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DRAFT

Recommend that the Congress expand the authorized membership (see 42 U.S.C. 4273) of the Advisory Commission on Intergovernmental Relations to include a tribal chairman and a tribal council member.

Consistent with the way the 14 non-Federal members are selected, the legislation proposed by the President could call for selection of the tribal chairman member from a panel of at least six submitted by the National Tribal Chairmen's Association. The tribal council member could be selected from a panel of eight submitted by the National Congress of American Indians. An alternative would be for joint submission by designated regional intertribal organization.

See the attached extracts from the 1959 Act establishing the Commission.

DRAFT

Tribal government officials should also be added to the Presidential Advisory Committee on Federalism which was established by Executive Order 12303 on April 8, 1981 (see p. 271 of the attachment), unless it is not going to be extended beyond its current expiration date of December 31, 1982.

DRAFT

The President should announce support for enactment of legislation providing for Federal tax treatment of tribal governments on a basis comparable to that accorded state governments and their subdivisions and agencies. This could include reference to the pending bills (S. 1298 and H.R. 3760) entitled "Tribal Government Tax Status Act of 1981" or he could support just the premise.

CHAPTER 53. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Section

- 4271. Establishment
- 4272. Declaration of purpose
- 4273. Membership of the Commission; appointment of members; term
 - (a) Number of members; appointment; qualifications
 - (b) Political and geographic composition
 - (c) Term of office; reappointment; period of service
- 4274. Organization of the Commission
 - (a) Initial meeting
 - (b) Chairman and Vice Chairman
 - (c) Vacancies in membership
 - (d) Termination of service in official position from which originally appointed
 - (e) Quorum
- 4275. Duties of the Commission
- 4276. Powers and administrative provisions
 - (a) Hearings; oaths and affirmations
 - (b) Cooperation by Federal agencies
 - (c) Executive director
 - (d) Appointment and compensation of other personnel; temporary and intermittent services
 - (e) Applicability of other laws to employees
 - (f) Maximum compensation of employees
- 4277. Compensation of members
- 4278. Authorization of appropriations
- 4279. Receipt of funds; consideration by Congress

CROSS REFERENCES

This chapter is referred to in 42 USCS § 4243.

§ 4271. Establishment

There is hereby established a permanent bipartisan commission to be known as the Advisory Commission on Intergovernmental Relations, hereinafter [42 USCS §§ 4271 et seq.] referred to as the "Commission". (Sept. 24, 1959, P. L. 86-380, § 1, 73 Stat. 703.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USCS § 2371 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Other provisions:

Ex. Or. No. 11455 revoked. Ex. Or. No. 11455 of Feb. 14, 1969, 34 Fed. Reg. 2299, which formerly appeared as a note to this section, was revoked by Ex. Or. No. 11690 of Dec. 14, 1972, 37 Fed. Reg. 26815 (effective 30 days after Dec. 14, 1972 as provided by Section 6 of Ex. Or. No. 11690), which appears as 3 USCS § 301 note. Ex. Or. No. 11455 established an Office of Intergovernmental Relations under the supervision of the Vice President.

Office of Intergovernmental Relations; authorization of appropriations; compensation of director; appointment of personnel; experts and consultants. Act Dec. 30, 1969, P. L. 91-186, §§ 1-3, 83 Stat. 849, provided: "There is hereby authorized to be appropriated such sums as may be necessary for expenses of the Office of Intergovernmental Relations (referred to hereafter as the 'Office'), established by Executive Order Numbered 11455 of February 14, 1969.

"The Director of the Office shall be compensated at a rate of basic compensation not to exceed the rate now or hereafter provided for level IV of the Federal Executive Salary Schedule [5 USCS § 5315].

"The Director of the Office is authorized—

"(1) to appoint such personnel as he deems necessary, without regard to the provisions of title 5, United States Code [5 USCS §§ 101 et seq.], governing appointments in the competitive services; and

"(2) to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code [5 USCS § 3109], at rates not to exceed the daily equivalent of the rate now or hereafter provided for GS-18 [see 5 USCS § 5332]."

✓ **Establishment of Presidential Advisory Committee on Federalism.** Ex. Or. No. 12303 of Apr. 8, 1981, 46 Fed. Reg. 21341, provided:

"By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [5 USCS App § 1], an advisory committee on federalism policy of the United States, it is hereby ordered as follows:

"Section 1. *Establishment.* (a) There is established the Presidential Advisory Committee on Federalism. The Committee shall be composed of members from among private citizens of the United States, public officials from State and local governments, and members of the Legislative and Executive branches of the Federal government who shall be appointed by the President. The members shall serve at the pleasure of the President.

"(b) The President shall designate a Chairman from among the members of the Committee.

"Sec. 2. *Functions.* The Committee shall advise the President with respect to the objectives and conduct of the overall federalism policy of the United States.

"Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information

with respect to federalism issues as it may require for the purpose of carrying out its functions.

"(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the governmental service (5 U.S.C. 5701-5707) [5 USCS §§ 5701-5707], to the extent funds are available therefor.

"(c) Any administrative support expenses of the Committee shall be paid from funds available to the White House Office.

"Sec. 4. *General.* (a) Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended [5 USCS App § 1], shall be performed by the President, except that, the Administrator of General Services shall, on a reimbursable basis, provide such administrative services as may be requested.

"(b) The Committee shall terminate on December 31, 1982, unless sooner extended."

§ 4272. Declaration of purpose

Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

- It is intended that the Commission, in the performance of its duties, will—
- ✓ (1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;
 - ✓ (2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
 - ✓ (3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;
 - ✓ (4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
 - ✓ (5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
 - ✓ (6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
 - ✓ (7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive

fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.
(Sept. 24, 1959, P. L. 86-380, § 2, 73 Stat. 703.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

This section formerly appeared as 5 USC § 2372 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

CROSS REFERENCES

This section is referred to in 42 USCS § 4275.

§ 4273. Membership of the Commission; appointment of members; term

(a) **Number of members; appointment; qualifications.** The Commission shall be composed of twenty-six members, as follows:

(1) Six appointed by the President of the United States, three of whom shall be officers of the executive branch of the Government, and three private citizens, all of whom shall have had experience or familiarity with relations between the levels of government;

(2) Three appointed by the President of the Senate, who shall be Members of the Senate;

(3) Three appointed by the Speaker of the House of Representatives, who shall be Members of the House;

(4) Four appointed by the President from a panel of at least eight Governors submitted by the Governors' Conference;

(5) Three appointed by the President from a panel of at least six members of State legislative bodies submitted by the board of managers of the Council of State Governments;

(6) Four appointed by the President from a panel of at least eight mayors submitted jointly by the National League of Cities and the United States Conference of Mayors;

(7) Three appointed by the President from a panel of at least six elected county officers submitted by the National Association of Counties.

(b) **Political and geographical composition.** The members appointed from private life under paragraph (1) of subsection (a) shall be appointed without regard to political affiliation; of each class of members enumerated in paragraphs (2) and (3) of subsection (a), two shall be from the majority party of the respective houses; of each class of members enumerated in paragraphs (4), (5), (6), and (7) of subsection (a), not more than two shall be from any one political party; of each class of members enumerated in paragraphs (5), (6) and (7) of subsection (a), not more than one shall be

from any one State; at least two of the appointees under paragraph (6) of subsection (a) shall be from cities under five hundred thousand population.

- ✓(c) **Term of office; reappointment; period of service.** The term of office of each member of the Commission shall be two years; members shall be eligible for reappointment; and, except as provided in section 4(d) [42 USCS § 4274(d)], members shall serve until their successors are appointed. (Sept. 24, 1959, P. L. 86-380, § 3, 73 Stat. 704; Nov. 2, 1966, P. L. 89-733, §§ 1, 2, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2373 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (a), in para. (6), substituted "National League of Cities" for "American Municipal Association" and "; and" for ";", in para. (7), substituted "Counties" for "County Officials"; and in subsec. (c), substituted "; members shall be eligible for reappointment; and, except as provided in section 4(d), members shall serve until their successors are appointed" for "; but members shall be eligible for reappointment".

CROSS REFERENCES

This section is referred to in 42 USCS § 4274.

§ 4274. Organization of the Commission

(a) **Initial meeting.** The President shall convene the Commission within ninety days following enactment of this Act [enacted Sept. 24, 1959] at such time and place as he may designate for the Commission's initial meeting.

(b) **Chairman and Vice Chairman.** The President shall designate a Chairman and a Vice Chairman from among members of the Commission.

(c) **Vacancies in membership.** Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (4), (5), (6), and (7) of section 3(a) [42 USCS § 4273(a)(4)-(7)], each panel of names submitted in accordance with the aforementioned paragraphs shall contain at least two names for each vacancy.

- ✓(d) **Termination of service in official position from which originally appointed.** Where any member ceases to serve in the official position from which originally appointed under section 3(a) [42 USCS § 4273(a)], his place on the Commission shall be deemed to be vacant.

(e) **Quorum.** Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

(Sept. 24, 1959, P. L. 86-380 § 4, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2374 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

CROSS REFERENCES

This section is referred to in 42 USCS § 4273

§ 4275. Duties of the Commission

It shall be the duty of the Commission—

(1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of the purposes set forth in section 2 of this Act [42 USCS § 4272];

(2) to consider, on its own initiative, ways and means for fostering better relations between the levels of government;

(3) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress or any committee of the Congress, and to any unit of government or organization as the Commission may deem appropriate.

(Sept. 24, 1959, P. L. 86-380, § 5, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2375 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Other provisions:

Study and report to Congress of effect on funds available for housing and State and local bond markets of full deposit insurance for public funds; submission date; authorization of appropriations. Act Oct. 28, 1974, P. L. 93-495, Title I, § 101(f), 88 Stat. 1502, effective on the 30th day beginning after Oct. 28, 1974, provided:

"(1) The Advisory Commission on Intergovernmental Relations (hereinafter referred to as the 'Commission') shall conduct a study of the impact of this section on funds available for housing and on State and local bond markets.

rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended.”.

Other provisions:

Effective date and application of amendment made by Act Aug. 14, 1964. Act Aug. 14, 1964, P. L. 88-426, § 501(a), 78 Stat. 435, provided that the amendment made to this section by § 306(e) of such Act is effective on the first day of the first pay period which begins on or after July 1, 1964.

§ 4277. Compensation of members

(a) Members of the Commission who are Members of Congress, officers of the executive branch of the Federal Government, Governors, or full-time salaried officers of city and county governments shall serve without compensation in addition to that received in their regular public employment, but shall be allowed necessary travel expenses (or, in the alternative, a per diem in lieu of subsistence and mileage not to exceed the rates prescribed in the Travel Expense Act of 1949, as amended), without regard to the Travel Expense Act of 1949, as amended (5 U.S.C. 835-842), the Standardized Government Travel Regulations, or section 10 of the Act of March 3, 1933 (5 U.S.C. 73b), and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Unless prohibited by State or local law, members of the Commission, other than those to whom subsection (a) of this section is applicable, shall receive compensation at the rate of \$50 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, as provided for in subsection (a) of this section.

(Sept. 24, 1959, P. L. 86-380, § 7, 73 Stat. 706; Nov. 2, 1966, P. L. 89-733, § 5, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

“The Travel Expense Act of 1949”, referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 655. Similar provisions as reenacted appear as 5 USCS §§ 5701 et seq.

“Section 10 of the Act of March 3, 1933”, referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 648. Similar provisions as reenacted appear as 5 USCS § 5731.

Explanatory notes:

This section formerly appeared as 5 USC § 2377 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (b), substituted "Unless prohibited by State or local law, members" for "Members".

§ 4278. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [42 USCS §§ 4271 et seq.].

(Sept. 24, 1959, P. L. 86-380, § 8, 73 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2378 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

§ 4279. Receipt of funds; consideration by Congress

The Commission is authorized to receive funds through grants, contracts, and contributions from State and local governments and organizations thereof, and from nonprofit organizations. Such funds may be received and expended by the Commission only for purposes of this Act [42 USCS §§ 4271 et seq.]. In making appropriations to the Commission the Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.

(Sept. 24, 1959, P. L. 86-380, § 9, as added Nov. 2, 1966, P. L. 89-733, § 6, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2379 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Issue Paper

Draft

Issue: Should the President recommend that the Congress expand the authorized membership (see 42 U.S.C. 4275, copy attached) of the Advisory Commission on Intergovernmental Relations to include a tribal chairman and a tribal council member? In the interim should the President request the Commission to invite the Assistant Secretary for Indian Affairs to attend Commission meetings as an observer?

Background: The Advisory Commission on Intergovernmental Relations is the National, permanent Commission established by the Congress in 1959 to monitor intergovernmental relations and make recommendations for change. The Secretary of the Interior was appointed by the President to serve as the current chairman of the Commission.

Consistent with the way the 14 non-Federal members are selected the legislation if proposed could call for selection of the tribal chairman member from a panel of at least six submitted by the National Tribal Chairmen's Association. The tribal council member could be selected from a panel of eight submitted by the National Congress of American Indians. An alternative would be for designated regional intertribal organizations to submit jointly a panel of six chairmen and six council members.

- Pros:
1. Tribes could learn from the other governments.
 2. Mutual problems could be examined and solutions developed. One specific duty of the Commission is to consider ways and means for fostering better relations between the levels of government.
 3. States, counties and cities are represented. Recognition by non-Indian governmental units of the status of tribes as governments is a must if negotiated resolution of problems is to be achieved. Placement of tribal governmental representatives on the ACIR would be a large step in gaining that recognition and would underscore the Administration's policy of a government-to-government relationship with Federally recognized tribes. (see 5)
 4. Problems of counties and cities vis-a-vis the state and Federal governments are very similar, but often neither the county, the city nor the tribe is aware of that fact. Participation on the Commission together would bring about that awareness and foster cooperation.
 5. (back)
- Cons:
1. Responses to inquiries in 1980 by The Clary Institute to each member of the Advisory Commission on Intergovernmental Relations were generally negative. The reason given by almost all members was that ACIR endorses Congress' original intent in enacting the statute. That is, that representation should be limited to general governments that are virtually universal in our nation, i.e., that exist in 45 states or more. Opposition on that basis from ACIR members can be expected.

Under President Reagan's goal of self-determination for Federally-recognized tribes, tribal leaders are going to have a growing need for knowledge on effective and efficient systems for delivering services to their constituents. Membership on the ACIR would be one of the most cost-effective ways to assist tribes in strengthening delivery systems, (over)

tribal gov. Tribal governments located in 26 states.

the authorized membership of the Advisory Commission on Intergovernmental Relations to include a tribal chairman and a tribal council member. In the interim should the President request the Commission to invite the Assistant Secretary for Indian Affairs to attend

5. The status of Federally-recognized tribal governments has never been defined by the Legislative, Executive or Judicial Branch. Placement on the ACIR would have a tremendous psychological impact on tribal governments. Recognition of a status of legitimacy and recognition of the fact that state and local governments expect them to responsibly shoulder their obligations to any other government. Psychological processes, it could speed up self-determination and self-sufficiency processes.

Problems of counties and cities vis-a-vis the state and Federal governments are very similar, but often neither the county, the city nor the tribe is aware of that fact. Participation on the Commission together would bring about that awareness and foster cooperation.

Responses to inquiries in 1980 by The Clary Institute to each member of the Advisory Commission on Intergovernmental Relations were generally negative. The reason given by almost all members was that ACIR endorses Congress' original intent in enacting the statute. That is, that representation should be limited to general governments that are virtually universal in our nation, i.e., that exist in 45 states or more. Opposition on that basis from ACIR members can be expected.

States, counties and cities are represented by non-Indian governmental units of the status of tribes as governments is a must if negotiated resolution of problems is to be had. Placement of tribal governmental representatives on the ACIR would be a large step in gaining that recognition.

Mutual problems can be examined and solutions developed. The specific duty of the Commission is to consider ways in which to strengthen inter relations between the levels of government.

The tribal council members selected from a panel of eight, sitting in the National Congress of American Indians. An alternative would be to have a joint intertribal

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Cons: 1. Responses to inquiries in 1980 by The Clary Institute to each member of the Advisory Commission on Intergovernmental Relations were generally negative. The reason given by almost all members was that ACIR endorses Congress' original intent in enacting the statute. That is, that representation should be limited to general governments that are virtually universal in our nation, i.e., that exist in 45 states or more. Opposition on that basis from ACIR members can be expected.

Consistent with the fact that in non-Federal members are selected the fact that in the last six years the National Tribal Chairman's Association. The tribal council members selected from a panel of eight, sitting in the National Congress of American Indians. An alternative would be to have a joint intertribal

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2. Acknowledging and dealing with tribes as governments is in some areas of the country an alien concept. Many American people feel that state and local governments are the only real true American governments within state geographical boundaries, and that none other should exist.

Recommendation:

(c) **Quorum.** Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

(Sept. 24, 1959, P. L. 86-380 § 4, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2374 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

CROSS REFERENCES

This section is referred to in 42 USCS § 4273

§ 4275. Duties of the Commission

It shall be the duty of the Commission—

✓(1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of the purposes set forth in section 2 of this Act [42 USCS § 4272];

✓(2) to consider, on its own initiative, ways and means for fostering better relations between the levels of government; ✓

✓(3) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress or any committee of the Congress, and to any unit of government or organization as the Commission may deem appropriate.

(Sept. 24, 1959, P. L. 86-380, § 5, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2375 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Other provisions:

Study and report to Congress of effect on funds available for housing and State and local bond markets of full deposit insurance for public funds; submission date; authorization of appropriations. Act Oct. 28, 1974, P. L. 93-495, Title I, § 101(f), 88 Stat. 1502, effective on the 30th day beginning after Oct. 28, 1974, provided:

“(1) The Advisory Commission on Intergovernmental Relations (hereinafter referred to as the ‘Commission’) shall conduct a study of the impact of this section on funds available for housing and on State and local bond markets.

rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended.”.

Other provisions:

Effective date and application of amendment made by Act Aug. 14, 1964. Act Aug. 14, 1964, P. L. 88-426, § 501(a), 78 Stat. 435, provided that the amendment made to this section by § 306(e) of such Act is effective on the first day of the first pay period which begins on or after July 1, 1964.

§ 4277. Compensation of members

(a) Members of the Commission who are Members of Congress, officers of the executive branch of the Federal Government, Governors, or full-time salaried officers of city and county governments shall serve without compensation in addition to that received in their regular public employment, but shall be allowed necessary travel expenses (or, in the alternative, a per diem in lieu of subsistence and mileage not to exceed the rates prescribed in the Travel Expense Act of 1949, as amended), without regard to the Travel Expense Act of 1949, as amended (5 U.S.C. 835-842), the Standardized Government Travel Regulations, or section 10 of the Act of March 3, 1933 (5 U.S.C. 73b), and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Unless prohibited by State or local law, members of the Commission, other than those to whom subsection (a) of this section is applicable, shall receive compensation at the rate of \$50 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, as provided for in subsection (a) of this section.

(Sept. 24, 1959, P. L. 86-380, § 7, 73 Stat. 706; Nov. 2, 1966, P. L. 89-733, § 5, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

“The Travel Expense Act of 1949”, referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 655. Similar provisions as reenacted appear as 5 USCS §§ 5701 et seq.

“Section 10 of the Act of March 3, 1933”, referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 648. Similar provisions as reenacted appear as 5 USCS § 5731.

Explanatory notes:

This section formerly appeared as 5 USC § 2377 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (b), substituted "Unless prohibited by State or local law, members" for "Members".

§ 4278. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [42 USCS §§ 4271 et seq.].
(Sept. 24, 1959, P. L. 86-380, § 8, 73 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2378 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

§ 4279. Receipt of funds; consideration by Congress

The Commission is authorized to receive funds through grants, contracts, and contributions from State and local governments and organizations thereof, and from nonprofit organizations. Such funds may be received and expended by the Commission only for purposes of this Act [42 USCS §§ 4271 et seq.]. In making appropriations to the Commission the Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.

(Sept. 24, 1959, P. L. 86-380, § 9, as added Nov. 2, 1966, P. L. 89-733, § 6, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2379 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Friday
October 26, 1979

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Part V

**Department of the
Interior**

Bureau of Indian Affairs

Indian School Equalization Program

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31h

Indian School Equalization Program

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: Final rule.

SUMMARY: Beginning on page 29842 of the May 22, 1979, Federal Register (44 FR 29842), there was published a notice of proposed rulemaking to add a new Part 31h to Chapter I, Subchapter E, of title 25 of the Code of Regulations. These rules are to implement sections 1128 and 1129 of the Education Amendments of 1978 (92 Stat. 2143, 2320 and 2321, Pub. L. 95-561), by: (a) establishing a uniform direct funding formula for allocating Bureau of Indian Affairs educational funds to schools for elementary and secondary education; and (b) establishing separate categorical funds for (1) contingencies, (2) school board training, (3) student transportation, (4) administration, (5) maintenance and minor repair of school facilities, (6) pre-kindergarten programs, and (7) operation and maintenance of contract schools.

EFFECTIVE DATE: These regulations shall become effective not less than 45 days from the date of publication. (See section 431 of the General Education Provisions Act (20 U.S.C. 1232) and 25 U.S.C. 2018). To determine the effective date contact the person below. The Bureau will publish a document confirming the effective date of this regulation at a later date.

FOR FURTHER INFORMATION CONTACT: Rick C. Lavis, Deputy Assistant Secretary—Indian Affairs, Department of Interior, 18th and C Streets, N.W., Room 6352, Washington, D.C. 20240, (202) 343-7163.

SUPPLEMENTARY INFORMATION: The authority for issuing these rules is sections 1128 and 1129 of the Education Amendments of 1978 Pub. L. 95-561, also referred to in this document as "the Act". This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

On May 22, 1979 the Bureau of Indian Affairs published a proposed rule on the Indian School Equalization Program (ISEP) to govern the allocation of funds for the education of Indian children to BIA operated and tribally operated contract schools and, in the case of administration, to Central, Area and Agency Offices. The public was invited to offer comments on the proposed rule

on or before June 21, 1979. Numerous public comments were received. Each of the comments was carefully considered by Task Force No. 5 on Allotment Formula which was constituted by the Assistant Secretary—Indian Affairs to oversee the preparation of these regulations, and was either adopted or not adopted according to the evaluation made by the Task Force.

The following responses to comments have been organized by subpart. Each comment is listed according to the section of the proposed regulations to which that comment was addressed. Some responses necessitated the deletion of sections or subsections of the proposed regulations and the insertion of new sections or subsections. In several instances these changes required renumbering of subsequent sections. For the purposes of consistency, all section numbers in the comments and responses refer to the proposed regulation as published in the Federal Register, except where they are designated as new sections.

Comments and Responses; Subpart A*A. Comments Adopted*

1. (§ 31h.1) One commentator brought to our attention that the terms "funding component", "program", and "cost account" are used with unclear distinctions in the rule. Response: A frequency count revealed that "funding component" is used twice, "program" is used 69 times, not including its use in titles, and "cost account" is used 5 times. It was determined that the term "cost account" was used fully consistently with its definition, and that "program" was used either in accord with its definition, or in a context where its meaning was sufficiently clear. The suggested term in the comment, "level", did not appear to offer any real improvement, so no general revision was attempted. Some editing has been done to remove needless synonyms.

2. (§ 31h.2) Two commentators expressed concern that regulation terminology regarding "grades" and "grade level" might preclude Bureau funding of schools which depart from the traditional grade-oriented program patterns, or might subtly promote such patterns in Bureau-funded schools. Response: A number of language changes have been made in the rule to de-emphasize "grades" and "grade levels", including a definition of these terms which permits their use as funding categories only, without effect upon the grouping of students for delivery of services.

3. (§ 31h.2) Two commentators recommended use of the same definition

of "Agency" as used in § 31g.2(a). Response: This recommendation has been adopted in final regulation wording.

4. (§ 31h.2) One commentator objected to the term "qualified Indian", as undefined. Response: The term has been replaced with "eligible student" which is already defined in § 31h.2(j).

5. (§ 31h.2) Two commentators pointed out that the definition of "Average Daily Membership" is inconsistent with procedures in § 31h.32 of the rule. Response: Procedures in § 31h.32 have been changed to conform to the definition, as originally intended.

6. (§ 31h.2) Two commentators suggested that the definition of "Local School Board" is not sufficiently specific. It does not refer to the identifying purpose of such a board, only to its manner of election. Response: The definition has been amended to include the purpose of the Board.

B. Comments Not Adopted

1. (§ 31h.1) Two commentators expressed objections to the inclusion of Contract schools in the same formula system with Bureau operated schools. Response: Section 1128(a) of the Act requires "a formula" for both, and does not authorize the provision of completely separate means of funding both types of Bureau-funded schools. Separate procedures have been provided in several sections of this rule where required by existing regulations governing financial planning and allotments to Contract schools under Pub. L. 93-638.

2. (§ 31h.2) One commentator objects to lack of standardized meanings of terms between major sections of the rule, and suggests standardization of definitions of all terms used in more than one section. Response: It is agreed in principle that such standardization, where possible, is desirable. However, full completion of implementing regulations for the Act will not take place for more than a year, because of time schedules in the Act for development of various portions of these rules. The process of standardization will have to be delayed until such time as all of these parts are in place, and comparisons can be made to determine which terms can be used with standard definitions, and which terms require special definition in more than one place.

3. (§ 31h.2) Two commentators recommended limiting membership of Agency school boards to persons appointed not only by, but from, local school boards. Response: This recommendation has been rejected as contrary to Indian control provisions of

Section 1130 of the Act, which imply that the decision as to whom to appoint should be made by the local school board without this limitation.

4. (§ 31h.2) Two commentors recommended that the definition of Indian be changed to conform to that used in 25 CFR 271. Response: The definition of "Indian" contained in this rule is consistent with the definition mandated in Pub. L. 95-561, and therefore the recommendation must be rejected.

5. (§ 31h.2) One commentor recommended that the definition of "school board" contain provisions whereby the members would be elected from parents of children enrolled in the school, by nomination of the Tribal governing bodies involved. Response: This recommendation is rejected as unneeded, since the Tribal governing bodies may determine provisions for nomination and election of school board members, as desired, through tribal law under existing definitions.

6. (§ 31h.2) One commentor objected to the absence of a definition of "public school boards of which a majority are Indian", for public schools located on a reservation, especially in reference to eligibility for school board training funds under the ISEP. Response: Appropriations for Bureau of Indian Affairs operated and funded schools cannot properly be used in support of public school programs for which States are responsible. The need for Federal support for public schools which serve Indian students has been recognized for many years in the Johnson-O'Malley Act, as revised, and this is the proper setting in which to address these needs. The definition in this rule specifically excludes public school boards from eligibility for funding under any part of the ISEP.

7. (§ 31h.3) One commentor recommends that Tribal governments be authorized to transfer up to 10% of the funds allocated to schools serving the Tribe from one school to another, in the interests of flexibility, with the agreement of the school boards. Response: This comment was seriously considered and a determination was made that to include such language in the regulations would be contrary to the intent of the law. For instance, the law specifies that through the formula, funds are generated to provide for the special education needs of the student and therefore, the dollars generated by each student remain at that school. However, this action does not prohibit the local school board and school supervisor from transferring funds up to 10% to another school for any purpose.

Subpart B

A. Comments Adopted

1. (§ 31h.11) Several commentors noted the inconsistency between the 175 days minimum in definitions of "grades", and the 180 days minimum in § 31g.11 of the personnel regulations. Response: The 175-day figure has been changed to 180 days.

2. (§ 31h.11) A number of commentors objected to the five hour day and 2½ hour half-day minimums set for Kindergarten operation in the definition of "Kindergarten", as in conflict with present Bureau policy, and with proposed policy regulations requiring the Bureau to respect and defend the integrity of the Indian family. Response: Minimum hours for Kindergarten have been reduced to 4 hours for a full day, and 2 hours for half-day programs, in keeping with current policy.

3. (§ 31h.11) A number of commentors expressed concern that the definition of "Intense Bilingual, K-3" is too inclusive, and "weak", and may result in allotment of funds to schools which are not actually providing services to meet the student need identified. Others objected to grade-level limitations. Response: The definition has been revised to read: "Intense Bilingual" means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non-native speakers of English, under resources of the ISEP.

4. (§ 31h.11) One commentor objected to perceived non-Indian ethnocentricity of the definitions of intensive residential guidance and exceptional child program presenting problems. Particular objections were expressed to the inclusion of sickle-cell anemia and reference made to "cultural . . . disadvantage." Response: Sickle-cell anemia has been removed from the list of health-impairments, but the reference to cultural disadvantage was incorporated in the rule as a limitation upon applications of the term "learning disability" and has been retained as necessary. The rule in no way implies that being Indian is, in itself, a "cultural disadvantage", but it accepts that particular Indian students may be culturally disadvantaged in one way or another—possibly by virtue of having been alienated from their Native American heritage and tradition through schooling—and simply prevents such a disadvantage from being labeled a "specific learning disability", for purposes of funding school programs.

The general charge of ethnocentricity of thinking is accepted as probably true, and as a current limitation of the Western cultural institution called schooling, of which the Bureau education system is a part. School reform is a long and difficult process, and is encouraged by these regulations wherever possible, through the decisions of local Indian people at the School Board level. Nothing in this rule prevents the use of Native American people's traditional mental health practices as the basis for treatment programs to serve the needs of students in the areas addressed. Additional informative and positive input in audibly defining Indian students' special education need conditions will be solicited as these regulations are refined and revised over time, but we have to begin somewhere if there is to be anything to improve upon.

5. (§ 31h.11) Several commentors objected that the definition of "intensive residential guidance" is too restrictive, and may limit needed services to some students whose placement in the residential program does not meet definition criteria. Many requested inclusion of a social worker referral category. Response: Regulations language has been modified to include referral by a Psychiatric Social Worker in this definition.

6. (§ 31h.11) A commentor suggested that the regulations be amended to provide that funds generated by the formula for special education should be earmarked to be spent on handicapped students. Response: Section 31h.62(d), which sets forth minimum requirements for the financial plan, has been amended to add language establishing such a requirement.

7. (§ 31h.11) Two commentors objected to the requirement that residential students must be in residence for four days and four nights during each count week to be counted in this category, on the basis that, for those students who routinely go home on the weekend, this requires perfect attendance during the count week, whereas in the instruction counts the student needs to be present only once during the count week. Response: The definition has been rewritten to provide other assurances that the student is a bona-fide resident in the dormitory.

8. (§ 31h.12) Two commentors objected to the general level of funding of residential care needs as higher than that afforded in the ISEP for instructional needs. Concern was expressed that this will provide incentives for conversion or transfer of students from day student status to residential status, in order to increase

institutional funding levels. Response: Preliminary analysis of comparative funding levels of day and residential schools under present funding systems and under the ISEP do not support the conclusion that there is any more incentive in the ISEP for residential placement than there is in the present funding system. However, language has been introduced in the Rule to require the development of Bureauwide policy criteria for placement of students in day and/or residential schools, and to govern the attendance boundaries of each Bureau school, in order to respond to the legitimate concerns of these commentors that schools may seek to place students, or recruit them, primarily for the financial benefit of the school instead of in the best educational interests of the student.

9. (§ 31h.12) Several commentors requested inclusion of funds for special services to handicapped students in dormitory and residential care programs of boarding schools, as a separate component of instructional services for these students. Response: Language has been introduced into this rulemaking to provide for such services in the residential care of these students, as part of the Bureau's mandate to maintain its program level of effort in education of the handicapped.

10. (§ 31h.12) One commentor objected to the labeling of handicapped students involved in the categorical funding system in the ISEP based upon handicapping condition definitions. Response: In general, we agree with the view expressed by this commentor. However, the Bureau has not, as yet, adopted a policy which provides for distribution of funds, with sufficient accountability limitations to assure that these funds are actually used to benefit handicapped students, other than the one used in this formula. The Bureau's Division of Special Education is in the process of developing such a policy that will provide for services to handicapped students with a minimum use of labels. When these policy decisions have been made and service definitions which provide assurances of accountability have been developed, this question will be reviewed, along with other questions of standards and policy impacting the ISEP, under procedures described in § 31h.20. An appropriately amended formula for distributing Bureau funds for the education of handicapped students may then be incorporated in a formal revision of the ISEP under a new Notice of Proposed Rulemaking. While it was not possible to incorporate an exceptional education weighting system based totally on service levels and

program content, some changes were made in the exceptional child program definitions in § 31h.11.

11. (§ 31h.13) Several commentors objected to the inclusion of a weighting of 1.40 for Kindergarten student residential care in dormitories and residential schools on grounds that it is contrary to present Bureau policy which discourages placement of such young students in dormitory facilities, by placing an incentive weighting on their heads. Response: The weighted student unit factor for kindergarteners in residential facilities has been modified to restrict the factor for use in fiscal year 1980 only and deleted entirely in subsequent fiscal years. The funding of kindergarteners for residential purposes contradicts the Bureau's policy "to avoid enrollment of beginners and small children where any other suitable plans can be made for them", (62 IAM 2.5 Federal Boarding Schools).

12. (§ 31h.17) One commentor objected to linkage of Bureau funding of schools with state funding levels. Another commentor objected that no provision had been made in the ISEP for funding of Bureau schools on a comparable basis with the academic services provided in the States in which they are located. Response: The first of these objections appears to be to Section 1128(b) of the Act which requires that the Bureau provide at least the same amount per Indian child to any Bureau funded school which is received per Indian child from other Federal funding sources by the Public School district in which the Bureau funded school is located. The second refers to the fact that this and another similar section of the Act were provided no implementing regulation in the proposed rule. Implementing provisions have been added in the final rule.

13. (§ 31h.19-21) Two commentors expressed misgivings regarding the lack of formal safeguards for decision making regarding weighted programs in these sections. Response: Section 19 provided for normal procedures for publication and revision of Bureau Manuals of procedure and policy. It remains unchanged, except for language changes introduced in response to other comments. Sections 20 and 21 are completely rewritten to provide such safeguards.

14. (§ 31h.21) One commentor requested inclusion of procedures for authorizing new school programs, program expansions into new age-groups levels, and similar actions which may increase the populations for which the Bureau is obligated to provide funds through the ISEP. Response: Time constraints did not permit the

publication of such a system with this rulemaking. However, a new section has been introduced, establishing a time frame and procedures for its development.

15. (§ 31h.22) Several commentors recommended that the Director's review of the question of adjustment of the ISEP to account for contract schools' receipt of supplemental funds should be subject to publication and public comment, prior to implementation. Response: We agree with this comment, and have amended the rule accordingly.

B. Comments Not Adopted

1. (§ 31h.11) Two commentors expressed concern that present bilingual instructional principles, concepts, and practices may be inappropriate within tribal value systems, and should not be imposed upon school boards as a condition of receipt of funds. Other commentors objected that the level of funding provided in the ISEP for bilingual programming is insufficient to meet costs. Response: The intense bilingual weighting in the ISEP is established to provide additional resources only to those schools with populations of students unable fully to profit from schooling which is delivered in the English language, because those students are primarily speakers of a Native American language. It is assumed in the ISEP that meeting these needs is critical to any future school success of such students and that such students are not uniformly distributed throughout the BIA school system. Consequently, additional funds are distributed to those schools which enroll such students and provide programs to meet their needs, at the expense of other schools which do not have them. Nothing in this provision restricts the principles, concepts, and practices used in providing services to meet these needs, other than that they must include academic instruction daily in the native language, and specialized instruction to overcome student limitations as nonnative speakers of English. School boards are encouraged to integrate such program elements with those of their "basic" program into a single, comprehensive instructional program in order to secure maximum benefits for students. Nothing in this rule restricts the use of funds for these purposes to only those which are received under the bilingual "add on" weight.

We further expect that Tribal standards of program quality, including the use of multicultural and multilingual instruction where these approaches are favored by the tribe(s) served, will be addressed in the local educational program. The local school supervisor

and school board have full responsibility for meeting such standards, and other standards such as those to be published by the Bureau at a later date and any expressed or implied in law or court decisions, within the limits of the funds appropriated. For this reason, the majority of funds distributed in the ISEP are deliberately left undesignated in the dollar value of the "base". This is intended to give the local school supervisor and school board as much flexibility in their use as possible.

2. (§ 31h.11) One commentator questioned whether the length of school day in definitions of "grades" refers to instruction periods, or to non-instructional activities as well. Response: The length of school days applies to total or gross hours in school, including meals, recess, and other non-instructional periods.

3. (§ 31h.11) One commentator questioned the inclusion of the upper age limit of 21 years in the definition of "grades 9-12". Response: The purpose of the ISEP is funding basic elementary and secondary level schooling. Students over the age of 21, who have not completed such schooling, are eligible for adult and other continuing education programs for which the Bureau has separate funds and means of distribution. The limitation at age 21 has been set to assure that school operations funds of the Bureau are used in the school programs for which they are appropriated.

4. (§ 31h.11) One commentator objected to the requirement of individualized treatment plans in the definition of intensive residential guidance as requiring too much administrative paperwork. Response: Such plans are not a paperwork exercise, but a requirement that specific decisions be made and recorded, and then followed in treatment of those student problems which are addressed in this subsection. The requirement has been retained as part of the rule.

5. (§ 31h.11) Several commentators requested inclusion of provisions for gifted and talented students in the Exceptional Child Programs in the ISEP, in both the definitions section, and in 31h.12, provisions for weighted student unit factors. Response: No other single question was given greater consideration and effort by the Task Force in drafting this rule than this one. However, auditable definitions of giftedness and talent, which successfully distinguish between such students and other Indian students in a way which will justify providing more funds to some schools at the expense of other schools, so as to serve the special needs of such students, are still not

available. It is the intent of the Bureau to incorporate such provisions in the ISEP at the earliest feasible time.

Meanwhile, the ISEP places all of the Bureau's school operations funds directly in the control of local Indian school boards, equitably distributed on the basis of other special needs, and of general educational needs of students. Any funds which the ISEP could have distributed for the gifted and talented among these students are included in the general educational funds, and are available at the local level for school boards to use for meeting these needs as they may be defined locally.

6. (§ 31h.11) A number of commentators objected to the omission of administrative costs as a separate factor in the ISEP, both in Bureau operated schools and as overhead costs of operating contract schools. Response: No such factor has been included, because it is assumed that such needs are relatively evenly distributed throughout the school system, and may be provided for even in small schools through shared services at the Agency level if left in the "base" and not earmarked for unequal distribution as a formula factor.

Overhead costs for contract schools, identified in the Act as one of the factors to be considered in establishing the formula, are to be identified "under existing procedures" of the Bureau which require establishment of an indirect cost rate by the cognitive Audit agency of the Indian contractor. And indirect costs are to be paid from the Indian Contract Support fund (Activity 3200) rather than from the School Operations fund (Activity 3100) which is distributed through the ISEP. These procedures are consistent with the intent of the Congress expressed in the Conference Report on Title XI of the Act.

7. (§ 31h.11) One commentator expressed concern that the reference in this sub-section to the Handicapped Act incorporates HEW Bureau of Education for the Handicapped (BEH) program requirements, such as limitations on the percentage of the student body served that can be included in handicapped student services. Response: The reference in this section incorporates only BEH requirements for the identification of students to be served, such as the development of Individualized Educational Programs, and observance of due process procedures. Any program requirements or constraints to be followed in the use of Bureau school operations funds for education of the handicapped will be developed as a result of standards to be

published by the Bureau under section 1121 of the Act.

8. (§ 31h.12) A number of commentators objected that the weight provided for Kindergarten students is insufficient to provide needed services, asserting the special importance of this age group, and the fact that present Bureau policy restricts class size for this group to smaller numbers than permissible in older classes. Responses: Current enrollment history indicates that actual Kindergarten class size does not vary widely from the sizes of classes for older children, which rarely approximate the maximums allowed. Funds provided by the current weighting allow up to approximately \$36,000 for a full Kindergarten classroom, which appears to be adequate funding. The weight has been retained at its original level.

9. (§ 31h.12) One commentator requested an increase in the weight provided for grades 4-8 on grounds that these are the years during which students begin to fall behind, and drop out, and that ESEA Title I funds are not sufficient for the remedial work needed. Response: Weights in the total formula were all set relative to this group [see the definition of the "base" in Section 31h.11(a)]. The problem of insufficient funding for basic needs of the base group in the educational system will have to be tackled by Indian educators working together to achieve greater output for the costs, and to secure increased funding for the total system. The weight has been retained at its original level.

10. (§ 31h.12) Several commentators requested that grades 7 and 8 be separated from grades 4 through 6, and removed from the base group, on grounds that programs for these grades are more similar to high school level programs than they are to the middle grades, and are the cause of critical dropout problems at these grade levels. Response: Some school program configurations at the middle school or junior high levels do resemble high school programs in terms of departmentalization and special subject matter courses. However, these similarities do not include the particularly high cost of high school level career-oriented and vocational training programs, and extra-curricular activities, which are the major justifications for higher weights for high school programs. By contrast, several other commentators requested increased weighting for high schools with these requests being justified by patterns of differential funding between grade and high schools in certain States. Others

made similar requests, with statements of the importance of related program areas, for increases in the weights for every single group given separate treatment in the ISEP, except grades 1 through 3.

Since there is still the same amount of money available for distribution through the ISEP, regardless of the number of weights created by inflating the formula, no real advantage is gained by anyone in giving everyone a "raise" in their formula weight. Consequently, only where there are compelling reasons for changing the relative importance of a particular need when compared with all other needs, have any changes been made in formula weights.

11. (§ 31h.12) A significant number of commentors proposed introducing additional cost accounts into the ISEP as weighted factors. Among such factors were alternative program development, vocational education, multicultural education, native language maintenance and revival, summer school programs, day care services, extra-curricular activities of a wide variety, student health care, curriculum design-research-development, accreditation costs, community school concept programs, substitute teacher pay, and many more. Response: In past school operations funding patterns, BIA funds for these and similar costs have been inequitably distributed among schools and students as the result of school supervisor, Agency or Area Office official, or Tribal success at negotiating separate budgets from them as line items at the school, Agency, Area, or sometimes Central Office levels. All funds which were previously distributed in this manner have been pooled. There is just as much money for such services as there ever was. But it is now to be distributed equitably to each student throughout the entire system, as part of the "base" dollar value, without being earmarked for any single purpose.

Those schools and Areas or Agencies which have previously been highly successful at negotiating special funding for such activities will probably have less under the ISEP than before, because they will be forced to share these funds with others who have not had them to date. On the other hand, those which have not had such "special" funding in the past will probably experience increased funding under the ISEP. In either case, the ISEP does not identify the particular activities for which these funds are to be used since, under the Act, decisions as to which special activities are to be carried out are the prerogative of the local school

supervisor and school board, in developing the local financial plan.

In reviewing commentor arguments, it became especially clear that many commentors have confused the ISEP with an appropriations request procedure, and felt that the Bureau was not "asking for funds to meet particular special needs" because no special formula weight had been introduced to respond to that special need separately from all other needs. It must be understood by anyone who wishes to make effective changes in the ISEP that this is not its nature or purpose. The purpose of the ISEP is to distribute available funds as equitably as possible, while preserving local school board options to decide how they are to be used within very broad limitations. Every special category of funding introduced as a formula weight will eventually have to be accounted for to assure that the local school is not just "using" the special need for funds as a money-raising device, and then spending the money for something else.

Administrators and school boards should be assured that there is money in their allocation, under the ISEP, for every legitimate educational program need they have. All they need to do is to plan and budget to meet that need. They must also understand that there is only so much money, and that when their fair share is used up, it is gone, and no amount of special pleading can create any more.

12. (§ 31h.12) One commentor from a day-school complained that the present ISEP formula will reduce funds for her or his own school, while increasing funding for a nearby cooperative boarding school, recommending that implementation be delayed while further studies are conducted to prevent such increases in inequity. Response: The Bureau has no choice regarding the time schedule for implementing the ISEP, which has been set by Congressional mandate. There may be real inequities the first year, but every effort is being made to prevent them. The possibility of the "double funding" of some cooperative school students, once from Bureau sources, and again from State Public School sources, is one of the problems which will continue to be addressed, on a case-by-case basis if necessary, during the implementation process.

13. (§ 31h.12) One commentor expressed concern that school operations funds (Element 11) should not continue to be used in the future for Agency, Area, or Central Office administrative costs (Element 10), and requested some regulation language preventing this. Response: Current

language is sufficient to assure this, since it provides for the distribution of all Element 11 funds to schools, to be used in accordance with a local financial plan controlled by the school board. Further restriction might prevent a particular school board from using some of its funds to secure otherwise unavailable administrative services by cooperative arrangement with other school boards, at the Agency or Area levels.

14. (§ 31h.12) One commentor requested provisions for adjustment of school allocations where facility configurations or conditions create additional program costs. Response: In the absence of any comprehensive data on what kinds of costs are associated with which facility configurations and conditions, and where these configurations and conditions are to be found, there was no way that this rulemaking could deal with this issue. The potential validity for the argument presented is not denied. Field personnel in schools where it can be documented that such factors create additional operating costs, are encouraged to begin local costs studies and documentation against the formula review which is required in § 31h.21.

15. (§ 31h.12) Several commentors suggested that the weighting for intense residential guidance is too low, and does not provide sufficient funds for the services required. Response: Commentors are referred to the response to comment 8 above which gives valid reasoning for declining to increase this weight, as well.

16. (§ 31h.12) One commentor expressed concern that the full-time and part-time classifications in the handicapped student weightings require the use of specific service delivery patterns, and preclude the use of itinerant teachers, or development of home or hospital bound services. Response: Particular service delivery patterns to be used are to be determined by the local school administrator and school board in development of the local financial plan. No limitation, other than as expressed in the definitions of full-time and part-time for frequency and intensity of services, is expressed or implied by the use of these terms.

17. (§ 31h.12) One commentor expressed concern that weightings under part-time classifications for handicapped students are insufficient to pay for the normal classroom program of students who are in a "mainstream" program. Response: Funds for the normal classroom portion of a handicapped student's mainstream program are provided in the base weight assigned the student under his grade

level classification. This is true of all students who receive "add on" weightings in the formula. Nothing in these rules prohibits the use of any portion of this base funding for special services, but language has been introduced to require that a minimum of 80% of the add-on funds received for handicapped students under the ISEP be spent on documented special services to meet these students' handicap-related needs.

18. (§ 31h.12) Two commentors expressed concern that the full-time and part-time weightings in the ISEP for handicapped students may result in schools classifying these students as full-time, in order to get more money, when their handicapping condition and related needs really require that they be placed in a part-time or mainstream type program. One commentor recommended that all handicapped students be given full-time weights to eliminate the problem. Response: Section 31h.11(h) requires that the student's services be developed in accordance with the due process and Individualized Educational Program (IEP) requirements of the Handicapped Act. These constraints are sufficient to prevent mis-classification of the student, since the development of the IEP will determine whether the student is to receive full or part-time services.

Distinctions between full-time and part-time weights are retained in the ISEP because of the radically different costs of these service levels for many handicapping conditions.

19. (§ 31h.12) Comments were received from several commentors indicating that the ISEP will not generate sufficient funds either for off-reservation residential schools or for most of the peripheral dormitory programs to meet costs of operation. A considerable volume of documentation was included with comments received which was intended to substantiate the assertions made by the commentors. Response: Preliminary studies of funding patterns in the Bureau's education system have revealed that both of these types of institutions have had a much higher level of per-pupil funding than has been experienced by other Bureau institutions providing similar educational and domiciliary services.

The documentation submitted indicated that these institutions have incorporated into their programs certain activities and functions, which may be manifestly worthy and laudable, but are services which similar institutions could not afford under the previously inequitable system of allocation of funding. It was anticipated that a system of equitable distribution of a fixed

amount of appropriated dollars would require a re-prioritization of program budget elements for those schools who have fared more favorably under the former funding system.

In the development of the ISEP, an in-depth analysis was made of program elements that would be justifiably associated with operation of the two types of institutions under consideration. Weights and special consideration were given wherever it was demonstrably apparent that justifiable costs were being incurred—i.e. residential student transportation costs and intensive residential guidance weights.

Much of the documentation received dealt with size of campus and number of buildings. The commentors are reminded that additional costs associated with these factors are relevant to Budget Activity 3500 funding, and are not affected by the provisions of these Rules and Regulations.

Peripheral dormitories which have been providing tutorial instructional programs under residential care funding in the past, which cannot continue to fund such services under amounts generated by the ISEP, are urged to seek supplementary ESEA Title I and Johnson-O'Malley support for these services under provisions of these programs.

20. (§ 31h.12) Two commentors objected to distribution of Bureau for the Education of the Handicapped funds through the ISEP, to provide services to handicapped students in BIA operated or funded schools. Response: An earlier plan to integrate funding of education of the handicapped in Bureau schools by distributing funds of both the BIA and BEH under the ISEP has been abandoned. Only BIA school operations funds are distributed to handicapped students in the ISEP, in amounts estimated to be equal to the Bureau's past commitments to education of the handicapped.

21. (§ 31h.13) One commentor suggested that off-reservation residential schools should receive more funds than on-reservation residential schools, because students in on-reservation residential schools often go home on weekends. Response: There is not sufficient data to date, including that presented by the commentor, to calculate any real saving from students going home on the weekends. Some students always remain, and no reduction in total staffing, or other basic costs, would result from the other students being gone.

22. (§ 31h.14) Several commentors expressed the view that the small school adjustment did not generate sufficient

funds for the needs of very small schools. Response: Review of tentative allotments under the ISEP indicate that very small schools (fewer than 25 students) tend to experience a reduction in funding compared to previous levels. The isolation factor, which is scheduled for future development and implementation, will serve in most cases to alleviate the adverse impact indicated.

Also, it is noted in reviewing tentative allotments that every small school under ISEP is tentatively scheduled to receive at least \$40,000.00 in Fiscal Year 1980. It is considered reasonable to expect that a school with 20 students or less in average daily membership (ADM) should be able to provide an adequate educational program with that level of funding.

23. (§ 31h.15) A number of commentors inquired concerning the issue of a post differential cost allowance for areas where inordinately high living cost factors exist due to severe isolation, extreme housing shortages, and other extraordinary circumstances. Response: Provision is made for a post differential cost allowance under rules and regulations pertaining to the Personnel Section of the Act—25 CFR, Part 31g.5 Basic Compensation—for educators and education positions. It must be noted, however, that in those cases where a post differential is granted by the BIA education office Director, provision must be made for the adjustments in the school's educational financial plans, and funding must come from the normal entitlement under the allotment formula. In no case will approval of a post differential cost adjustment result in increased funding for any given school.

24. (§ 31h.15) A number of commentors state that the 25% add-on for Alaskan schools was not adequate. They cited such factors as isolation, personnel transportation costs, need to compete with State schools for teachers, high freight costs, and increased needs for school board and staff training. Response: Tentative allotments under the formula have been compared with Fiscal Year 1979 funding levels for Alaskan schools, and no radical departures from previous funding patterns were indicated. The commentors are apprised that only educational operations and maintenance funding will continue to flow according to the budgeting procedures of the BIA Division of Facilities Engineering.

The law mandates inclusion of the 25% differential to every phase of funding for Alaskan educational costs within the scope of authority of the ISEP.

25. (§ 31h.16) One commentor requested clarification on what is included in the base, since in FY 1979 a number of services have been provided on a shared basis at Agency or Area levels. Response: Except for those specific functions or categorical funds set aside in Subparts F, G, H, I, and J of this rule, the base includes all school operations funds of the Bureau which have, in the past, been identified as Budget Activity 3100. Funds for any services to local schools previously provided at the Agency or Area levels out of 3100 funds have been pooled and re-distributed in the ISEP to local schools. Schools which wish to share funds for joint services at the Agency or Area levels may do so as part of the local financial plan of each school which so desires. Administrative services to schools at the Area and Agency levels are provided for in Subpart J.

26. (§ 31h.17) One commentor expressed concern that continuous monitoring of the processes by which final allocations are made will result in unpredictably timed changes in school allotments, and requested guarantees that funding changes will occur only at the prescribed times. Response: Provisions in 31h.78 for use of a formula implementation set-aside as a source of funds, to adjust allotments upward due to changes in student ADM count, contain a final deadline for such changes, after which unused funds are to be distributed. To the extent possible, such changes will be made without reducing any allotments of other schools. If all goes well the only schools that face any reduction will be those whose October and November ADM counts are subject to audit exceptions, and these exceptions are sustained.

27. (§ 31h.17) Another commentor expressed concern that Section 31h.17 might sanction unilateral contract amount adjustments for contract schools by the Bureau. Response: No sanction for unilateral reduction of dollar amounts already committed by a Federal Contracting Officer is either expressed or implied in this rule. The possibility of a gratuitous unilateral increase does exist, but it is hard to imagine how it could be a problem to the contract school receiving it.

28. (§ 31h.18) One commentor spotted the increasing availability of funds over the period of the phase-in, because of decreasing limits on the amounts which schools may "lose" under the formula, from their FY 1979 funding levels, over this period, and requested these funds to be "earmarked" for schools with athletic programs, Boy Scouts, and other extra-

curricular activities, as they become available. Response: the commentor is referred to the response to comment 11 under 31h.12 above, which includes valid reasoning for refusal to make this provision.

29. (§ 31h.18) One commentor requested provisions for budget increases during the school year, in cases of substantial increase of enrollment after the count weeks. Response: Under the time constraints imposed by the Congress for implementing the ISEP, this level of sophistication in response to school level changes is, while ideally desirable, beyond our capacity to establish procedures for.

30. (§ 31h.18) Several commentors recommended raising the protection levels in the phase-in procedure from a 20% limit on losses the first year to a 10% limit. Several others recommended lowering the limit on gains for their schools. Response: It is impossible to do both without radically lowering the base fundings for all schools. However, Congress has passed a technical amendment to the Law, setting these limits in the language of the Act.

The rule, as proposed, provided a reasonable level of maximum gain and loss which we believe can be absorbed without seriously disrupting the system. The Congressional phase-in requirement reduces the basic per student allocation by approximately \$110 and ameliorates the impact of the ISEP on the subject institutions in FY 1980. Paragraph 31h.19 incorporates the Congressional phase-in limits. These changes were made in order to comply with the Congressional mandate, not as a result of a decision by the Task Force.

31. (§ 31h.22) Several commentors presented positions concerning Title IV of the Indian Education Act and Johnson-O'Malley Act funds available to contract schools but not available to Bureau operated schools, and provisions in the Rule for review by the Director of possible adjustment of the ISEP formula to account for this fact.

Three positions were taken, with variations of each. Some felt that these funds should not be considered in the application of the formula to the contract schools, because they are supplemental funds from another source under other Federal legislation. Some felt that it was unfair for Contract schools to receive such funds in addition to 3100 funds, and that the 3100 funds should be adjusted downward to reflect Contract school receipt of these supplemental funds. Some felt that Bureau schools ought to become eligible for receipt of the supplemental funds, too. Response: The existence of these

positions was the reason the Task Force recommended review in a formal, responsible manner by the Director.

Subpart C

A. Comments Adopted

1. (§ 31h.31) A commentor stated that the Department of Interior may not withhold funds or services from Indian children, due to the actions or inaction of Federal officials. It was argued that Indian children have the right to educational services, as affirmed by the United States Supreme Court, and determined in various treaties, Federal statutes, and Executive Orders. Response: We agree that withholding of funds is inappropriate. Provisions for withholding of funds from Indian schools have been deleted from the Regulation, as they were published in proposed form, and replaced with appropriate provisions for discipline of Federal employees, and sanctions against contractors, where essential to the operation of the ISEP.

2. (§ 31h.32) Several commentors had problems with the definition of ADM as being either ambiguous or not the same as the one appearing earlier and with student absences during the count week. Response: The language has been changed to read: "For each count week all those students eligible under the definition in Section 31h.(f) shall be counted by student program classification. An average for the two count weeks shall be computed to two decimal places for each student program classification as separately provided for in the funding formula."

B. Comments Not Adopted

1. (§ 31h.30) One commentor feels that the October and November ADM (counts) seem to be late in determining entitlements for the existing year. This would create a real problem for schools in Alaska who needs to order supplies early for shipment. Response: The tentative allotments are made available to schools in the spring. This permits schools to plan their budgets for the following school year.

2. (§ 31h.30) A commentor stated that a BIA non-education employee the regulations reek of self interest. Why are the count weeks specified if not to allow educators to pad counts? Wouldn't unannounced visits more accurately reflect the count? Response: The objective of the law is more local control for Indian Education. The weeks are specified so that timely counts can be reported for projecting school entitlements. There will be unannounced visits and audits made for counts as well as use of funding. Audits

revealing inaccurate counts will result in adjustments and/or disciplinary action where necessary.

3. (§ 31h.31) A commentator interprets the regulations as discriminating against contract schools in general and younger contract schools in particular, thus creating disincentives to contract for school operations. Response: The commentator appears to be responding to § 31h.31, condition of eligibility for funding. The requirement that day schools, boarding schools and dormitories meet minimum eligibility standards apply to both BIA operated and tribally operated (contract) schools. Tribally operated institutions however, need to meet the requirements of tribal review and endorsement as prescribed by Pub. L. 93-638 guidelines.

4. (§ 31.32) A commentator suggested that the formula should allow for adjustment in funding after count week if a school experiences significant enrollment increases. Response: Large increases in membership are not often expected to occur after the fall count weeks. In those cases where they do, the greatest increase in costs would be associated with added staff costs. It is probably possible that a fairly large increase could be absorbed by temporarily increasing class size.

5. (§ 31h.32) One commentator urged that the count date for handicapped students occur in December, which would coincide with the Pub. L. 94-142 child count date. The rationale for the request is that schools often have not been able to complete the identification, evaluation and placement of handicapped children early in the school year; thus, the proposed count dates would not accurately reflect the number of handicapped children being served and could act as a disincentive to identify and serve children after the count dates. Response: The October and November dates are the latest dates when counts could be taken and still allow for timely notice of final allotments. Most Bureau funded schools are now concentrating their efforts on identifying handicapped children and developing necessary IEP's in order to meet the count deadlines.

6. (§ 31h.37) A commentator states that the uniform accounting methods requirement of 31h.37 is in conflict with 14h.70 of 25 CFR 271. Response: The uniform accounting methods would address the minimum requirement for reporting expenditure of funds by cost categories. This does not amend the procurement regulations as covered in 14h.20 of 25 CFR 271.

7. (§ 31h.38) A commentator feels that the application of § 31h.38 is a punitive measure that impacts children, not

managers, but it also appears to potentially effect contract schools more severely than BIA schools because it conflicts with the Bureau's legal mandate to provide educational services. Response: The Bureau's responsibility for the education of Indian children is not affected by the law but is reenforced by providing equitable funding for each child. The process and the minimum requirements are necessary to arrive at an equitable entitlement.

8. (§ 31h.38) A commentator wishes to know whose fault it is when failure to comply with conditions for receipt of allotment is determined. Is it an individual's or the School Board's and will the school itself be penalized? Response: The determination of a school's entitlement is based on the reported ADM so the school suffers if there is no basis for arriving at the funding level. The local school board should identify the party responsible for reporting and meeting requirements.

Subpart D

A. Comments Adopted

1. (§ 31h.50) One commentator, in referring to the designation of the Agency Superintendent of Education by a school board decision of record or by contract, states that the use of the word "contract" is unclear and may be confused with Pub. L. 93-638 contracts. The commentator suggests that since it appears that the word "contract" refers to two party written agreements regarding the designation, the language be changed to be more specific. Response: The wording in § 31h.50(e) has been changed. Substituted for the word "contract" is the phrase "a written agreement signed by both parties."

2. (§ 31h.50) A commentator feels that §§ 31h.50(e) and 31h.55 have the effect of forcing Bureau organization policy on contract school boards, who may wish to choose alternative organizational plans or processes. Response: It was not intended that §§ 31h.50(e) and 31h.55 apply to contract schools. Therefore, § 31h.50(e) is being changed to read as follows: "Responsible Fiscal Agent means the local school supervisor of a Bureau-operated school . . ."

3. (§ 31h.51) Two commentators are concerned that there be timely notification of the next school year's funding. Contract schools will need to know prior to the end of the current school year to begin the contract negotiation process under Pub. L. 93-638 guidelines. Alaskan villages also begin summer activities soon after school is out. Response: Section 31h.51 has been changed to provide that all schools and

boards will be notified of their tentative allotment of funds no later than April 15 preceding the fiscal year for which the allotment is made. This is the earliest possible time schools could be notified after the March student count.

4. (§ 31h.52) A number of commentators objected to the quarterly allotment procedure as unrealistic, a reflection of past Bureau practices, and unacceptable under Indian control provisions of the Act. Others argued that there are adequate existing procedures, under Pub. L. 93-638 and 25 CFR 271, for management of fund transfer to and cash flow of contract schools. Response: Sections 31h.52 and 31h.53 have been revised to reflect these comments.

5. (§ 31h.53) A commentator is concerned about the quarterly authority to obligate because of procurement timelines. Response: The quarterly authority to obligate procedures have been eliminated.

6. (§ 31h.54) A commentator questioned why contract schools are required to deal with the Agency Superintendent of Education or a designee whereas Bureau operated schools deal with the Director of Indian Education Programs for the Bureau of Indian Affairs. Response: Law and regulations require that the allotment of funds and any adjustments thereto can only be made to a Federal official, i.e., the Superintendent of Education, or as otherwise provided by the Director. The entitlement of funds for each school, including contract schools, is determined by the Director. The administrative process of effecting a contract document is the responsibility of an Area Office as provided in 25 CFR 271.66. The Area Office may complete a contract based on a tentative allotment and insert language in the contract such as "subject to availability of funds as determined in the allotment." This section is being changed to include the reference to 25 CFR 271.66.

7. (§ 31h.54) Two commentators stated the language of § 31h.54(b) is contrary to the specific intent of Pub. L. 93-638 regulations, § 271.66. Response: Section 31h.54(b) has been amended as follows: "The Agency Superintendent of Education, or another agent as designated by the Director shall be responsible through the contracting officer in accordance with 25 CFR 271.66 for effecting and adjusting contracts with tribally operated schools."

8. (§ 31h.56) A commentator suggested that expenditure of allotments be allowed in accordance with tribally-developed comprehensive education plans. Response: Section 1129(b) of Pub. L. 95-561 clearly states that expenditures of allotment are to be made on the basis of local financial

plans which are ratified by the local school board. There is no provision, however, that would prohibit the local school board from incorporating, at their discretion, applicable provisions of tribally developed education plans into the local educational financial plan. Section 31h.56(a) of this subpart is revised to clarify this point.

B. Comments Not Adopted

1. (§ 31h.50) A commentator suggested the addition of a subsection (g) to 31h.50 for dealing with the HEW "flow thru" funds such as ESEA Title I, etc; and delineating how these funds would be distributed to the schools. The schools must know exactly how all funding will be distributed, including sources of these funds in order to adequately prepare budgets. Response: These regulations are not intended to address or change those administrative procedures in any way, since those procedures do not fall within the scope of these regulations.

2. (§ 31h.50) A commentator felt that local school supervisors (Principals) and school boards must be made aware of possible fluctuations and, where possible, be kept well informed ahead of time about changes in allotments. Response: The objective of the regulations is to provide timely notice for effecting changes in allotments as ADM fluctuations are experienced. The display of the formula, showing how the funding entitlement is calculated on each notice, also allows for a local school supervisor or school board to project the final entitlement.

3. (§ 31h.50) Two commentators are of the opinion that the concept of apportionment schedules is irrelevant to contract schools which operate according to Pub. L. 93-638 contracting procedures (i.e., cost reimbursable contracts). Response: Apportionment schedules are prepared on a quarterly basis to provide the Treasury Department the required outlay of cash to meet obligations. While it may be true that Pub. L. 93-638 contracts are negotiated at full amount, the outlay of cash requirements is not 100% at the outset but an estimate is made of the quarterly projection. The quarterly authority to obligate is a control measure for implementing adjustments to schools that may have over or under reported ADM.

4. (§ 31h.51) The commentator suggested that the Director notify rural schools of tentative allotments by telephone or radio telephone as well as by mailing them because of frequent problems with weather conditions. Response: The comment makes a great deal of sense

and has been drawn to the attention of the appropriate Bureau officials.

5. (§ 31h.52) A commentator is concerned with equalized funding to support operation and maintenance of school facilities. Is the Bureau or Department doing anything? Response: The BIA is currently in the process of conducting a study and inventory of all BIA facilities. This will be the basis for an equalization formula for funding all school facilities operation and maintenance.

6. (§ 31h.52) A commentator stated that there is no reason for contract amounts to be funded to the agency, but rather, initial allotments will be made, since such notification is dependent upon the enactment of the appropriation act which is not expected until fall. The alternate language suggested by the commentator cannot be accepted since law and regulation provide that allotments can be made only to a Federal official, i.e., the Agency Superintendent of Education or as otherwise provided by the Director.

7. (§ 31h.52) A commentator suggested that in the event it becomes necessary to adjust a school's allocation by virtue of either increased or decreased ADM, the Director should have flexibility to negotiate the adjustment so as to minimize adverse effects on the affected school or school system. It was suggested that consideration should be given to: (1) Maximum allowable adjustment, (2) budget categories to be adjusted, (3) allowance of significant leeway until a firm enrollment trend is established and (4) how to minimize personnel (contract) difficulties. Response: The regulations permit schools to average the fall ADM count with the ADM count of the previous spring to reduce the effects on the budget in the case of declining enrollment if the decline in the school's ADM exceeds ten percent (10%) in any given school year. One intent of Pub. L. 95-561 was to eliminate the negotiated budget process by establishing formula funding.

8. (§ 31h.53) A commentator recommended further consideration should be given to adjustments in funding levels between tentative and actual allotments. Response: The October student count alone would not generate a new entitlement for the school. Section 31h.32 requires that an average of the October and November counts be calculated. If this average were different from the February 1979 count, the school's entitlement would be affected, since the formula is based upon weighted pupil units. The funds available are redistributed among all schools based upon the new total ADM

and weighted pupil units some time after the November count. We believe this provision is sufficient.

9. (§ 31h.53) A commentator states that the provision in § 31h.53(a) is grossly inadequate and would sharply reduce the funding now available to Bureau schools at the beginning of a school year; as well as contract schools encountering delay in the transmittal of funding. An initial apportionment of 75% is recommended with adjustments due to final enrollment being made in payment of the balance in three installments. Response: The quarterly apportionment is a process for estimating what the cash outlay will be for the Treasury Department. The suggested schedule is to allow for some control over schools spending more than their entitlement. In the absence of knowing what the transportation formula would yield, the quarterly apportionments for the first year have to be adjusted for a higher rate in the first quarter.

10. (§ 31h.53) A commentator suggested that a provision be added for early release of funds against the second quarter entitlements in cases where ADM increases 10% over the previous year. Response: Within the development of the total financial plan for the year, the local school supervisor has the flexibility to adjust the plan to provide for the contingencies mentioned.

11. (§ 31h.53) A commentator suggested further delineation of exactly who the local school supervisor is and/or who the school's responsible fiscal agent will be. Response: The term "local school supervisor" is defined in § 31h.2(s). For Bureau operated schools, the responsible fiscal agent normally would be the local school supervisor who would be held responsible in the event of inappropriate expenditures.

12. (§ 31h.54) Three commentators are concerned that the authority granted to an Agency Superintendent of Education in § 31h.54(b) to "effect and adjust" contracts is unnecessarily vague and is also in conflict with Pub. L. 93-638 contracting procedure. Response: The allotment of federal funds can be made only to a federal employee and therefore the Agency Superintendent of Education is proposed as the designated Federal agent responsible for those duties identified with the Agency Superintendent or Area Director. The adjustments include decreases or increases. Audits are completed to verify the actual entitlement of a school or the addition of available supplementary funds.

13. (§ 31h.55) A commentator stated that ratification of the financial plan is a tribal government function rather than a

school board function. Response: The law is specific in giving authority to local school boards. Tribal governments determine qualifications for school board members and the manner in which they are elected or appointed.

14. (§ 31h.55) A commentator is concerned that the new law increases the responsibilities and workload of a local school supervisor (principal). Response: The school equalization plan in its equitable distribution of funds could provide additional funds for clerical support in carrying out some of the added workload. There is also the option of designating the Agency Superintendent of Education as the Responsible Fiscal Agent.

15. (§ 31h.55) A commentator suggests who the responsible fiscal agent shall be and also specifies his or her responsibility to spend funds within the limitations and guidelines of Federal regulations. Response: The commentator is referred to § 31h.50(e) which provides the definition and selection process of the responsible fiscal agent. The applicability of Federal regulations governing expenditure of Federal funds is covered in § 31h.56(a).

16. (§ 31h.55) A commentator feels that the responsibilities and authorities granted to the "responsible local fiscal agent" directly conflict with tribal policy. Response: The local school board by decision of record or by contract may designate the responsible fiscal officer. The requirements as written in the rulemaking are guidelines for insuring the use of Federal funds in accordance with approved financial plans, Federal regulations and accepted tribal procedures (a requirement of Pub. L. 93-638).

17. (§ 31h.55) A commentator recommends that allowance be provided for a responsible fiscal agent to account for a group of Agency schools. Response: Administrative support services cost-sharing by several schools is encouraged. This leaves less overhead cost and provides more funds for serving students.

18. (§ 31h.56) A commentator suggests timely review of the implementation of paragraph (b) of § 31h.56 so that it does not become a long drawn out effort. Response: Proper financial planning and review should keep to a minimum disagreements in the use of funds.

19. (§ 31h.56) A commentator expressed a desire for assurance that technical assistance will be provided and that funds for technical assistance will be available. Response: Subpart g, paragraphs 31h.90 and 31h.91 provide school board training and technical assistance. Technical assistance to

contract school boards is also provided under Pub. L. 93-638.

Subpart E

A. Comments Adopted

1. (§ 31h.61) A commentator pointed out that language in this section regarding the tentative allotment procedure states that the notification of the tentative allotment will be received on May 1, whereas § 31h.51 states that the Director shall notify school administrators and boards of tentative allotments no later than May 1. Response: It was not intended to introduce an apparent contradiction into the language in § 31h.51. Hence, a change in § 31h.61 is indicated.

2. (§ 31h.62) A commentator recommended that a budget and program plan be submitted to the Agency Office for concurrence. Response: This recommendation has been addressed by requiring that the financial plan be referred to the Agency Office for review (See § 31h.63(f)).

3. (§ 31h.62) A commentator suggests that § 31h.62 (e) and (f) may not apply to contract schools. Response: An exclusion has been incorporated in paragraph (f).

4. (§ 31h.63) One commentator expressed concern that school boards are given insufficient authority, because proposed regulations left it optional for the school supervisor to involve school board members in the development of the financial plan. Additional commentators expressed concern that the members of the board have no authority as individuals, and should only be consulted when meeting as a board. Others expressed concern that the procedure for approval of the financial plan was too detailed and restrictive. A proposed revision of this section was submitted as a comment by the Bureau's Task Force on school boards, which contained changes reflecting similar concerns. Response: The Task Force consulted at length with representatives of the school boards' Task Force, and has completely rewritten this portion of the rule to reflect these comments and concerns.

5. (§ 31h.63) Paragraph 31h.63(c) deals with the lack of action on the financial plan by the school board which results in an automatic appeal to the Agency Superintendent of Education. A commentator is concerned that in the case of an automatic appeal there is no written statement of the disagreement or reason for lack of action by the school board. Response: In proposing the language of § 31h.63(c), the Task Force intended that an approved plan should include two signatures. In the absence of

the signature of the chief board officer, it was intended that the plan be referred to the Agency Superintendent of Education after the time allowed for action of the school board. It was felt that the lack of action would most likely not be due to disagreement, but rather to failure to meet in quorum in the time allowed. The confusion in the language is evidently due to the usage of the word "appeal" which has been changed to "referral for approval."

6. (§ 31h.63) Three commentators feel that action on the financial plan should be completed before July 31, the date provided in paragraph (c). Response: Section 31h.51 has been changed to provide an earlier notice of tentative allotments. This will permit earlier completion of the plan by the local school supervisor and earlier final action by the school board.

7. (§ 31h.64) A commentator is concerned that the school board's authority will be limited, that the principal would be the one who would handle the accounts and budget, and that the Agency Superintendent should have some central control to resolve conflict. Response: Although it is true that the local school supervisor or responsible fiscal agent has the authority to sign documents, obligate funds, and make payments, § 31h.55(a) requires that such authorities shall be carried out "solely in accordance with the local educational financial plan, as ratified or amended by the local school board . . ." It is true that in the event of a disagreement between the local school supervisor of a Bureau operated school and the local school board, the Agency Superintendent of Education may be called in if the board's decision is appealed by the local school supervisor. New language has been incorporated in the final regulations which provide the board broader authority in the appeal process.

B. Comments Not Adopted

1. (§ 31h.60) Two commentators object that this subpart appears to require new and specific accounting procedures which would be time-consuming and costly. Response: Section 31h.62 sets forth the requirements for a cost accounting system in paragraph (c). The requirement provides that the system be uniform among all schools. It is felt that there is merit to a uniform system from the standpoint of accountability in accordance with need categories reflected in the formula and for reporting to the Congress on expenditure of appropriations. While it is desirable that all funds generated by the formula for discrete programs be spent on these programs, there is no requirement that

such be the case except for exceptional child programs where a requirement of not less than 80% is established.

2. (§ 31h.60) A commentor is concerned that little guidance is given as to the makeup of the financial plan and suggests that more detail be supplied concerning the plan. Response: The specifics of the financial plan and the planning system should be an administrative determination rather than regulatory. For the first year an interim system is being developed. This interim system will provide guidelines, instructions, formats and exhibits in some detail.

3. (§ 31h.60) One commentor speaks of the importance of training for the school board and local school supervisor and the shortage of time left for training and recommends that the regulations not become effective until the local school board and principals are ready to assume the new responsibilities. Another commentor asks about examples and technical assistance. Response: The Bureau is presently developing training materials that deal with financial planning responsibilities. Area-wide workshops were held in August and September. These workshops and subsequent technical assistance should be helpful to local school supervisors and school boards in their assumption of the new responsibilities.

4. (§ 31h.60) Two commentors ask that school boards be given the authority to procure goods from other sources when the price appears to be out of line. Response: This is an administrative procedure and is not appropriate for regulations.

5. (§ 31h.60) A commentor suggests that two or more schools should work together to purchase services in order to prevent unnecessary duplication. Response: This process could be worked out administratively and need not be provided for in these regulations.

6. (§ 31h.60) A commentor stated that the time available for implementation of these Rules and Regulations is unrealistic. The commentor further stated that there was no specific time set for training members of school boards and no funds provided for such training prior to Fiscal Year 1980. Response: The Bureau is planning an interim program of training for school board members.

7. (§ 31h.61) A commentor recommends that schools be permitted to retain income generated by the school. Response: Although it is not necessary to provide for this by regulation, an interim financial planning system, to be issued in early August,

includes the procedure recommended by the commentor.

8. (§ 31h.62) Three commentors are concerned that the financial planning requirements are too rigid, narrow and restrictive, not permitting the flexibility to meet needs based upon assessments. Response: A narrow restricted concept of planning is not intended. Although the funds for a school are generated by discrete groups of students who have certain needs, the regulations do not require that 100% of the funds generated by that group be spent on that group. Paragraph (d) requires only that for all discrete programs except exceptional child programs, the percentage planned to be spent be shown on the financial plan. For exceptional child programs a minimum expenditure requirement of 80% is established.

Since the allotment to the school is generated by students who have special or discrete needs, it is believed that there should be some relationship between the source of funds and the programming of the funds. The commentor appears to agree that the needs would be met but that this programming should not be identified on the plan. Such a requirement does not infringe on the flexibility of the local school supervisor in developing programs. Therefore, we cannot agree with the recommended language.

9. (§ 31h.63) A commentor apparently believes that this section limits the power of local school boards of Bureau operated schools compared to tribally controlled schools. Response: Such limitation is not expressed or implied. The section applies equally to Bureau operated and contract schools.

10. (§ 31h.63) A commentor requests that paragraph (a) be changed to provide for mandatory consultation between the school board and local school supervisor in the drafting of the plan. Response: Subsection (d) provides for the mandatory discussion of the plan, which should satisfy the commentor.

11. (§ 31h.63) A commentor recommends the inclusion of language to provide that the Tribal Department of Education shall have the function and authority to oversee and coordinate all educational entities on the reservation, including school boards. Response: For those tribes which have Tribal Departments of Education, it would seem to be a matter for the tribal government to decide the organizational and functional relationships between its Department of Education and the school board or boards on the reservation. Nothing in these regulations is intended to preclude the relationship recommended by the commentor.

12. (§ 31h.64) A commentor is concerned that the time frame for appeals of the financial plan is too long and will delay the delivery of supplies and materials to distant points in Alaska for a year. Another commentor believes the long process will discourage appeals. Response: The final regulations have been revised (§ 31h.51) to provide for earlier notification of tentative allotments to the school. This will have the effect of moving up final action on the financial plan and any appeals. In addition, funds to be expended under the financial plan being appealed are not available for expenditure until October 1 of the fiscal year, which would seem to indicate that sufficient time should be available, after the appeal is decided, to gear up for the preparation of purchase orders by October 1.

Regarding the belief that the lengthy process will discourage appeals, the regulations are in line with other Federal appeal procedures. To shorten the time frame may risk the appellants' right of the due process.

13. (§ 31h.64) A commentor questioned wording in § 31h.64(e) of the regulations. Response: The question refers to the contents of an early draft. Paragraph 31h.64(e) was deleted when the proposed regulations were published in the **Federal Register**.

Subpart F

A. Comments Adopted

1. (§ 31h.73) A commentor suggested that the purposes of the Disaster Contingency Fund should be extended to include unforeseen and deliberate acts of vandalism. The commentor pointed out that such acts have the same effect on a school's program as if they were a natural disaster (acts of God). Response: Language is added to the section to include under Purposes "Acts of massive and catastrophic vandalism."

2. (§ 31h.73) A commentor requested clarification of the term "reasonable" as applied in § 31h.73(b)(1) in reference to commuting distance. Response: Language is added at end of subsection cited: "Reasonable commuting distance will be determined under existing policies or by the Director."

B. Comments Not Adopted

1. (§ 31h.71) Several commentors suggested that disaster contingency funds should also cover employee losses of personal property, especially in remote, rural areas where householders' insurance is not available. Response: Federal policies require that employees suffering losses in the manner indicated must file claims through the appropriate

procedures established under the Tort Claims Act or the Employees Claims Act.

2. (§ 31h.72) A commentator's inquiry on resources of emergency construction and repairs, pointed out that the \$750,000 indicated for FY 1980 might not be sufficient in the event of large scale disasters, inflationary conditions and high-cost-of-living factors in Alaska. Response: Reference is made to § 31h.77, which provides for the Director to request transfer of funds from funds appropriated for school construction to school Disaster Contingency Fund, if such an action becomes necessary.

3. (§ 31h.73) A commentator asked how soon could construction of permanent structures replacing those destroyed in a disaster be expected, pointing out that support facilities, such as warehouses, are critical to school operations. Response: Construction of permanent facilities is governed by policies and procedures of the BIA Division of Facilities Engineering under a separate appropriation so the subject cannot be addressed in these Rules and Regulations.

4. (§ 31h.73) A commentator inquired concerning disposition of temporary structures, once permanent structures are in place. Response: Disposition of Government property is regulated by Federal procurement regulations, and the subject cannot be addressed in these Rules and Regulations.

5. (§ 31h.73) A commentator suggested that allowing replacement of students' clothing and personal supplies would conflict with the Tort Claims and Employees Claims Acts. Response: The Disaster Contingency Fund is intended to provide immediate response to those needs required for the rapid resumption of normal and orderly school operations. The claims avenues cited by the commentator would not provide the speedy response needed to meet the exigencies of situations addressed by this subpart. The Bureau of Indian Affairs at present has the authority to purchase clothing and personal supplies for students.

6. (§ 31h.76) A commentator inquired if references to "instructional materials and audiovisual centers" refers to buildings only—and not contents. Response: Reference is to buildings only, and does not include contents.

7. (§ 31h.76) A commentator suggested elimination of the subsection on prohibition of expenditures, "except for state subguidelines." Response: State law cannot be used as a means of control of Federal programs under existing Federal law and regulations. The prohibitions upon expenditure were introduced here in order to assure that

these funds are used only for bona-fide emergencies, and only to the extent necessary to get the affected school back in operation.

8. (§ 31h.76) A commentator stated that a prohibition against use of Disaster Contingency Funds for start-up costs for new or expanding school programs is contrary to the intent and purpose of Pub. L. 93-638. Response: This subpart states a prohibition on use of Disaster Contingency Funds, but does not constitute a denial of funding within the Bureau's budgeting and appropriations request procedures for funding of start-up and school expansion programs, which are not related to a disaster. See also § 31h.78 for further clarification.

Subpart G

A. Comments Adopted

None.

B. Comments Not Adopted

1. (§ 31h.90) Several commentators suggested that school board training funds be made available to public schools which have a majority of Indian students and are located on Indian reservations. Response: Monies allocated under the formula established in these Rules and Regulations are appropriated for Bureau operated and funded schools only. Such funds cannot be made available for training of school boards of public schools.

2. (§ 31h.90) A commentator suggested that training should also be provided to school principals. Response: Training required for principals may be provided by inclusion in the school's financial plans.

3. (§ 31h.90) A commentator expressed a belief that \$5,000 was not enough to cover training needs of each school board. Response: Attention is directed to § 31h.91, in which responsibility of the Director to assure adequate technical assistance and training services to school boards is stated. The intent of the \$5,000 figure was to establish a minimal base figure which must be spent for school board training. In the development of its educational financial plan, a school board may elect to establish as a priority additional funding for school board training.

4. (§ 31h.90) A commentator stated that funding should be available for in-service staff training, especially for teachers at isolated schools. Response: The Bureau of Indian Affairs is considering an interim financial procedure followed with training to be provided for key people from each area. These key people will conduct area training. Also, each school may, at its discretion, include a component for in-

service training in its educational financial plan.

5. (§ 31h.91) A commentator stated that by allowing school boards from contract schools to receive additional technical assistance and training, a duplication of effort and waste of money will occur. Response: The last sentence of subpart G, § 31h.91 refers to contract schools operated under the provisions of Pub. L. 93-638, which mandates technical assistance to meet the special needs of tribes wishing to contract. The rules and regulations promulgated under Pub. L. 95-561 cannot, and should not, take precedence over responsibilities to tribes which were established in separate legislation.

6. (§ 31h.91) Two commentators suggested that school board members should be bonded and technical assistance given to them in financial matters. Response: School board members, either as members of tribal school boards or as members of Bureau school boards, can be bonded at the option of each school board by including cost of bonding in the school's financial plan. Intensive training for school board members is provided under the provisions of these Rules and Regulations. Also the Director will continue to bear responsibility for providing technical assistance to Indian school boards.

7. (§ 31h.91) A commentator suggested that "a discretionary fund be established for added costs that may occur because of the recommended training requirements." Response: This suggested activity is addressed under the provisions of § 31h.91.

8. (§ 31h.92) A commentator inquired concerning a method for getting the Director's approval for "other training activities which school boards deem appropriate." Response: The request for approval, outlining type of training requested and justification for request, should be forwarded directly to the Director. The Director may also from time to time, and as new training needs arise and are brought to his attention, issue memoranda to schools authorizing new training areas.

9. (§ 31h.92) One commentator suggested that training activities for school boards should include the education of handicapped children. Response: The regulations do not prohibit the use of school board training funds for training in the education of handicapped children. This type of training would be included under special curriculum areas.

10. (§ 31h.92) A commentator supported the regulations on the following two items: (1) The need for school board training in school board responsibilities,

which include financial management; and (2) the \$5,000 per school board for promoting involvement of school boards elected by the community they serve. The commentor also asked if it would be possible to use the designated school board training funds to develop a community school program for adult education once the school board became well trained. Response: The school board has the responsibility for planning use of the training funds for the allowable purposes stated herein. It is suggested that the commentor consider Element 13, Adult Education Funds, for the type of project that he suggests.

11. (§ 31h.93) A commentor suggested that funds for travel and per diem be provided for school board members. Response: Coverage of travel and per diem expenses for school board members while attending training sessions is provided for in § 31h.93(c). Travel costs for other purposes should be covered through a separate provision in the school's financial plan.

12. (§ 31h.96) A commentor suggested that a flat figure of \$5,000 is not calculated fairly, and should be a percentage of the total allocation for each school. (Comment relates more directly to § 31h.90.) Response: The intent of this provision was to establish a basic minimal figure guaranteeing a training effort for all school boards. Training needs are essentially the same for board members of small schools as for board members of large schools. Adjustment by the Director is intended to allow increased funding as costs rise, so that the guaranteed minimal training effort will not diminish the coming years.

13. (§ 31h.97) A commentor inquired concerning the functions of the Agency school board and the necessity for having such an entity. Response: The Task Force on School Boards is developing proposed rules and regulations in which the roles and responsibilities of Agency school boards will be clearly defined.

Subpart H

A. Comments Adopted

1. (§ 31h.100) One commentor requested that the term "school bus" be defined. Response: A definition of school bus has been added to § 31h.100.

2. (§ 31h.100) Six commentors expressed concern over basing the day student transportation allocation on a loaded bus mile concept and defining distance as "distance to the farthest student on the bus route." These commentors stated that the proposed system penalized schools which were unable to run loop bus routes due to

road systems and the location of students.

Also, six commentors believed that the one mile restriction on transportable students was unrealistic, given geographic and weather conditions in some areas as well as the concern that local school boards should determine policy with regard to day school transportation guidelines. Response: In response to these comments, the definitions of and any reference to loaded bus miles, farthest student, and transportable students were deleted from Sections 31h.100 and 31h.102. The factors used in the day school transportation formula in § 31h.102(a)(1) were changed. These parameters were determined by an empirical analysis of the actual cost of day student transportation at 88 Bureau funded schools.

3. (§ 31h.102) One commentor noted the inequity between the day student and residential student transportation, stating that there was no requirement that funds generated for residential student transportation be used for transporting these students to and from school. Response: Subparagraph 102(b)(6) was added to the regulations requiring that at least 80% of the funds generated by paragraphs 102, 103, 104, and 105 be used for student travel between home and school.

4. (§ 31h.102) Two commentors stated that the twenty-five mile limitation on boarding and dormitory student transportation should be changed to one mile. Response: Based on the Task Force decision to amend the regulations (new § 31h.20) to require the Director to develop policy guidelines for the placement of students in boarding schools and dormitories, 25 miles was changed to one mile in § 31h.102(b)(1).

5. (§ 31h.102) A review should be made to determine the adequacy of the transportation formula based on experience. Response: Paragraph 31h.103 was added to the regulations requiring an annual review of transportation allotment factors.

B. Comments Not Adopted

1. (§ 31h.100) Two commentors stated that transportation funding should include a special provision for the additional cost of transporting handicapped children. Response: The funds generated by the special education weight factors in § 31h.12 are believed adequate for the provision of services required by the special needs of handicapped students.

2. (§ 31h.101) Four commentors stated that funds for extracurricular transportation costs should be included in the transportation formula. Response:

The inclusion of the cost of extra-curricular travel was considered prior to publication of the proposed regulations. A decision was made not to include these costs in the transportation formula because including these costs would increase the transportation funds at the expense of the weighted student formula funds. The local school board has the option of programming funds for extra-curricular travel in its financial plan.

3. (§ 31h.102) Two commentors requested inclusion of provisions for shifts of students from day to residential status, and back again, for schools which board students when seasonal weather conditions do not permit them to be bused reliably from home. Response: This comment was given very serious consideration, but assuming that such schools already have dormitory facilities to accommodate such students, the additional costs of boarding a relatively small additional number of students as necessitated by seasonal weather conditions should be largely offset by the corresponding savings in transportation costs. Note that schools will receive transportation funding throughout the year at a rate established on the basis of an average count of students transported during the fall count period. It is much simpler for schools to transfer transportation funds to boarding functions as necessary within their own budgets than it would be to institute a complicated accounting system to adjust the allocation on a seasonal basis.

4. (§ 31h.102) One commentor detailed the situation of a boarding school where the residential facility is separated from the instructional facility by 35 miles. Concern was raised whether the day school transportation formula would generate funds for transportation between the two facilities. Response: The day school transportation formula would generate funds for daily transportation of students between two Bureau-funded facilities if these facilities are located on separate campuses.

5. (§ 31h.102) One commentor requested that additional funds be provided to schools whose students have to travel over unimproved roads. Response: The day school transportation formula is based on the analysis of data on transportation costs, road conditions, number of miles required for transportation and number of students transported. This information was submitted to the Task Force by 88 schools which provide day student transportation. The analysis showed no statistically significant correlation between road conditions and

transportation costs. Therefore, it was decided not to include a factor for road conditions.

6. (§ 31h.102) Two commentors stated that the transportation formula did not include vehicle replacement and GSA lease costs. Response: These factors were included in the total cost for the data of the 88 schools which was analyzed to determine the transportation formula.

7. (§ 31h.102) Two commentors asked for an explanation for the different mileage rates for transportation. Response: The mileage rates are based on an analysis of actual cost of transportation of boarding and dormitory students. The mileage rates according to distance criteria were based on an assumption that the closer the boarding school or dormitory is to the student's residence, the more often the student would go home for weekends.

Subpart I

A. Comments Adopted

1. (§ 31h.110 and § 31h.111) A commentor suggested that a "subject to availability of funds" clause should be repeated at least once in each separate section of the rule. Response: We agree that all funds to be distributed through the ISEP are subject to availability through appropriation. However, we do not agree that such a fact needs to be announced quite so often. § 31h.3(b) was added to the regulations. This subparagraph specifies that each expenditure of funds authorized in part 31h is subject to the availability of funds.

B. Comments Not Adopted

1. (§ 31h.110) A commentor is concerned that very little could be accomplished with the small amount per school provided by this fund and suggests that for greater efficiency the total responsibility be shifted to the Facility Management organization and that working procedures between the two organizations be established. The commentor is further concerned that the respective responsibilities of Plant Management and Education are not defined. Response: It is believed that even though the fund may provide just a few hundred dollars to the smallest schools and only a few thousand dollars to the larger schools, these amounts can have significant impact when dealing with nagging or small emergency situations. Such immediate attention has not been possible until now because of the necessity of dealing with another organization on an interdepartmental work order basis.

Although limits of responsibilities are not defined between Education and Financial Management, the proposed regulations require that these funds be used only to meet minor problem situations requiring immediate attention. It may also be true that if the plant management organization were relieved of dealing with these minor problems, greater efficiency would result, since that organization would have to deal only with the larger issues. In either case, it would be worthwhile for administrative procedures to be developed to insure adequate and timely receipt of maintenance and repair services not covered in this subpart.

2. (§ 31h.110) A commentor apparently interprets the proposed regulations as requiring that Tribes contract for interim repair and maintenance services stating that some will prefer that the BIA continue to operate schools. The commentor also states that some Tribes do not have the necessary trained personnel to contract successfully. Response: We cannot see where any of the proposed subpart I would lead to such an interpretation, especially § 31h.114 specifically states that nothing in this provision shall be interpreted as relieving the BIA from continuing to provide maintenance and repair services to schools through existing procedures.

3. (§ 31h.112) Two commentors are concerned that other factors in addition to square footage should be used to distribute interim maintenance and minor repair funds. Factors mentioned include age of building, condition, type of construction, location and local conditions. Response: The regulations provide for only a temporary formula for maintenance and minor repair which gives each school a modest amount of money for this purpose. More information is needed to develop a fair formula for the distribution of operation, maintenance and repair funds to schools.

A facilities study that includes the collection of data on building age, type of construction, and condition is now underway and the report should be completed in October 1979. When this information is available, formula development for the distribution of additional repair and maintenance funds will begin and should be ready for FY 1981.

4. (§ 31h.113) A commentor asks if "minor" modifies "maintenance" as well as "repair" and is concerned that the small amount of money each school will receive will be almost useless. Response: Even though the fund provides just a few hundred dollars to the smallest school and only a few thousand dollars to the largest, those

amounts can be significant when dealing with persistent or small emergency situations. Such immediate attention until now has not been possible because of the necessity of dealing with another organization on an inter-departmental work order basis.

It is agreed that major maintenance programs carried out on a periodic basis could not be funded. It can be construed from the last sentence in § 31h.111 that "minor" modifies "maintenance" also. We do not consider the point of sufficient significance to change the position of the modifier in all instances where the phrase occurs in these regulations.

5. (§ 31h.114) A commentor asks if staff quarters are covered under this section and if the Bureau is getting away from maintaining employee quarters furnished by the Government. Response: The Branch of Facilities Management will not be relieved of any responsibility for continuing to provide maintenance and repair services for employee quarters which belong to the Bureau. However, square footage of employee quarters may not be used in the computation of funds earned by a school under the Interim Maintenance and Minor Repair Fund (see § 31h.112(a)).

Subpart J

A. Comments Adopted

1. (§ 31h.123) Two commentors stated that the Office of Indian Education Programs should not be funded at the same level in FY 1980 as in FY 1979, but should receive reduced funding. Response: It was decided to fund the Office of Indian Education Programs at its FY 1979 level for FY 1980 to allow the Director flexibility in reorganizing his staff based on the regulations on functions. However, to assure that the funds allocated to the Office of Indian Education Programs are used for education administration, the Task Force added a sentence to new § 31h.124(a) stipulating that any unused salary lapse occurring in the Office of Indian Education Programs as of August 1, 1980 shall be apportioned to the schools through the formula.

2. (§ 31h.123) Three commentors questioned whether the funds for Johnson-O'Malley administration would come from Johnson-O'Malley funds. Response: The intent of the Task Force in the proposed regulations was to fund Johnson-O'Malley administration from the total available for allotment for administrative costs. The wording of new § 31h.124(b)(1) was changed to provide clarification of this intent.

3. (§ 31h.123) Two commentors cited the statutory requirement for a 25% Alaska

salary supplement and noted that this supplement was not included in the computation of administrative costs. Response: A new § 31h.124(3) was added to the regulations which includes a .25 factor for the Juneau area education administration funds.

4. (§ 31h.125) Two commentors recommended that Agency Education offices receive their administrative allotments from the Director and not from the Area Education Office. Response: The total amount for allotment within each geographic area is computed according to § 31h.123. However, Agency education administration funds will not flow through Area offices. This was set out in § 31h.125(b). A definition section (§31h.121) was added to Subpart J to clarify the terminology used in the formula computation.

5. (§ 31h.125) Four commentors stated that the Agency Education offices should not be required to absorb more of a funding cut than the Area Education offices. Response: In new paragraph § 31h.126(a) "90%" was changed to "85%".

6. (§ 31h.125) Three commentors requested clarification on the approval of education administrative financial plans at Agencies having no schools and therefore, no school boards. Response: The wording of new § 31h.126(b) was changed giving the Director approval authority for the agency financial plans in those cases where no school boards exist. Also, a new § 31h.126(d) was added requiring the Director to establish procedures for approval of Area and Agency financial plans.

7. (§ 31h.123) One commentor was concerned that the Office of Indian Education Programs was not going to receive an increased allotment in FY 1980. No special education administrative positions were supported with FY 1979 OIEP funds and no allowance was made in the proposed regulations for the funding of special education coordinators in Area and Agency Education Offices. The commentor believed these positions should be included for FY 1980. Response: OIEP evidenced a salary lapse in FY 1979 which could be used by the Director to fund special education administrative positions in FY 1980. However, in order to meet the requirements of the Bureau's Pub. L. 94-142 state plan, \$700,000 is to be distributed to Areas based on the number of handicapped students in average daily membership. These funds are to be used to provide exceptional education coordination and centralized services.

B. Comments Not Adopted

1. (§ 31h.120) One commentor felt that the amount of funds for administration was too high and should be limited to 10% of the total education budget. Response: The administrative funds to be distributed through the interim administrative cost formula amount to less than 7% of the total budget for school operations and less than 5% of the total Bureau education budget including JOM, higher education and continuing education. Therefore, funding of administration is already well under 10% of the total education budget.

2. (§ 31h.122) Several commentors objected to giving the Director authority to terminate Pub. L. 93-638 contracts funded from element 10. Response: The intent of the Task Force was not to give the Director blanket authority in contract termination, but to provide a mechanism for a rational review of the contracts funded from element 10. Some of these contracts are not Pub. L. 93-638 contracts to provide start-up costs of new schools which will be funded elsewhere under the ISEF.

3. (§ 31h.123) One commentor questioned the amount of funds allotted to Area and Agency offices. The commentor recommended that administrative allotments be reduced as the overall level of self-determination increases. Response: The administrative formula included in the regulations is an interim measure. New § 31h.124(a)(ii) allocates funds based on the number of schools within the Area, with contract schools weighted at .6 and Bureau operated schools at 1.0. Therefore, there is a differential for contract school administration. In addition, the funds allotted under this formula are not only for the administration of school operations at Area and Agency levels, but also include administration of JOM, higher education, and continuing education.

4. (§ 31h.125) Two commentors expressed concern that this section could permit funding of activities excluded by the intent of Pub. L. 95-561. Response: Paragraph 31h.120 specifies that funds allotted under the interim administrative cost formula are for the administration of Bureau education programs. Section 31h.125 specifies that these funds will be distributed by the Director based on financial plans and that the Director may transfer administrative positions for the purpose of implementing direct line authority. The intent of the regulation language is to fund Area education offices based on functions while allowing the Director some leeway in reorganizing education

administration during the first year of implementation of Pub. L. 95-561.

5. (§ 31h.125) Three commentors requested a provision or weighted formula for Agency administrative costs for multi-tribal Agencies and for multi-tribal Agency administration of contract programs. Response: These Agencies are already included in § 31h.125. Funding for multi-tribal Agency functions will be based on financial plans and the total amount of funds available for Agency education office funding as generated by the interim administrative cost formula. The interim administrative cost formula allows the Director to distribute funds to Agencies within Areas based on differential need.

Subpart K

A. Comments Adopted

1. (§ 31h.130-131) Thirteen commentors expressed concern over the lack of a weight factor or any set-aside fund in the funding formula for ongoing pre-kindergarten programs that have been funded by Bureau education funds in previous years. These commentors also stated that these programs should be included in order to meet the requirements of the regulations on Bureau Education Policies. Response: The Task Force realizes the need for and utility of pre-kindergarten programs. Funding limitations precluded the addition of these programs on a Bureauwide basis in FY 1980. However, the Task Force did not want to discontinue ongoing pre-kindergarten programs which have been funded by Bureau education funds in previous years. Therefore, Subpart K was added to the regulations. This subpart provides for the funding in FY 1980 and FY 1981 of all pre-kindergarten programs funded by Bureau education funds in FY 1979. This subpart also requires that cost factors be developed for pre-kindergarten programs and included in the funding formula in FY 1982. FY 1982 was determined to be the first year that these programs could be included on a system-wide basis in the Bureau's education budget because of the two-year appropriations request cycle.

B. Comments Not Adopted

None.

Subpart L

A. Comments Adopted

1. (§ 31h.140-143) Three commentors are concerned that certain tribally controlled schools which were not formerly operated by the Bureau and referred to as "previously private" have not received repair and maintenance funds in the past and will receive very

little under these regulations. Also, there are some previously Bureau schools which are not receiving these funds or services. It was recommended that a provision be made in the formula for more adequate funding from budget activity 3500. Response: Based on an analysis of cost information supplied by contract schools, an interim operation and maintenance fund for these schools has been established. Subpart L was added to the regulations detailing the establishment and distribution of this fund.

B. Comments Not Adopted

None.

General

A. Comments Adopted

None.

B. Comments Not Adopted

1. A commentator recommended that a provision to carry over unexpended funds into the next fiscal year be inserted into the regulations. It was felt that such a carryover of funds would result in better planning, efficiency in operation and better services being provided. Response: Carryover authority can only be granted by the Congress. Regulations are not the proper forum for authorizing carryover of funds. However, carryover of funds is permitted for contract schools under Pub. L. 93-638.

2. A commentator suggested that the Bureau should develop implementation requirements appropriate and considerate of school administrations' workloads. The commentator based his suggestion on the vast increase of responsibilities and reports required on the part of school administrators under the provisions of these Rules and Regulations. Response: The Bureau is considering an Interim Financial Procedure with report formats, pending the completion of a new Management Information System.

3. A commentator suggested that a copy of these Rules and Regulations be translated into the Yupik Eskimo language so that Yupik Eskimo school boards will understand the provisions and requirements set forth therein. Response: It is suggested that at least one bilingual member of each school board, where school board members are not adequately competent in English, should be intensively trained in the provisions and requirements of these Rules and Regulations so that he or she can translate and interpret the Rules and Regulations to the remaining board members. School board training is provided for under subpart G. Should no

bilingual member be available on a given school board, then the board should utilize the person who normally translates other matter and data for them.

Other Information

These rules will govern the allocation of funds for the education of Indian children into BIA-operated and tribally-operated contract schools (referred to in these rules as contract schools); and, in the case of administration, to Central, Area and Agency Offices. These rules include provisions which are designed (a) to equalize educational allocations in accordance with individual student needs, (b) to provide uniform direct funding to BIA and contract schools in relation to their students' needs, and (c) to establish managerial and fiscal systems for receipt and expenditure of educational funds.

Because of the potential impact of Title XI of the Education Amendments of 1978 (Pub. L. 95-561) on the education of Indian children, the Bureau of Indian Affairs invited Task Forces which were broadly representative of Indian populations and programs to participate in the development of regulations pertaining to the various sections of the law.

The Task Force on the Allotment Formula is composed of sixteen members (9 members are Indian, 7 are non-Indian; 6 members are Bureau employees, 10 members are not, including 5 contract school representatives).

To meet the time constraints imposed by law requiring the formula allocation of FY 1980 funds, the Task Force met during the winter, spring and summer of 1979. The Task Force, as a working group, was organized into subgroups to address the numerous issues related to uniform direct funding. The Task Force developed the following components of the Indian School Equalization Program in order to serve the needs of Indian children and to comply with the Congressional mandates expressed in Title XI of the Education Amendments of 1978 (Pub. L. 95-561).

Overview of the Indian School Equalization Program

The Indian School Equalization Program (ISEP) consists of a number of funding components:

- (a) The Indian School Equalization Formula (ISEF);
- (b) Administrative provisions for implementing formula funding;
- (c) Contingency funds for school disaster and formula implementation;
- (d) A school board training categorical fund;

(e) Student transportation supplements;

(f) An interim school maintenance and minor repair fund;

(g) An interim administrative cost formula for Agency, Area and Central services;

(h) Pre-kindergarten programs; and

(i) Operation and maintenance funds for contract schools. Each of these seven components is summarized below:

1. *Indian School Equalization Formula (ISEF)*. The major portion of BIA educational funds will be distributed by the Indian School Equalization Formula. Funds for instruction and residential care of students are earned by each school based on the average daily membership (ADM) each school is serving. Students in different special programs or in different grade levels are counted on weighted differently based on average cost differences necessary to provide for quality programs. Different weights are assigned for different instructional and residential programs to create weighted student units. These units are increased in the case of small schools and Alaskan schools to produce a number of supplemental student units for each school. The number of units is then multiplied by a base dollar figure to determine each school's entitlement under the ISEF.

It is the intent of the Bureau to provide an opportunity for most Bureau operated or funded schools to begin operations budgeting in fiscal year 1980 without any phase-in adjustments. However, a limited phase-in must occur to facilitate the implementation of formula funding. In some situations, too rapid growth in school income, even if justified under the formula, can be better managed if the growth is extended in increments over several years. Even more difficult is the management of declining revenues, however equitable they may be. Therefore, for a limited number of schools that will experience extreme fluctuations in their total budgets, strict application of the formula will be gradually phased in over the next two year period. It is the intent that all Bureau-funded schools will be operating entirely under the funding formula beginning with the 1982 fiscal year.

2. *Administrative Provisions for Implementing Formula Funding*. A number of critical management procedures are covered by the rules, which include provisions for direct funding, calculating student unit entitlements, the disbursement and local management of formula earnings, compliance requirements, and phase-in provisions.

3. *Contingency Funds*. Two separate and distinct contingency funds have

been established for the following purposes:

(a) To reimburse schools for the costs incurred due to unforeseen disasters; and

(b) To facilitate the implementation of the Indian School Equalization Formula in order to maximize stability in school entitlements.

4. School Board Training Categorical Fund. A flat amount has been earmarked for each school board to use in meeting its own training needs.

5. Student Transportation Supplements. To offset the varying costs of transporting students to and from school, a transportation formula supplement is established.

6. Interim Maintenance and Minor Repair Fund. It is the intent of the Bureau of Indian Affairs to place responsibility and authority for operation and maintenance of school facilities in the hands of local school administrators and local school boards. This first requires completion of an evaluation of all BIA and contract school facilities. This study is now in progress. As an interim measure, a small amount of funds for maintenance and minor repair will be placed under direct control of school administrators and school boards.

7. Interim Administrative Cost Formula. Costs for administration of educational programs at the Central Office, Area office, and Agency office levels have been budgeted in the past in no direct relationship to the size or nature of the services administered, and have included a number of actual services of a non-administrative nature. In order to create a direct relationship between administrative resource and services administered, a formula for distribution of these resources based on size of special programs, number of students and number of schools and institutions, is established.

As a consequence of Pub. L. 95-561 educational administration functions are under reorganization, with many functions to be shifted from one level to another. Therefore, the funding formula set forth in these regulations is an interim measure until the reorganization is completed and a more permanent formula can be developed.

8. Pre-kindergarten Programs. Existing pre-kindergarten programs are funded for two years at their FY 1979 level until a clear Bureau policy on creating new pre-kindergarten programs is established and until new appropriations are requested and received for that purpose.

9. Contract School Operation and Maintenance Funds. In the past, BIA-operated schools and most previously

Federal contract schools have received plant operation and maintenance services for which previously private and some previously Federal contract schools were ineligible. Funds, based on FY 1979 expenditure levels, are provided for this purpose.

It has been determined that these regulations are not a major Federal action within the scope of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c).

The Department of Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document was the Bureau of Indian Affairs Task Force on the Allotment Formula. Donald Antone and David Mack, co-chairmen of the Task Force, may be contacted through the Director of the Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Washington, D.C., (202) 343-2175.

With above changes and technical amendments made to conform the regulations to legal requirements, Part 31h to Subchapter E, Chapter 1 of Title 2 of the Code of Federal Regulations is adopted as set forth below:

PART 31h—THE INDIAN SCHOOL EQUALIZATION PROGRAM

Subpart A—General

- Sec.
31h.1 Purpose and scope.
31h.2 Definitions.
31h.3 General provisions.

Subpart B—The Indian School Equalization Formula

- 31h.10 Establishment of the formula.
31h.11 Definitions.
31h.12 Entitlement for instructional purposes.
31h.13 Entitlement for residential purposes.
31h.14 Entitlement for small schools.
31h.15 Alaskan school cost supplements.
31h.16 Computation of school entitlements.
31h.17 Comparability with public schools.
31h.18 Recomputations of current year entitlements.
31h.19 Phase-in provisions.
31h.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.
31h.21 Future consideration for weighted programs.
31h.22 Authorization of new program development and termination of programs.
31h.23 Review of contract schools' supplemental funds.

Subpart C—Formula Funding Administrative Procedures

- 31h.30 Definitions.
31h.31 Condition of eligibility for funding.

Sec.

- 31h.32 Annual computation of average daily membership.
31h.33 Special education unduplicated count provision.
31h.34 Substitution of a count week.
31h.35 Computation of average daily membership for tentative allotment.
31h.36 Declining enrollment provision.
31h.37 Auditing of student counts.
31h.38 Failure to provide timely and accurate student counts.
31h.39 Delays in submission of ADM counts.

Subpart D—Direct Allotment of Formula Entitlements

- 31h.50 Definitions.
31h.51 Notice of tentative allotments.
31h.52 Initial allotments.
31h.53 Obligation of funds.
31h.54 Apportionment of entitlements to schools.
31h.55 Responsible local fiscal agent.
31h.56 Financial records.
31h.57 Access to and retention of local educational financial records.
31h.58 Expenditure limitations for Bureau-operated schools.

Subpart E—Local Educational Financial Plan

- 31h.60 Definitions.
31h.61 Development of local educational financial plans.
31h.62 Minimum requirements.
31h.63 Procedures for development of the plan.
31h.64 Procedures for financial plan appeals.

Subpart F—Contingency Funds

- 31h.70 Definitions.
31h.71 Establishment of the School Disaster Contingency Fund.
31h.72 Continuing and cumulative provisions.
31h.73 Purposes.
31h.74 Application procedures.
31h.75 Disbursement procedures.
31h.76 Prohibitions of expenditures.
31h.77 Transfer of funds from facilities management for other contingencies.
31h.78 Establishment of a formula implementation set-aside fund.
31h.79 Prohibitions.

Subpart G—School Board Training

- 31h.90 Establishment of a school board training fund.
31h.91 Other technical assistance and training.
31h.92 Training activities.
31h.93 Allowable expenditures.
31h.94 Prohibition of expenditures.
31h.95 Reporting of expenditures.
31h.96 Provision for annual adjustment for inflation.
31h.97 Training for agency school board.

Subpart H—Transportation

- 31h.100 Definitions.
31h.101 Purpose and scope.
31h.102 Allocation of transportation funds.
31h.103 Annual transportation formula adjustment.

Subpart I—Interim Maintenance and Minor Repair Fund**Sec.**

- 31h.110 Establishment and funding of a Interim Maintenance and Minor Repair Fund.
- 31h.111 Conditions for distribution.
- 31h.112 Allocation.
- 31h.113 Use of funds.
- 31h.114 Limitations.

Subpart J—Interim Administrative Cost Formula

- 31h.120 Purpose and scope.
- 31h.121 Definitions.
- 31h.122 Accounting.
- 31h.123 Determination of present costs levels.
- 31h.124 Allotment of educational administrative funds.
- 31h.125 Allotment exceptions.
- 31h.126 Distribution of administrative funds within area.
- 31h.127 Exceptional education services at Area and Agency Education Offices.
- 31h.128 Provision for administrative cost formula based on administrative functions.

Subpart K—Prekindergarten Programs

- 31h.130 Interim FY 1980 and 1981 funding for pre-kindergarten programs previously funded by the Bureau.
- 31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in FY 1982.

Subpart L—Contract School Operation and Maintenance Funds

- 31h.140 Definitions.
- 31h.141 Establishment of an interim FY 1980 operation and maintenance fund for contract schools.
- 31h.142 Distribution of funds.
- 31h.143 Future consideration of contract school operation and maintenance funding.

Authority: Sec. 1128 of Title XI of the Education Amendments of 1978. (92 Stat. 2320, 25 U.S.C. 2008).

Subpart A—General**§ 31h.1 Purpose and scope.**

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories, and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 31h.2. Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies

and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) "Agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

(c) "Agency Superintendent of Education" or "Superintendent" means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) "Area Director for Education" means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

(f) "Average daily membership" or "ADM" means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those eligible students shall be counted as members who are:

- (1) Listed on the current roll of the school counting them during the count week;
- (2) Not listed as enrolled in any other school during the same period; and
- (3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

(g) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(h) "Decision of record" means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

(i) "Director" means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) "Eligible student" means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) "Entitlement" means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) "Advice of allotment" means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) "Allotment" means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) "Indian" means a person who is a member of an Indian tribe.

(o) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) "Program" means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following accounting programs are those established by this part:

- (1) Instructional costs;
- (2) Boarding costs;
- (3) Dormitory costs;
- (4) Bilingual instruction costs;
- (5) Exceptional child education costs;
- (6) Intense residential guidance costs;
- (7) Student transportation fund costs;
- (8) School maintenance and repair fund costs;
- (9) School board training fund costs;
- (10) Pre-kindergarten costs; and
- (11) Previously private contract school operation and maintenance costs.

(q) "School" means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) "Local School Board," (usually referred to as "school board") including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded

school, in accordance with the laws of the tribe to be served or; in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Director in consultation with the affected tribes.

(s) "Supervisor" or "local school supervisor" means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) "Tribally operated contract school" or "contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) "Weighted student unit (WSU)" means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 31h.10 below. The term weighted student unit also describes the measure by which supplements to the weighted student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§ 31h.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 31h is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§ 31h.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF).

Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as

provided for in Subpart C of this part. From the application of ratios or weights as provided in these rules a weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

§ 31h.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 31h.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) "Base" or "base unit" means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) "Basic program" means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) "Grade" or "Grade Level", followed in most cases by "K" or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is "non-graded" or "individualized", or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as "in the grade level" to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) "Grades 1-3" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of

the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) "Grades 4-8" and "grades 9-12" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) "Kindergarten" means a weighted program for a student who is present during the count week (see § 31h.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as "half-time kindergarten" students.

(g) "Intense Bilingual" means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non native speakers of English, under resources of the ISEP.

(h) "Intensive residential guidance" means the weighted program for a resident student that needs special residential services due to one or more of the problems identified below, and that appropriate documentation is in that student's file as follows:

- (1) Presenting problem:
 - (i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.
 - (ii) Expulsion from previous school under due process.
 - (iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.
 - (iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.
- (2) Documentation required:
 - (i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;
 (iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or
 (iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.

(v) No student shall be classified under "Intense residential guidance" who is eligible for services at a full-time or part-time service level because of a handicapping condition as defined under Exceptional Child programs below.

(i) "Exceptional Child Program" means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by Part B of the Education of the Handicapped Act (20 U.S.C. 1401 et seq.; 45 CFR 121 a.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR 84) and who have the following diagnosed impairments:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(3) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(4) "Severely Multi-handicapped" means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.

(5) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes

impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(6) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1)-(12) of this section.

(7) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small group instruction, supervision, and group counseling:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(8) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.

(9) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.

(10) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term

includes partially seeing, but not fully blind, children.

(11) "Severely emotionally disturbed" means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(12) "Severely and profoundly retarded" means a degree of mental retardation (as defined in paragraph (3) above) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.

(13) "Students requiring home/hospital based instruction" means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.

(14) "Multihandicapped" means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.

(15) "Blind" means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20°.

(16) "Full-time—High Service Level" means a program of special education and related services provided to an exceptional student which consists of fifteen or more hours per week (or 60% or more of the total instructional time) of instruction and/or required related services (as described in the students individualized education program), provided outside of the regular classroom. In geographically isolated, smaller schools where facilities are limited, a full time program may consist

of fifteen or more hours per week (or 60% or more of the total instructional time) of specialized individual or small group instruction or required related services regardless of where the services are actually provided (including the regular classroom).

(17) "Part-time—Moderate Service Level" means any program of regular education modified to provide specialized instruction and/or required related services (as described in the student's individualized education program) which does not provide at least the number of hours in the definition of "Full-time—High Service Level Exceptional Child Program" set forth in paragraph (i)(14) above.

(18) Classification of a student in full or part-time service levels in residential care programs shall be based upon prior classification of the student in an instructional program serving his/her handicapping condition.

(j) "Resident" means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

§ 31h.12 Entitlement for instructional purposes.

BIA educational funds for the instruction of elementary and secondary Indian children shall be computed according to the following weighted student unit factors:

Basic Programs		Base Weights
Kindergarten.....		1.00
Grades 1 to 3.....		1.20
Grades 4 to 8.....		1.00
Grades 9 to 12.....		1.30
Supplemental Program		Add-on Weight
Intense bilingual.....		.20
Exceptional Child Programs		
Full time—high service level:		
Deaf.....		3.00
Blind.....		3.00
Severely multihandicapped.....		3.00
Severely and profoundly retarded.....		3.00
Students requiring hospital/homebound instruction.....		3.00
Severely emotionally disturbed.....		3.00
Severely emotionally disturbed (nonsevere).....		1.00
Specific learning disabled.....		1.00
Mentally retarded.....		1.00
Part time—moderate service level:		
Emotionally disturbed.....		.50
Specific learning disabled.....		.50
Mentally retarded.....		.50
Multihandicapped.....		.50

Exceptional Child Programs	
Hard of hearing.....	.25
Visually handicapped.....	.25
Orthopedically impaired.....	.25
Other health impaired.....	.25
Speech impaired.....	.25

§ 31h.13 Entitlement for residential purposes.

Basic funds for student residential purposes shall be computed according to the following weighted student unit factors:

Basic Programs		Add-on Weight
Kindergarten (For FY 80 only, 0 factor thereafter)....		1.40
Grades 1 to 3.....		1.40
Grades 4 to 8.....		1.25
Grades 9 to 12.....		1.25
Exceptional Child Programs		Add-on Weight
All full-time handicapped students.....		.50
Part time:		
Orthopedically impaired.....		.25
Other health impaired.....		.25
Emotionally disturbed.....		.25
Mentally retarded.....		.25
Multihandicapped.....		.25
Intense Residential Guidance.....		.50

§ 31h.14 Entitlements for small schools.

To compensate for the additional costs of operating small schools, qualified schools shall receive the following adjustments:

(a) Instructional programs in day and boarding schools. For each separate small school having an instructional average daily membership count (called x) of less than 100 students, the formula $[(100-x) \text{ divided by } 200] \text{ times } x$ shall be used to generate add-on weighted pupil units for each such school.

(b) Boarding school residential programs. For each separate small boarding school having a resident average daily membership count (called y) of less than 100 students, the formula $[(100-y) \text{ divided by } 200] \text{ times } y$ shall be used to generate add-on weighted pupil units for each such boarding school.

(c) Dormitory residential programs serving public schools. For each small dormitory program having an average daily membership count (called z) of less than 100 students, the formula $[(100-z) \text{ divided by } 200] \text{ times } z$ shall be used to generate add-on weighted pupil units for each dormitory.

§ 31h.15 Alaskan school cost supplements.

To meet the statutory requirements for a salary supplement for Alaskan educational staff, and add-on weight of .25 will be used as a factor by which all pupil program-generated weighted students shall be supplemented. Such generated Alaskan cost supplements will be added to the weighted pupil units generated by each school in the same manner as small school units.

§ 31h.16 Computation of school entitlements.

The sum of all weighted student units, including any small school and any Alaskan school cost supplements shall be computed for each school under the management of the Director. The total number of units generated by each approved school shall be multiplied by a base dollar value which is equivalent to a base weight of 1.0 in the formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

§ 31h.17 Comparability with public schools.

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 31h.78 of these regulations.

§ 31h.18 Recomputations of current year entitlements.

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly allocated to the

schools, and that all funds are fully allotted to schools.

§ 31h.19 Phase-in provisions.

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—20%

(2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—10%

(2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

§ 31h.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop: (a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of

boarding schools and in special weighted program areas which expand upon the definitions in this part; and (b) a uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program. The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placements can occur before the FY 1981 October student count.

§ 31h.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

(1) A rural isolation adjustment.

(2) A staff cost adjustment.

(3) A gifted and talented student program.

(4) A vocational education program.

(5) A facilities operation and maintenance program.

(6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under Section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout Part 31h. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary, who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

§ 31h.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60)

days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under 25 CFR 271 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93-638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

§ 31h.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under Title IV of the Indian Education Act, which are available to contract schools but not to Bureau schools, and determine appropriate adjustments, if any. Any adjustments in the ISEP which results from this review shall be effected by formal revision of this rule, under a Notice of Intended Rulemaking published in the *Federal Register*, and shall be subject to public comment for a minimum of sixty (60) days prior to final rulemaking.

Subpart C—Formula Funding Administrative Procedures

§ 31h.30 Definitions.

As used in this subpart, the term:

(a) "Certifying the validity of student counts" means that counts of student ADM have been accurately recorded in compliance with specifications of these rules, and that the Agency Superintendent of Schools, the local school supervisor, and local school board chairperson, where a school board exists, testify to and confirm the correctness of this count.

(b) "Count weeks" mean the first full school week in October and the first full school week in November for recording student ADM for the purposes of calculating allotments, and the first full school week in February and the first full school week in March for recording student ADM for purposes of calculating tentative allotments.

(c) "Cumulative total" means the sum of all daily student ADM counts during count weeks.

(d) "Student classification" means any special need area of students which receives a separate weighting through the Indian School Equalization Formula.

§ 31h.31 Conditions of eligibility for funding.

(a) To be eligible for direct formula funding as established in subpart B of this part, a day school, boarding school, or dormitory must meet minimum standards, or, failing to do so, must include in its financial plan steps acceptable to the Director for taking corrective action to meet the standards to be prescribed pursuant to section 1121 of the Education Amendments of 1978 (Pub. L. 95-561; 25 U.S.C. 2001). Until such standards are prescribed, the Director shall determine eligibility for funding in accordance with established procedures for authorizing Bureau operated schools.

(b) To be eligible for direct formula funding, a tribally operated day or boarding school or dormitory must meet the requirements of part 271 of this chapter (25 CFR 271) for receipt of Bureau Education funds under contracts for school operation.

§ 31h.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 31h.1(f) shall be determined during the first full school week in October and the first full school work week in November of the school year. For each count week all those students eligible under the definition in § 31h.1(f) shall be counted by student program classification. An average for the two count weeks shall be computed to two decimal places for each student program classification as separately provided for in the funding formula.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices, and, in the case of off-reservation boarding schools, Area education offices, together with each school's supervisor and school board chairperson where a board exists, shall be responsible for certifying the validity of each school's student counts. The October and November ADM will be used to determine final entitlements for the school year.

§ 31h.33 Special education unduplicated count provision.

In counting special education ADM with the exception of speech therapy, no child shall be counted or funded twice

for participation in more than one special education program.

§ 31h.34 Substitution of a count week.

A school may petition the Director to substitute another week in the same month for the specified count week if it can be established that to use the specified count week would result in grossly inaccurate student counts. Where tribal ceremonial days are known in advance, such a petition shall be submitted in advance of the determined count week.

§ 31h.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the average daily membership for the first full school week in February and the first full school week in March of the school year. Procedures for computation shall be the same as those of the annual computation in October and November.

§ 31h.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average ADM for February and March of the previous year and October and November of the current year.

§ 31h.37 Auditing of student counts.

The Secretary shall provide for auditors as required to assure timeliness and validity in reporting student counts for formula funding.

§ 31h.38 Failure to provide timely and accurate student counts.

(a) Responsible Bureau school, Agency, Area, and Central Office administrators may be dismissed for cause, or otherwise penalized, for submission of invalid or fraudulent annual student ADM counts or willfully inaccurate counts of student participation in weighed program areas. A person who knowingly submits or causes to be submitted to a Federal official or employee false information upon which the expenditure of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 286, 287, 371, or 1001 of Title 18, U.S. Code.

(b) Failure of responsible Federal officials to perform administrative operations which are essential to the ISEP, on a timely basis, shall result in swift disciplinary action by Bureau supervisory personnel, under existing procedures. Failure or refusal of Bureau supervisory personnel to take disciplinary action shall result in disciplinary action against them by higher level supervisors.

§ 31h.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of § 31h.78 below.

(b) In no case shall the Director delay the computation of initial allotments for schools which have submitted timely ADM counts while waiting for those schools which have failed to submit.

Subpart D—Direct Allotment of Formula Entitlements

§ 31h.50 Definitions.

As used in this subpart, the term:

(a) "Apportionment" means that part of a school's allotment received each quarter as an authorization to obligate funds.

(b) "Approved apportionment schedules" means that approval given for the quarterly obligation of funds for a given appropriation of funds for the Bureau.

(c) "Authorization to obligate" means that approval given to a school to incur obligations of funds against a given appropriation.

(d) "Initial allotments" means that notice given to schools of their entitlements to funds based on October and November student counts through the Indian School Equalization Formula based on a final appropriation, prior to any adjustments due to fluctuating student counts.

(e) "Responsible fiscal agent" means the local school supervisor of a Bureau operated school except where such authority is designated to the Agency Superintendent of Education by a school board decision of record or by a written agreement signed by both parties. For contract schools, the responsible fiscal agent shall be designated in an action of record by the contractor.

(f) "Tentative allotments" means the notice given to schools of their

entitlements to funds based on February and March student counts as computed through the Indian School Equalization Formula based on a proposed appropriations in the President's budget for the next fiscal year.

§ 31h.51 Notice of tentative allotments.

The Director shall notify school administrators and boards of tentative allotments of funds based on the February and March ADM counts established under Subpart B of this Part no later than April 15, preceding the year for which the allotment is to be made as authorized by Pub. L. 95-561, section 1129, Title XI.

§ 31h.52 Initial allotments.

The Assistant Secretary—Indian Affairs, as requested by the Director, shall make initial allotments to Bureau operated schools, Agency Education Offices, and Central and Area Offices. The Assistant Secretary—Indian Affairs shall make initial allotments for tribally operated schools to appropriate Agency Superintendents of Education, or as otherwise provided by the Director.

§ 31h.53 Obligation of funds.

(a) Authority to obligate funds in the Bureau operated schools shall be governed by provisions of the Bureau Manual (42 BIAM).

(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR 271.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 31h.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 31h.75, 31h.78, 31h.90, 31h.102 and 31h.111.

§ 31h.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 31h.55 of this part. Such quarterly apportionments will be made as determined in § 31h.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25

CFR 271 for effecting and adjusting contracts with tribally operated schools.

§ 31h.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

(a) Expend funds solely in accordance with the local educational financial plan, as ratified or amended by the local school board, unless in the case of Bureau operated schools, this plan has been overturned under the appeal process prescribed in these rules, in which case expenditures shall be made in accordance with the local educational financial plan as determined by the Agency Superintendent of Education.

(b) Sign all documents required for the obligation and or payment of funds and documentation of receipt of goods and services.

(c) Report at least quarterly to the local school board on the amounts expended, amounts obligated and amounts currently remaining in funds budgeted for each program of services in the local financial plan.

(d) Recommend changes in budget amounts, as required for effective management of resources to carry out the local financial plan, and incorporate such changes in the budget as are ratified by the local school board, subject to provisions for appeal and overturn.

§ 31h.56 Financial records.

Each responsible fiscal agent receiving funds under the ISEP shall maintain expenditure records in accordance with financial planning system procedures as required herein.

§ 31h.57 Access to and retention of local educational financial records.

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives shall have access for audit and examination purposes to any of the local schools' accounts, documents, papers and records which are related or pertinent to the school's operation. The provisions of 25 CFR 271.47 will be applicable in the case of tribally contracted schools.

§ 31h.58 Expenditure limitations for Bureau operated schools.

(a) Expenditure of allotments shall be made in accordance with applicable federal regulations and local education financial plans, as defined in § 31h.60(b), below.

(b) Where there is disagreement between the Area or Agency support service staff and the responsible fiscal agent regarding the propriety of the obligation or disbursement of funds, appeal shall be made to the Director.

Subpart E—Local Educational Financial Plan

§ 31h.60 Definitions.

As used in this subpart, the term:

(a) "Consultation" means soliciting and recording the opinions of school boards regarding each element in the local financial plan, as set forth below, and incorporating those opinions to the greatest degree feasible in the development of the local educational financial plan at each stage thereof.

(b) "Local educational financial plan" means that plan which programs dollars for educational services for a particular Bureau operated or funded school which has been ratified in an action of record by the local school board, or determined by the superintendent under the appeal process set forth in this subpart.

(c) "Budget" means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories thereunder.

§ 31h.61 Development of local educational financial plans.

A local educational financial plan shall be developed by the local school supervisor, in active consultation with the local school board, based on the tentative allotment received as provided in § 31h.51.

§ 31h.62 Minimum requirements.

The local financial plan shall include, at a minimum, each of the following elements:

(a) Separate programing of funds for each group of Indian students for whom a discrete program of services is to be provided. This must include at a minimum each program for which funds are allotted to the school through the Indian School Equalization Program;

(b) A brief description, or outline, of the program of student services to be provided for each group identified;

(c) A budget showing the costs projected for each program, as determined by the Director through the development of a uniform cost accounting system related to the Indian School Equalization Program;

(d) A statement of the percentage relationship between the total of the anticipated costs for each program and the amount the students served by that program will generate under the Indian School Equalization Formula. Beginning in FY 1981, there shall also be included a statement of the cost incurred for each program in the preceding fiscal year and the amount received for each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan

must provide that at least 80% of the funds generated by students served by the program be spent on those students;

(e) A provision for certification by the chairman of the school board that the plan as shown, or as amended, has been ratified in an action of record by the school board; or

(f) Except in the case of contract schools, a provision for certification by the Agency Superintendent of Education that he or she has approved the plan as shown, or as amended, in an action overturning the rejection or amendment of the plan by the school board.

§ 31h.63 Procedures for development of the plan.

(a)(1) Within thirty (30) days after receipt of the tentative allotment for the coming school year, the school supervisor shall meet and consult with the local school board on the local financial plan.

(2) The school supervisor shall discuss at this meeting the present program of the school and any proposed changes he or she wishes to recommend. The school board members shall be given every opportunity to express their own ideas as well as their views on the supervisor's recommendations. Subsequently the school supervisor shall present a draft plan to the school board with recommendations concerning each of the elements outlined in this sub-part.

(b) Within sixty (60) days of receipt of the tentative allotment, the school board shall review the local financial plan as prepared by the school supervisor and, by a quorum vote, shall have the authority to ratify, reject or amend such financial plan.

(c) The school board shall have the authority, at any time following the ratification of the financial plan on its own determination or in response to the supervisor, to revise such plan to meet needs not foreseen at the time of preparation of the plan.

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

(e) In the event that the school board does not act within the prescribed deadline, the financial plan shall be referred to the Agency Superintendent of Education for ratification, subject to subsequent amendment by the school board in accordance with paragraph (c) above.

(f) The Agency Superintendent of Education will review the local financial plan for compliance with prescribed laws and regulations or may refer the plan to the Solicitor's Office for legal review. If the Superintendent notes any problem with the plan, he or she shall notify the local board and local supervisor of the problem within two weeks of receipt of the local financial plan and shall make arrangements to assist the local school supervisor and board to correct the problem. If the Superintendent is not able to correct the problem, it shall be referred to the Director of the Office of Indian Education.

§ 31h.64 Procedure for financial plan appeals.

(a) If the supervisor of a school finds an action of the local school board, in rejecting or amending the local financial plan, to be unacceptable in his or her judgment as a professional educator, the supervisor may appeal to the Agency Superintendent of Education under the following procedures and conditions:

(1) The appeal must be presented in writing, within ten (10) consecutive days of the supervisor's receipt of the school board decision which is appealed.

(2) The written appeal shall contain, at a minimum, the following information and documentation:

(i) All descriptive information concerning the element(s) in the local financial plan being appealed, substantially as presented to the school board prior to its decision.

(ii) Official documentation of the school board's decision amending or rejecting the element(s) being appealed.

(iii) A statement of the school supervisor's reasons for appealing the board's actions.

(iv) Signed certification by the supervisor that his/her reason for appeal has been presented to the chairperson of the school board, and that the school board has been offered full opportunity to submit a counter statement to the Superintendent.

(3) If the supervisor of the school is also the Superintendent, the appeal shall be made following the above procedures to the Director, who shall follow procedures set forth below, as acting Superintendent for the appeal.

(b) Within ten (10) consecutive days of receiving the appeal, the Agency Superintendent of Education shall review the appeal documents to determine if they are complete according to the criteria established in this subpart, and if so shall notify both the school supervisor and the school board of a date for an informal conference.

(c) Within twenty-five (25) consecutive days of receiving the referral for approval, the Superintendent shall:

(1) Hear any arguments on either or both sides of the appeal issue(s) at the option of either the supervisor of the school board involved.

(2) Following the informal conference, either sustain or reject the appeal for good cause, which the Superintendent shall set out in writing to both the supervisor and school board.

(d) Nothing in this subsection shall be construed as enabling the supervisor of a tribally operated school to appeal decisions of a contract school board to the Agency Superintendent for Education, nor as empowering the Agency Superintendent for Education to overturn any action of a contract school board under this appeal process as established in Pub. L. 93-638.

(e) Within 180 days after the effective date of this subpart, the Assistant Secretary shall develop and publish in the Federal Register procedures for a formal hearing process which shall be available to school boards who believe their decisions regarding the financial plan have been overturned for other than good cause.

Subpart F—Contingency Funds

§ 31h.70 Definitions.

As used in this Subpart, the term:

(a) "Cumulative total" means the sum of all funds carried over from the previous fiscal year(s) as unobligated and the amount for the current year.

(b) "Temporary replacement" means the substitution of a structure on a temporary basis in lieu of the original permanent structure that has been lost to use. The temporary use will expire at the time that arrangements are completed for the availability of a structure similar to the original.

§ 31h.71 Establishment of the School Disaster Contingency Fund.

The Bureau's annual budget justifications shall identify an amount for a separate budget account entitled the School Disaster Contingency Fund (SDCF). All schools and dormitories receiving support under the provisions of subparts B and C of this part are eligible for disaster aid from this contingency fund.

§ 31h.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be

added when appropriated but the Fund should not exceed a \$1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

§ 31h.73 Purposes.

Disbursements from the School Disaster Contingency Fund shall be for the following purposes:

(a) Costs of replacement of items in the following categories including shipment and installation, in the event of their destruction by earthquake, fire, flood, storm, or other "acts of God," and acts of massive and catastrophic vandalism where such costs are not already covered in an insurance policy in force at the time of destruction and where such destruction could not have been prevented by prudent action by the officials responsible for the care of such items:

- (1) Educational materials and supplies.
- (2) Equipment and furnishings.
- (3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.
- (4) Food services supplies, furnishings and equipment not a fixed part of structures.
- (5) Office supplies and equipment for minimum essential administrative operations.
- (6) Janitorial supplies and cleaning equipment.
- (7) Student clothing and personal supplies if destroyed along with a school facility.
- (8) Fuel supplies, tanks, lines, connections, meters, etc.
- (9) Transportation equipment not otherwise provided for through the General Services Administration.
- (10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other "acts of God," until they can be reconstructed. These costs may include purchase of, or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined

under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmaries, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

§ 31h.74 Application procedures.

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity of the school operation at either the local school, Agency or Area levels.

§ 31h.75 Disbursement procedures.

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

§ 31h.76 Prohibitions of expenditures.

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of

facilities no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been "condemned" or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audio-visual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

§ 31h.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary

procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contingency fund shall be established to cover such costs.

§ 31h.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed \$2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

§ 31h.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

Subpart G—School Board Training

§ 31h.90 Establishment of a school board training categorical fund.

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95-561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at \$5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

§ 31h.91 Other technical assistance and training.

The provision of funds under § 31h.90 above does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible. The provision of assistance under this subpart does not preclude a school board or its trial governing body from

receiving financial or other assistance from the Bureau under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; Pub. L. 93-638; 25 U.S.C. 450 et seq.).

§ 31h.92 Training activities.

Training funds provided under this part may be used for training in the following subject areas:

- (a) Educational philosophy;
- (b) Community school programs;
- (c) Legal aspects of being a school board member;
- (d) School board operations and procedures;
- (e) Fiscal management;
- (f) Formula funding;
- (g) Personnel matters;
- (h) Union negotiations;
- (i) Contracting procedures and obligations;
- (j) Special curriculum areas;
- (k) Students' rights and responsibilities;
- (l) Education agency relations;
- (m) Alternative sources of Federal grants;
- (n) Juvenile justice;
- (o) Teachers training and inservice options;
- (p) Needs assessment, program development, proposal writing; and
- (q) Other training activities school boards deem appropriate and applicable to their situation and which are approved by the Director.

§ 31h.93 Allowable expenditures.

Allowable expenditures under this subpart are limited to:

- (a) Contracting with individuals and organizations for training services,
- (b) Membership fees in school boards' associations and purchase of their materials and publications,
- (c) Membership reimbursement for subsistence and travel expenses incurred while participating in training activities; and
- (d) Cooperative contracts with other school boards for joint training or technical assistance activities.

§ 31h.94 Limitations on expenditures.

(a) No expenditure may be authorized except in accordance with a decision of record by the school board and each payment shall be made under written authorization of the board chairperson.

(b) Expenditures under this subpart may not be made for school board members' stipends or honorariums associated with participation in training activities. Payments for such may, however, come from the school's operational budget, if so designated and approved in the school's operational budget, if so designated and approved in

the school's local educational finance plan. The maximum amounts of such payments shall be determined in accordance with the laws or regulations of the tribe involved and shall be subject to approval by the Director. In the absence of such tribal laws or regulations, such maximums shall be determined by the Director in consultation with the school board. Payments under this subpart may not be made to any employee of a school served by the school board being trained or assisted.

§ 31h.95 Reporting of expenditures.

An accounting of all expenditures of school board training funds shall be maintained as a supplement to each school's public accounting records.

§ 31h.96 Provision for annual adjustment.

The allocation of \$5,000 per school may be annually adjusted by the Director.

§ 31h.97 Training for agency school board.

Provisions for training agency school board members, except as they may also be members of local school boards, are not included in these local school board training funds. If required, such provision shall be incorporated in agency or area office educational administration training plans and budgets.

Subpart H—Student Transportation

§ 31h.100 Definitions.

As used in this subpart, the term:

(a) "Basic transportation miles" means the daily average of all bus miles logged for round trip home-to-school transportation of day students.

(b) "Transported student" means the average number of students transported to school on a daily basis.

(c) "School bus" means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

§ 31h.101 Purpose and scope.

The purpose of this section is to provide funds to each school for the round trip transportation of students between home and the school site.

§ 31h.102 Allocation of transportation funds.

Transportation funds for FY 1980 shall be allocated to each school as follows:

(a) *Day students.* Funds shall be allocated to each school which provides daily transportation of students between the student's residence and the school site by the following formula:

(1) $180 \times (\$.85 \text{ per basic transportation mile} + \$.61 \text{ per transported student})$.

(2) The allocation shall be based on the daily average of transported students and basic transportation miles computed during the October and November count periods.

(3) This formula shall not apply to any dormitory which provides daily transportation between dormitory and the public school which the dormitory student attends.

(b) *Boarding school and dormitory students.* Funds shall be allocated to each boarding school and dormitory for the transportation of resident students according to the following criteria:

(1) For each student whose home is more than 1 mile and no more than 100 miles from the boarding school or dormitory, the school shall receive \$3.20 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(2) For each student whose home is more than 100 and no more than 350 miles from the boarding school or dormitory, the school shall receive \$1.60 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(3) For each student whose home is more than 350 miles from the boarding school or dormitory, the school shall receive \$.48 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home agency to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(4) For each student whose home is more than 350 miles from the boarding school or dormitory and for whom it is necessary to provide airplane transportation, the school shall receive \$.60 per mile per student flown per year. The miles per student shall be the actual one way air miles between the airport closest to the school site and the closest to the student's home. Airplane

transportation shall be provided only when ground transportation is unavailable or not cost-effective.

(5) For each student attending Mt. Edgecumbe Boarding School, Sitka, Alaska, who requires airplane transportation, the school shall receive \$1.05 per mile per student flown per year. The miles per student shall be the one way air miles between the Sitka, Alaska airport and the airport nearest the student's home.

(6) At least 80% of the funds received by the school under 3, 4, and 5 above must be used for student travel between home and school.

§ 31h.103 Annual Transportation Formula Adjustment.

The Director will review transportation allotment factors each year and make changes in factors based on changes in transportation costs.

Subpart I—Interim Maintenance and Minor Repair Fund

§ 31h.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.

There is established in the Division of Facilities Management a separate temporary fund entitled the Interim Maintenance and Minor Repair Fund. The Assistant Secretary shall cause the distribution of an amount of \$1 million, under the FY 1980 Appropriation for the Bureau, from budget activity 3500, "General Management and Facilities Operation", to the direct use of schools, and shall create an appropriate account or subaccount for the Interim Maintenance and Minor Repair Fund and credit these funds thereto.

§ 31h.111 Conditions for distribution.

Funds from the Interim Maintenance and Minor Repair Fund shall be distributed to Bureau operated and funded schools and shall be separately earmarked in local school financial plans solely for expenditure at the discretion of the school supervisor for cost of school facility maintenance and minor repair. These funds shall be used to meet immediate minor repair and maintenance needs.

§ 31h.112 Allocation.

(a) Interim Maintenance and Minor Repair funds shall be allocated to all Bureau operated and contract schools based on the number of square feet of floor space used for that school's educational program, for student residence and for support facilities. Staff quarters shall be specifically excluded from the computation.

(b) Square footage figures used in determining school allocations shall be

taken from the facilities inventory maintained by the Division of Facilities Engineering.

(c) In those cases, such as contract schools, where square footage figures are not now available, it shall be the responsibility of the Bureau's Division of Facilities Engineering to correct the information.

(d) Schools in Alaska shall receive a 25% cost adjustment increase in the computation of their allocation.

§ 31h.113 Use of funds.

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

§ 31h.114 Limitations.

Nothing in this provision shall be interpreted as relieving the Bureau branch of Facilities Management or its field offices of any responsibility for continuing to provide maintenance and repair service to schools through existing procedures.

Subpart J—Interim Administrative Cost Formula

§ 31h.120 Purposes and scope.

The purpose of this subpart is to provide funds at the Office of Indian Education Programs and the area and agency education offices for FY 1980 for administration of all Bureau of Indian Affairs education functions, including school operations, continuing education, and Johnson O'Malley programs.

§ 31h.121 Definitions.

(a) "Area Education Office" means the office responsible for Bureau education programs and functions in a Bureau Area Office.

(b) "Area" means the Area Education Office and all agency education offices within the geographic area.

§ 31h.122 Accounting.

A separate education administrative cost account element will be established in the Bureau's education funds accounting system beginning in FY 1980.

§ 31h.123 Determination of present cost levels.

In previous years element 10 ("Education and Training-General") funds have included special program contracts as well as direct administrative costs. To determine what portion of element 10 constituted actual direct administrative costs for each area in FY 1979, the Director, in consultation with the Area Director for Education of the Area where the contract is now held, will review each of these element 10 contracts for FY 1979 and determine the

appropriate status of each according to the following criteria:

(a) All contracts for non-administrative services shall be deleted from the computation of current and future administrative cost figures.

(b) Contracts for services which will be funded elsewhere under the Indian School Equalization Program shall be terminated as of September 30, 1979.

(c) All such contracts which provide unique educational services which are not funded elsewhere under the Indian School Equalization Program are to be reviewed on a contract by contract basis and a determination made by the Director whether each shall be continued or terminated. Those contracts which are continued shall be placed under an appropriate non-administrative education cost account. Funds equal to the FY 1979 contract amount shall be transferred to this account from the FY 1980 element 10 appropriation.

§ 31h.124 Allotment of educational administrative funds.

The FY 1980 total budget for educational administration shall be allotted to the Director and to officials in the Area and Agency Education Offices designated by the Director. The total amount to be allotted shall be equal to the amount budgeted for element 10 in the FY 1980 budget appropriations request, less the amounts which were spent in FY 1979 for non-administrative contract programs and services (as determined in section 31h.123) and less any reduction due to appropriation of less than the requested amount of a reprogramming approved by the Congressional Appropriation Committees. This total shall be called the "total available for allotment" and shall be distributed to the various BIA educational administration offices as follows:

(a) The Office of the Indian Education Programs allotment shall be \$4,353,400, which is equal to the FY 1979 element 10 budget. This amount shall be used to fund salaries and personal services, general office overhead, and management improvement projects. None of these funds shall be used to fund special projects. Any unused salary lapse occurring in the Office of Indian Education Programs as of August 1, 1980 shall be apportioned to the schools through the formula.

(b) Each area shall receive for both Area and Agency Education Office administration a share of the balance in the total available allotment, after funds for the office of Indian Education Programs have been allotted, which shall be computed as follows:

(1) The Area's share for administration of Johnson O'Malley (JOM) and Higher Education and Adult Education programs shall be equal to 2% of the total of JOM and Higher Education and Adult Education funds for programs administered in and by the Area. This sum shall be computed and allotted to the Area from the total available for allotment prior to computation of any additional amounts for the Area.

(2) The funds remaining in the total available for allotment shall be allocated for the general administration of educational functions in all Area and Agency Education Offices to be apportioned as follows:

(i) Twenty percent of the remaining total available for allotment shall be apportioned on the basis of each area's percentage of Indian students in average daily membership in Bureau operated and funded schools in the area compared to the national total of such membership.

(ii) The remaining 80 percent shall be apportioned on the basis of number of Bureau operated or funded schools and institutions located within the area. These funds shall be apportioned across areas based on a weighting factor .6 times the number of schools tribally operated under contract or other conveyance and a weight of 1.0 times the number of schools which are Bureau operated.

(3) To meet the statutory requirements for a salary supplement for Alaskan educational staff, an add-on weight of .25 will be used as a factor in determining the amount for distribution within the Juneau area under § 31h.124b (1) and (2).

§ 31h.125 Allotment exceptions.

Notwithstanding the provisions above, no Area shall receive less than 85% of the amount allotted to that Area for education administration in element 10 in FY 1979, excluding the sum spent on non-administrative contracts in FY 1979.

§ 31h.126 Distribution of administrative funds within area.

Within each Area, funds allotted to that Area shall be distributed to the Area and Agency Education Offices as follows:

(a) No Area Education Office shall receive an amount in excess of 85% of the element 10 allotments which that office received in FY 1979 exclusive of non-administrative contracts, except with the consent of the Director.

(b) Remaining funds in the Area after allotment to the Area Education Office shall be allotted by the Director to

agency education offices on the basis of financial plans approved by Agency School Boards, where such boards exist, and in those cases where no school boards exist approved by the Director.

(c) In cases where the Director must during the course of the fiscal year make administrative transfers of Area or Agency administrative positions for the purpose of implementing policy decisions on direct line authority, the budgeted amounts for salary and other direct costs associated with those positions shall be transferred with them.

(d) Within 120 days of the effective date of this Part, the Director shall establish procedures to provide for Agency and Area school board approval of Area and Agency financial plans, where such boards are established.

(e) In developing such procedures, he or she shall consult all affected tribal governments of each area or agency.

§ 31h.127 Exceptional education services at Area and Agency Offices.

An amount of \$700,000 shall be distributed to the Areas based on the Area's proportion of the number of exceptional education students in average daily membership in all Bureau funded schools. These funds shall be used only for exceptional education services and program coordination.

§ 31h.128 Provision for administrative cost formula based on administrative functions.

The Director shall propose amendments to these regulations to provide a formula system for distribution of administrative funds to Area and Agency Education Offices based on education functions to be performed at each location. This system of distribution shall be implemented for FY 1981, to reflect the education functions to be performed at each administrative level.

Subpart K—Prekindergarten Programs

§ 31h.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.

Those schools having pre-kindergarten programs funded fully or in part from Bureau education funds in fiscal year 1979 shall be funded from Bureau education funds by the Director in fiscal year 1980 and fiscal year 1981 at their fiscal year 1979 Bureau education funding levels. The fiscal year 1979 pre-kindergarten Bureau funding amount for each Bureau funded school shall be deducted from the school's fiscal year 1979 Bureau Education Budget amount prior to application of

the phase-in provision detailed in § 31h.19.

§ 31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

§ 31h.140 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

§ 31h.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of \$2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500, "General Management and Facilities Operations", to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 31h.142 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These post figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set forth in § 31h.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§ 31h.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

October 18, 1979.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

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P.L. 95-561 - Title XI
Basic Indian Education Act
(November 1, 1978)

Part A

- 1101 - 874/Impact Aid
- 1102 - Johnson-O'Malley

Part B

- 1121 - Basic Education Standards
- 1122 - Dormitory Criteria
- 1125 - Facilities Construction
- 1126 - Functions
- 1127 - Implementation - Time Frames
- 1128 - Allotment Formula
- 1129 - Direct Funding
- 1130 - Policy of Indian Control
- 1131 - Personnel - DM 130
- 1132 - MIS
- 1133 - Policies
- 1134 - Procedures and Practices
- 1135 - Recruitment
- 1136 - Annual Report
- 1137 - Student Rights
- 1138 - Regulations
- 1139 - Definition - School Boards