any Federal  
10 agency for any other funds, from whatever source derived,  
11 funds received under this part shall not be taken into con-  
12 sideration.

13 **“SEC. 5209. APPLICATION WITH RESPECT TO INDIAN SELF-**  
14 **DETERMINATION AND EDUCATION ASSIST-**  
15 **ANCE ACT.**

16 “(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—  
17 The following provisions of the Indian Self-Determination  
18 and Education Assistance Act (and any subsequent revi-  
19 sions thereto or renumbering thereof), shall apply to  
20 grants provided under this part:

21 “(1) Section 5(f) (relating to single agency  
22 audit).

23 “(2) Section 6 (relating to criminal activities;  
24 penalties).

1           “(3) Section 7 (relating to wage and labor  
2 standards).

3           “(4) Section 104 (relating to retention of Fed-  
4 eral employee coverage).

5           “(5) Section 105(f) (relating to Federal prop-  
6 erty).

7           “(6) Section 105(k) (relating to access to Fed-  
8 eral sources of supply).

9           “(7) Section 105(l) (relating to lease of facility  
10 used for administration and delivery of services).

11           “(8) Section 106(e) (relating to limitation on  
12 remedies relating to cost allowances).

13           “(9) Section 106(i) (relating to use of funds for  
14 matching or cost participation requirements).

15           “(10) Section 106(j) (relating to allowable uses  
16 of funds).

17           “(11) Section 108(c) (Model Agreements provi-  
18 sions (1)(a)(5) (relating to limitations of costs),  
19 (1)(a)(7) (relating to records and monitoring),  
20 (1)(a)(8) (relating to property), and (a)(1)(9) (relat-  
21 ing to availability of funds).

22           “(12) Section 109 (relating to reassumption).

23           “(13) Section 111 (relating to sovereign immu-  
24 nity and trusteeship rights unaffected).

1       “(b) ELECTION FOR GRANT IN LIEU OF CON-  
2 TRACT.—

3           “(1) IN GENERAL.—Contractors for activities to  
4 which this part applies who have entered into a con-  
5 tract under the Indian Self-Determination and Edu-  
6 cation Assistance Act that is in effect upon the date  
7 of the enactment of the No Child Left Behind Act  
8 of 2001 may, by giving notice to the Secretary, elect  
9 to have the provisions of this part apply to such ac-  
10 tivity in lieu of such contract.

11           “(2) EFFECTIVE DATE OF ELECTION.—Any  
12 election made under paragraph (1) shall take effect  
13 on the later of—

14           “(A) October 1 of the fiscal year suc-  
15 ceeding the fiscal year in which such election is  
16 made; or

17           “(B) 60 days after the date of such elec-  
18 tion.

19           “(3) EXCEPTION.—In any case in which the 60-  
20 day period referred to in paragraph (2)(B) is less  
21 than 60 days before the beginning of the succeeding  
22 fiscal year, such election shall not take effect until  
23 the fiscal year after the fiscal year succeeding the  
24 election.

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1       “(c) NO DUPLICATION.—No funds may be provided  
2 under any contract entered into under the Indian Self-De-  
3 termination and Education Assistance Act to pay any ex-  
4 penses incurred in providing any program or services if  
5 a grant has been made under this part to pay such ex-  
6 penses.

7       “(d) TRANSFERS AND CARRYOVERS.—

8           “(1) BUILDINGS, EQUIPMENT, SUPPLIES, MATE-  
9 RIALS.—A tribe or tribal organization assuming the  
10 operation of—

11           “(A) a Bureau school with assistance  
12 under this part shall be entitled to the transfer  
13 or use of buildings, equipment, supplies, and  
14 materials to the same extent as if it were con-  
15 tracting under the Indian Self-Determination  
16 and Education Assistance Act; or

17           “(B) a contract school with assistance  
18 under this part shall be entitled to the transfer  
19 or use of buildings, equipment, supplies and  
20 materials that were used in the operation of the  
21 contract school to the same extent as if it were  
22 contracting under the Indian Self-Determina-  
23 tion and Education Assistance Act.

24           “(2) FUNDS.—Any tribe or tribal organization  
25 which assumes operation of a Bureau school with as-

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1       sistance under this part and any tribe or tribal orga-  
2       nization which elects to operate a school with assist-  
3       ance under this part rather than to continue as a  
4       contract school shall be entitled to any funds which  
5       would carryover from the previous fiscal year as if  
6       such school were operated as a contract school.

7       “(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—Any  
8       exception or problem cited in an audit conducted pursuant  
9       to section 5207(b)(2), any dispute regarding a grant au-  
10      thorized to be made pursuant to this part or any amend-  
11      ment to such grant, and any dispute involving an adminis-  
12      trative cost grant under section 1128 of the Education  
13      Amendments of 1978 shall be administered under the pro-  
14      visions governing such exceptions, problems, or disputes  
15      in the case of contracts under the Indian Self-Determina-  
16      tion and Education Assistance Act of 1975. The Equal  
17      Access to Justice Act shall apply to administrative appeals  
18      filed after September 8, 1988, by grantees regarding a  
19      grant under this part, including an administrative cost  
20      grant.

21      “**SEC. 5210. ROLE OF THE DIRECTOR.**

22      “Applications for grants under this part, and all ap-  
23      plication modifications, shall be reviewed and approved by  
24      personnel under the direction and control of the Director  
25      of the Office of Indian Education Programs. Required re-

1 ports shall be submitted to education personnel under the  
2 direction and control of the Director of such Office.

3 **“SEC. 5211. REGULATIONS.**

4 “The Secretary is authorized to issue regulations re-  
5 lating to the discharge of duties specifically assigned to  
6 the Secretary by this part. In all other matters relating  
7 to the details of planning, development, implementing, and  
8 evaluating grants under this part, the Secretary shall not  
9 issue regulations. Regulations issued pursuant to this part  
10 shall not have the standing of a Federal statute for the  
11 purposes of judicial review.

12 **“SEC. 5212. THE TRIBALLY CONTROLLED GRANT SCHOOL**  
13 **ENDOWMENT PROGRAM.**

14 “(a) IN GENERAL.—

15 “(1) TRUST FUNDS.—Each school receiving  
16 grants under this part may establish, at a Federally  
17 insured banking and savings institution, a trust fund  
18 for the purposes of this section.

19 “(2) AUTHORITY OF SCHOOLS REGARDING  
20 TRUST FUNDS.—The school may provide—

21 “(A) for the deposit into the trust fund,  
22 only funds from non-Federal sources, except  
23 that the interest on funds received from grants  
24 under this part may be used for this purpose;



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1           “(B) for the deposit in the account of any  
2           earnings on funds deposited in the account; and

3           “(C) for the sole use of the school any  
4           noncash, in-kind contributions of real or per-  
5           sonal property, such property may at any time  
6           be converted to cash.

7           “(b) INTEREST.—Interest from the fund established  
8           under subsection (a) may periodically be withdrawn and  
9           used, at the discretion of the school, to defray any ex-  
10          penses associated with the operation of the school.

11       **“SEC. 5213. DEFINITIONS.**

12          “For the purposes of this part:

13               “(1) BUREAU.—The term ‘Bureau’ means the  
14               Bureau of Indian Affairs of the Department of the  
15               Interior.

16               “(2) ELIGIBLE INDIAN STUDENT.—The term  
17               ‘eligible Indian student’ has the meaning of such  
18               term in section 1127(f) of the Education Amend-  
19               ments of 1978.

20               “(3) INDIAN TRIBE.—The term ‘Indian tribe’  
21               means any Indian tribe, band, nation, or other orga-  
22               nized group or community, including Alaska Native  
23               Village or regional corporations (as defined in or es-  
24               tablished pursuant to the Alaskan Native Claims  
25               Settlement Act, which is recognized as eligible for

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1 the special programs and services provided by the  
2 United States to Indians because of their status as  
3 Indians.

4 “(4) LOCAL EDUCATIONAL AGENCY.—The term  
5 ‘local educational agency’ means a public board of  
6 education or other public authority legally con-  
7 stituted within a State for either administrative con-  
8 trol or direction of, or to perform a service function  
9 for, public elementary or secondary schools in a city,  
10 county, township, school district, or other political  
11 subdivision of a State or such combination of school  
12 districts or counties as are recognized in a State as  
13 an administrative agency for its public elementary or  
14 secondary schools. Such term includes any other  
15 public institution or agency having administrative  
16 control and direction of a public elementary or sec-  
17 ondary school.

18 “(5) SECRETARY.—The term ‘Secretary’ means  
19 the Secretary of the Interior.

20 “(6) TRIBAL ORGANIZATION.—(A) The term  
21 ‘tribal organization’ means—

22 “(i) the recognized governing body of any  
23 Indian tribe; or

24 “(ii) any legally established organization of  
25 Indians which—

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1           “(I) is controlled, sanctioned, or char-  
2           tered by such governing body or is demo-  
3           cratically elected by the adult members of  
4           the Indian community to be served by such  
5           organization; and

6           “(II) includes the maximum participa-  
7           tion of Indians in all phases of its activi-  
8           ties.

9           “(B) In any case in which a grant is provided  
10          under this part to an organization to provide serv-  
11          ices benefiting more than one Indian tribe, the ap-  
12          proval of the governing bodies of Indian tribes rep-  
13          resenting 80 percent of those students attending the  
14          tribally controlled school shall be considered a suffi-  
15          cient tribal authorization for such grant.

16          “(7) TRIBALLY CONTROLLED SCHOOL.—The  
17          term ‘tribally controlled school’ means a school oper-  
18          ated by a tribe or a tribal organization, enrolling  
19          students in kindergarten through grade 12, includ-  
20          ing preschools, which is not a local educational agen-  
21          cy and which is not directly administered by the Bu-  
22          reau of Indian Affairs.”.