

107TH CONGRESS
1ST SESSION

S. 211

To amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2001

Mr. CAMPBELL (for himself and for Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Edu-
5 cation Improvement Act of 2001”.

1 **TITLE I—AMENDMENTS TO THE**
 2 **EDUCATION AMENDMENTS**
 3 **OF 1978**

4 **SEC. 101. AMENDMENTS TO THE EDUCATION AMENDMENTS**
 5 **OF 1978.**

6 Part B of title XI of the Education Amendments of
 7 1978 (25 U.S.C. 2001 et seq.) is amended to read as fol-
 8 lows:

9 **“PART B—BUREAU OF INDIAN AFFAIRS**
 10 **PROGRAMS**

11 **“SEC. 1120. FINDING AND POLICY.**

12 “(a) FINDING.—Congress finds and recognizes
 13 that—

14 “(1) the Federal Government’s unique and con-
 15 tinuing trust relationship with and responsibility to
 16 the Indian people includes the education of Indian
 17 children; and

18 “(2) the Federal Government has the responsi-
 19 bility for the operation and financial support of the
 20 Bureau of Indian Affairs funded school system that
 21 the Federal Government has established on or near
 22 reservations and Indian trust lands throughout the
 23 Nation for Indian children.

24 “(b) POLICY.—It is the policy of the United States
 25 to work in full cooperation with tribes toward the goal of

1 assuring that the programs of the Bureau of Indian Af-
2 fairs funded school system are of the highest quality and
3 provide for the basic elementary and secondary edu-
4 cational needs of Indian children, including meeting the
5 unique educational and cultural needs of these children.

6 **“SEC. 1121. ACCREDITATION AND STANDARDS FOR THE**
7 **BASIC EDUCATION OF INDIAN CHILDREN IN**
8 **BUREAU OF INDIAN AFFAIRS SCHOOLS.**

9 “(a) PURPOSE; DECLARATIONS OF PURPOSE.—

10 “(1) PURPOSE.—The purpose of the standards
11 implemented under this section shall be to ensure
12 that Indian students being served by a school funded
13 by the Bureau of Indian Affairs are provided with
14 educational opportunities that equal or exceed those
15 for all other students in the United States.

16 “(2) DECLARATIONS OF PURPOSE.—

17 “(A) IN GENERAL.—Local school boards
18 for schools operated by the Bureau of Indian
19 Affairs, in cooperation and consultation with
20 the appropriate tribal governing bodies and
21 their communities, are encouraged to adopt dec-
22 larations of purpose for education for their
23 communities, taking into account the implica-
24 tions of such declarations on education in their
25 communities and for their schools. In adopting

1 such declarations of purpose, the school boards
2 shall consider the effect the declarations may
3 have on the motivation of students and fac-
4 ulties.

5 “(B) CONTENTS.—A declaration of pur-
6 pose for a community shall—

7 “(i) represent the aspirations of the
8 community for the kinds of people the
9 community would like the community’s
10 children to become; and

11 “(ii) contain an expression of the com-
12 munity’s desires that all students in the
13 community shall—

14 “(I) become accomplished in
15 things and ways important to the stu-
16 dents and respected by their parents
17 and community;

18 “(II) shape worthwhile and satis-
19 fying lives for themselves;

20 “(III) exemplify the best values
21 of the community and humankind;
22 and

23 “(IV) become increasingly effec-
24 tive in shaping the character and

1 quality of the world all students
2 share.

3 “(C) STANDARDS.—The declarations of
4 purpose shall influence the standards for ac-
5 creditation to be accepted by the schools.

6 “(b) STUDIES AND SURVEYS RELATING TO STAND-
7 ARDS.—Not later than 1 year after the date of enactment
8 of the Native American Education Improvement Act of
9 2001, the Secretary, in consultation with the Secretary of
10 Education, consortia of education organizations, and In-
11 dian organizations and tribes, and making the fullest use
12 possible of other existing studies, surveys, and plans, shall
13 carry out, by contract with an Indian organization, studies
14 and surveys to establish and revise standards for the basic
15 education of Indian children attending Bureau funded
16 schools. Such studies and surveys shall take into account
17 factors such as academic needs, local cultural differences,
18 type and level of language skills, geographic isolation, and
19 appropriate teacher-student ratios for such children, and
20 shall be directed toward the attainment of equal edu-
21 cational opportunity for such children.

22 “(c) REVISION OF MINIMUM ACADEMIC STAND-
23 ARDS.—

24 “(1) IN GENERAL.—Not later than 2 years
25 after the date of enactment of the Native American

1 Education Improvement Act of 2001, the Secretary
2 shall—

3 “(A) propose revisions to the minimum
4 academic standards contained in part 36 of title
5 25, Code of Federal Regulations (on the date of
6 enactment of the Native American Education
7 Improvement Act of 2001) for the basic edu-
8 cation of Indian children attending Bureau
9 funded schools, in accordance with the purpose
10 described in subsection (a) and the findings of
11 the studies and surveys carried out under sub-
12 section (b);

13 “(B) publish such proposed revisions to
14 such standards in the Federal Register for the
15 purpose of receiving comments from the tribes,
16 local school boards, Bureau funded schools, and
17 other interested parties; and

18 “(C) consistent with the provisions of this
19 section and section 1130, take such actions as
20 are necessary to coordinate standards imple-
21 mented under this section with—

22 “(i) the Comprehensive School Reform
23 Plan developed by the Bureau; and

1 “(ii)(I) the standards of the State in
2 which any Bureau funded school is located;
3 or

4 “(II) in a case where schools operated
5 by the Bureau are within the boundaries of
6 the reservation land of 1 tribe but within
7 the boundaries of more than 1 State, the
8 standards of the State selected by the
9 tribe.

10 “(2) FINAL STANDARDS.—Not later than 6
11 months after the close of the comment period for
12 comments described in paragraph (1)(B), the Sec-
13 retary shall establish final standards under this sub-
14 section, distribute such standards to all tribes, and
15 publish such standards in the Federal Register.

16 “(3) FURTHER REVISIONS.—The Secretary
17 shall revise standards under this subsection periodi-
18 cally as necessary. Prior to making any revisions of
19 such standards, the Secretary shall distribute pro-
20 posed revisions of the standards to all the tribes,
21 and publish such proposed revisions in the Federal
22 Register, for the purpose of receiving comments
23 from the tribes and other interested parties.

24 “(4) APPLICABILITY OF STANDARDS.—Except
25 as provided in subsection (e), the final standards

1 published under this subsection shall apply to all
2 Bureau funded schools not accredited under sub-
3 section (f), and may also serve as model standards
4 for educational programs for Indian children in pub-
5 lic schools.

6 “(5) CONSIDERATIONS WHEN ESTABLISHING
7 AND REVISING STANDARDS.—In establishing and re-
8 vising standards under this subsection, the Secretary
9 shall take into account the unique needs of Indian
10 students and support and reinforce the specific cul-
11 tural heritage of each tribe.

12 “(d) ALTERNATIVE OR MODIFIED STANDARDS.—
13 With respect to a school that is located in a State or region
14 with standards that are in conflict with the standards es-
15 tablished under subsection (c), the Secretary shall provide
16 alternative or modified standards in lieu of the standards
17 established under such subsection so that the programs
18 of such school are in compliance with the minimum ac-
19 creditation standards required for schools in the State or
20 region where the school is located.

21 “(e) WAIVER OF STANDARDS; ALTERNATIVE STAND-
22 ARDS.—

23 “(1) WAIVER.—A tribal governing body, or the
24 local school board so designated by the tribal gov-
25 erning body, shall have the local authority to waive,

1 in part or in whole, the standards established under
2 subsection (c) and (d) if such standards are deter-
3 mined by such body or board to be inappropriate for
4 the needs of students from that tribe.

5 “(2) ALTERNATIVE STANDARDS.—The tribal
6 governing body or school board involved shall, not
7 later than 60 days after providing a waiver under
8 paragraph (1) for a school, submit to the Director
9 a proposal for alternative standards that take into
10 account the specific needs of the tribe’s children.
11 Such alternative standards shall be established by
12 the Director for the school involved unless specifi-
13 cally rejected by the Director for good cause and in
14 writing provided to the affected tribes or local school
15 board.

16 “(f) ACCREDITATION AND IMPLEMENTATION OF
17 STANDARDS.—

18 “(1) DEADLINE.—Not later than the second
19 academic year after publication of final standards
20 established under subsection (c) or (d), or after the
21 approval of alternative standards under subsection
22 (e), to the extent necessary funding is provided, each
23 Bureau funded school to which such standards
24 would apply shall meet the applicable standards or
25 be accredited—

1 “(A) by a tribal accrediting body that has
2 been accepted by formal action of the appro-
3 priate tribal governing body;

4 “(B) by a regional accreditation agency;

5 “(C) in accordance with State accredita-
6 tion standards for the State in which the school
7 is located; or

8 “(D) in the case of a school that is located
9 on a reservation that is located in more than 1
10 State, in accordance with the State accredita-
11 tion standards of 1 State as selected by the
12 tribal government.

13 “(2) DETERMINATION OF STANDARDS TO BE
14 APPLIED.—The accreditation type or standards ap-
15 plied for each school shall be determined by the
16 school board of the school, in consultation with the
17 Administrator of the school, provided that in the
18 case where the School Board and the Administrator
19 fail to agree on the type of accreditation and stand-
20 ards to apply, the decision of the school board with
21 the approval of the tribal governing body shall be
22 final.

23 “(3) ASSISTANCE TO SCHOOL BOARDS.—The
24 Secretary, through contracts and grants, shall assist
25 school boards of contract or grant schools in imple-

1 menting standards established under subsections (c),
2 (d), and (e), if the school boards request that such
3 standards, in part or in whole, be implemented.

4 “(4) FISCAL CONTROL AND FUND ACCOUNTING
5 STANDARDS.—The Bureau shall, either directly or
6 through a contract with an Indian organization, es-
7 tablish a consistent system of reporting standards
8 for fiscal control and fund accounting for all con-
9 tract and grant schools. Such standards shall yield
10 data results comparable to the data provided by Bu-
11 reau schools.

12 “(g) ANNUAL PLAN FOR MEETING OF STAND-
13 ARDS.—

14 “(1) IN GENERAL.—Except as provided in sub-
15 sections (e) and (f), the Secretary shall begin to im-
16 plement the standards established under this section
17 on the date of their establishment.

18 “(2) PLAN.—On an annual basis, the Secretary
19 shall submit to the appropriate committees of Con-
20 gress, all Bureau funded schools, and the tribal gov-
21 erning bodies of such schools a detailed plan to
22 bring all Bureau funded schools up to the level re-
23 quired by the applicable standards established under
24 this section. Such plan shall include detailed infor-
25 mation on the status of each school’s educational

1 program in relation to the applicable standards es-
2 tablished under this section, specific cost estimates
3 for meeting such standards at each school, and spe-
4 cific timelines for bringing each school up to the
5 level required by such standards.

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

7 “(1) IN GENERAL.—Except as specifically re-
8 quired by law, no Bureau funded school or dor-
9 mitory operated on or after January 1, 1992, may
10 be closed, consolidated, or transferred to another au-
11 thority and no program of such a school may be sub-
12 stantially curtailed except in accordance with the re-
13 quirements of this subsection.

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

16 “(A) in those cases in which the tribal gov-
17 erning body for a school, or the local school
18 board concerned (if designated by the tribal
19 governing body to act under this paragraph),
20 requests the closure, consolidation, or substan-
21 tial curtailment; or

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

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

7 “(4) NOTIFICATION.—

8 “(A) CONSIDERATION.—Whenever closure,
9 transfer to another authority, consolidation, or
10 substantial curtailment of a school program of
11 a Bureau school is under active consideration or
12 review by any division of the Bureau or the De-
13 partment of the Interior, the head of the divi-
14 sion or the Secretary shall ensure that the af-
15 fected tribe, tribal governing body, and local
16 school board, are notified (in writing) imme-
17 diately, kept fully and currently informed, and
18 afforded an opportunity to comment with re-
19 spect to such consideration or review.

20 “(B) FORMAL DECISION.—When the head
21 of any division of the Bureau or the Secretary
22 makes a formal decision to close, transfer to an-
23 other authority, consolidate, or substantially
24 curtail a school program of a Bureau school,
25 the head of the division or the Secretary shall

1 notify (in writing) the affected tribes, tribal
2 governing body, and local school board at least
3 6 months prior to the end of the academic year
4 preceding the date of the proposed action.

5 “(C) COPIES OF NOTIFICATIONS AND IN-
6 FORMATION.—The Secretary shall transmit cop-
7 ies of the notifications described in this para-
8 graph promptly to the appropriate committees
9 of Congress and publish such notifications cop-
10 ies in the Federal Register.

11 “(5) REPORT.—

12 “(A) IN GENERAL.—The Secretary shall
13 submit a report to the appropriate committees
14 of Congress, the affected tribal governing body
15 and the designated local school board, describ-
16 ing the process of the active consideration or re-
17 view referred to in paragraph (4).

18 “(B) CONTENTS.—The report shall include
19 the results of a study of the impact of the ac-
20 tion under consideration or review on the stu-
21 dent population of the school involved, identify
22 those students at the school with particular
23 educational and social needs, and ensure that
24 alternative services are available to such stu-
25 dents. Such report shall include a description of

1 consultation conducted between the potential
2 service provider and current service provider of
3 such services, parents, tribal representatives,
4 the tribe involved, and the Director of the Of-
5 fice regarding such students.

6 “(6) LIMITATION ON CERTAIN ACTIONS.—No
7 irreversible action may be taken to further any pro-
8 posed school closure, transfer to another authority,
9 consolidation, or substantial curtailment described in
10 this subsection concerning a school (including any
11 action that would prejudice the personnel or pro-
12 grams of such school) prior to the end of the first
13 full academic year after the report described in para-
14 graph (5) is submitted.

15 “(7) TRIBAL GOVERNING BODY APPROVAL RE-
16 QUIRED FOR CERTAIN ACTIONS.—The Secretary may
17 terminate, contract, transfer to any other authority,
18 consolidate, or substantially curtail the operation or
19 facilities of—

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

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

1 “(C) any school board of a school operated
 2 under a grant under the Tribally Controlled
 3 Schools Act of 1988,
 4 only if the tribal governing body for the school in-
 5 volved approves such action.

6 “(i) APPLICATION FOR CONTRACTS OR GRANTS FOR
 7 NON-BUREAU FUNDED SCHOOLS OR EXPANSION OF BU-
 8 REAU FUNDED SCHOOLS.—

9 “(1) IN GENERAL.—

10 “(A) APPLICATIONS.—

11 “(i) TRIBES; SCHOOL BOARDS.—The
 12 Secretary shall only consider the factors
 13 described in subparagraph (B) in
 14 reviewing—

15 “(I) applications from any tribe
 16 for the awarding of a contract or
 17 grant for a school that is not a Bu-
 18 reau funded school; and

19 “(II) applications from any tribe
 20 or school board associated with any
 21 Bureau funded school for the award-
 22 ing of a contract or grant for the ex-
 23 pansion of a Bureau funded school
 24 that would increase the amount of

1 funds received by the tribe or school
2 board under section 1126.

3 “(ii) LIMITATION.—With respect to
4 applications described in this subpara-
5 graph, the Secretary shall give consider-
6 ation to all the factors described in sub-
7 paragraph (B), but no such application
8 shall be denied based primarily upon the
9 geographic proximity of comparable public
10 education.

11 “(B) FACTORS.—With respect to applica-
12 tions described in subparagraph (A) the Sec-
13 retary shall consider the following factors relat-
14 ing to the program and services that are the
15 subject of the application:

16 “(i) The adequacy of existing facilities
17 to support the proposed program and serv-
18 ices or the applicant’s ability to obtain or
19 provide adequate facilities.

20 “(ii) Geographic and demographic fac-
21 tors in the affected areas.

22 “(iii) The adequacy of the applicant’s
23 program plans or, in the case of a Bureau
24 funded school, of a projected needs anal-

1 ysis conducted either by the tribe or the
2 Bureau.

3 “(iv) Geographic proximity of com-
4 parable public education.

5 “(v) The stated needs of all affected
6 parties, including students, families, tribal
7 governing bodies at both the central and
8 local levels, and school organizations.

9 “(vi) Adequacy and comparability of
10 programs and services already available.

11 “(vii) Consistency of the proposed
12 program and services with tribal edu-
13 cational codes or tribal legislation on edu-
14 cation.

15 “(viii) The history and success of
16 these services for the proposed population
17 to be served, as determined from all fac-
18 tors, including standardized examination
19 performance.

20 “(2) DETERMINATION ON APPLICATION.—

21 “(A) PERIOD.—The Secretary shall make
22 a determination concerning whether to approve
23 any application described in paragraph (1)(A)
24 not later than 180 days after the date such ap-
25 plication is submitted to the Secretary.

1 “(B) FAILURE TO MAKE DETERMINA-
2 TION.—If the Secretary fails to make the deter-
3 mination with respect to an application by the
4 date described in subparagraph (A), the appli-
5 cation shall be treated as having been approved
6 by the Secretary.

7 “(3) REQUIREMENTS FOR APPLICATIONS.—

8 “(A) APPROVAL.—Notwithstanding para-
9 graph (2)(B), an application described in para-
10 graph (1)(A) may be approved by the Secretary
11 only if—

12 “(i) the application has been approved
13 by the tribal governing body of the stu-
14 dents served by (or to be served by) the
15 school or program that is the subject of
16 the application; and

17 “(ii) the tribe or designated school
18 board involved submits written evidence of
19 such approval with the application.

20 “(B) INFORMATION.—Each application de-
21 scribed in paragraph (1)(A) shall contain infor-
22 mation discussing each of the factors described
23 in paragraph (1)(B).

1 “(4) DENIAL OF APPLICATIONS.—If the Sec-
2 retary denies an application described in paragraph
3 (1)(A), the Secretary shall—

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

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

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

15 “(D) provide to the applicant a notice of
16 the applicant’s appeals rights and an oppor-
17 tunity to appeal the decision resulting from the
18 hearing under subparagraph (D).

19 “(5) EFFECTIVE DATE OF A SUBJECT APPLICA-
20 TION.—

21 “(A) IN GENERAL.—Except as otherwise
22 provided in this paragraph, the action that is
23 the subject of any application described in para-
24 graph (1)(A) that is approved by the Secretary
25 shall become effective—

1 “(i) on the first day of the academic
2 year following the fiscal year in which the
3 application is approved; or

4 “(ii) on an earlier date determined by
5 the Secretary.

6 “(B) APPLICATION TREATED AS AP-
7 PROVED.—If an application is treated as having
8 been approved by the Secretary under para-
9 graph (2)(B), the action that is the subject of
10 the application shall become effective—

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

14 “(ii) on an earlier date determined by
15 the Secretary.

16 “(6) STATUTORY CONSTRUCTION.—Nothing in
17 this section shall be construed to preclude the expan-
18 sion of grades and related facilities at a Bureau
19 funded school, if such expansion is paid for with
20 non-Bureau funds.

21 “(j) JOINT ADMINISTRATION.—Funds received by
22 Bureau funded schools from the Bureau of Indian Affairs
23 and under any program from the Department of Edu-
24 cation or any other Federal agency for the purpose of pro-
25 viding education or related services, and other funds re-

1 ceived for such education and related services from non-
2 Federally funded programs, may apportion joint adminis-
3 trative, transportation, and program costs between such
4 programs and the funds shall be retained at the school.

5 “(k) GENERAL USE OF FUNDS.—Funds received by
6 Bureau funded schools from the Bureau of Indian Affairs
7 and under any program from the Department of Edu-
8 cation or any other Federal agency for the purpose of pro-
9 viding education or related services may be used for
10 schoolwide projects to improve the educational program of
11 the schools for all Indian students.

12 “(l) STUDY ON ADEQUACY OF FUNDS AND FOR-
13 MULAS.—

14 “(1) STUDY.—The Comptroller General of the
15 United States shall conduct a study, in consultation
16 with tribes and local school boards, to determine the
17 adequacy of funding, and formulas used by the Bu-
18 reau to determine funding, for programs operated by
19 Bureau funded schools, taking into account unique
20 circumstances applicable to Bureau funded schools,
21 including isolation, limited English proficiency of In-
22 dian students, the costs of educating disabled Indian
23 students in isolated settings, and other factors that
24 may disproportionately increase per-pupil costs, as

1 well as expenditures for comparable purposes in pub-
2 lic schools nationally.

3 “(2) FINDINGS.—On completion of the study
4 under paragraph (1), the Secretary shall take such
5 action as may be necessary to ensure distribution of
6 the findings of the study to the appropriate author-
7 izing and appropriating committees of Congress, all
8 affected tribes, local school boards, and associations
9 of local school boards.

10 **“SEC. 1122. NATIONAL STANDARDS FOR HOME LIVING SITU-**
11 **ATIONS.**

12 “(a) IN GENERAL.—The Secretary, in accordance
13 with section 1137, shall revise the national standards for
14 home-living (dormitory) situations to include such factors
15 as heating, lighting, cooling, adult-child ratios, need for
16 counselors (including special needs related to off-reserva-
17 tion home-living (dormitory) situations), therapeutic pro-
18 grams, space, and privacy. Such standards shall be imple-
19 mented in Bureau schools. Any subsequent revisions shall
20 also be in accordance with such section 1137.

21 “(b) IMPLEMENTATION.—The Secretary shall imple-
22 ment the revised standards established under this section
23 immediately upon their issuance.

24 “(c) PLAN.—

1 “(1) IN GENERAL.—Upon the submission of
2 each annual budget request for Bureau educational
3 services (as contained in the President’s annual
4 budget request under section 1105 of title 31,
5 United States Code), the Secretary shall submit to
6 the appropriate committees of Congress, the tribes,
7 and the affected schools, and publish in the Federal
8 Register, a detailed plan to bring all Bureau funded
9 schools that have dormitories or provide home-living
10 (dormitory) situations into compliance with the
11 standards established under this section.

12 “(2) CONTENTS.—Each plan under paragraph
13 (1) shall include—

14 “(A) a statement of the relative needs of
15 each of the home-living schools and projected
16 future needs of each of the home-living schools;

17 “(B) detailed information on the status of
18 each of the schools in relation to the standards
19 established under this section;

20 “(C) specific cost estimates for meeting
21 each standard for each such school;

22 “(D) aggregate cost estimates for bringing
23 all such schools into compliance with the stand-
24 ards established under this section; and

1 “(E) specific timelines for bringing each
2 school into compliance with such standards.

3 “(d) WAIVER.—A tribal governing body or local
4 school board may, in accordance with section 1121(e),
5 waive the standards established under this section for a
6 school described in subsection (a) in the same manner as
7 the governing body or school board may waive the stand-
8 ards provided under section 1121(e) for a Bureau funded
9 school.

10 “(e) CLOSURE FOR FAILURE TO MEET STANDARDS
11 PROHIBITED.—No school in operation on or before July
12 1, 1999 (regardless of compliance or noncompliance with
13 the standards established under this section), may be
14 closed, transferred to another authority, or consolidated,
15 and no program of such a school may be substantially cur-
16 tailed, because the school failed to meet such standards.

17 **“SEC. 1123. SCHOOL BOUNDARIES.**

18 “(a) ESTABLISHMENT BY SECRETARY.—Except as
19 described in subsection (b), the Secretary shall establish,
20 by regulation, separate geographical attendance areas for
21 each Bureau funded school.

22 “(b) ESTABLISHMENT BY TRIBAL BODY.—In any
23 case in which there is more than 1 Bureau funded school
24 located on a reservation of a tribe, at the direction of the
25 tribal governing body, the relevant school boards of the

1 Bureau funded schools on the reservation may, by mutual
2 consent, establish the boundaries of the relevant geo-
3 graphical attendance areas for such schools, subject to the
4 approval of the tribal governing body. Any such bound-
5 aries so established shall be accepted by the Secretary.

6 “(c) BOUNDARY REVISIONS.—

7 “(1) IN GENERAL.—Effective on July 1, 1999,
8 the Secretary may not establish or revise boundaries
9 of a geographical attendance area with respect to
10 any Bureau funded school unless the tribal gov-
11 erning body concerned or the school board concerned
12 (if designated by the tribal governing body to act
13 under this paragraph) has been afforded—

14 “(A) at least 6 months notice of the inten-
15 tion of the Secretary to establish or revise such
16 boundaries; and

17 “(B) the opportunity to propose alternative
18 boundaries.

19 “(2) PETITIONS.—Any tribe may submit a peti-
20 tion to the Secretary requesting a revision of the
21 geographical attendance area boundaries referred to
22 in paragraph (1).

23 “(3) BOUNDARIES.—The Secretary shall accept
24 proposed alternative boundaries described in para-
25 graph (1)(B) or revised boundaries described in a

1 petition submitted under paragraph (2) unless the
2 Secretary finds, after consultation with the affected
3 tribe, that such alternative or revised boundaries do
4 not reflect the needs of the Indian students to be
5 served or do not provide adequate stability to all of
6 the affected programs. On accepting the boundaries,
7 the Secretary shall publish information describing
8 the boundaries in the Federal Register.

9 “(4) TRIBAL RESOLUTION DETERMINATION.—
10 Nothing in this section shall be interpreted as deny-
11 ing a tribal governing body the authority, on a con-
12 tinuing basis, to adopt a tribal resolution allowing
13 parents a choice of the Bureau funded school their
14 child may attend, regardless of the geographical at-
15 tendance area boundaries established under this sec-
16 tion.

17 “(d) FUNDING RESTRICTIONS.—The Secretary shall
18 not deny funding to a Bureau funded school for any eligi-
19 ble Indian student attending the school solely because that
20 student’s home or domicile is outside of the boundaries
21 of the geographical attendance area established for that
22 school under this section. No funding shall be made avail-
23 able for transportation without tribal authorization to en-
24 able the school to provide transportation for any student

1 to or from the school and a location outside the approved
2 attendance area of the school.

3 “(e) RESERVATION AS BOUNDARY.—In any case in
4 which there is only 1 Bureau funded school located on a
5 reservation, the boundaries of the geographical attendance
6 area for the school shall be the boundaries (as established
7 by treaty, agreement, legislation, court decision, or execu-
8 tive decision and as accepted by the tribe involved) of the
9 reservation served, and those students residing near the
10 reservation shall also receive services from such school.

11 “(f) OFF-RESERVATION HOME-LIVING SCHOOLS.—
12 Notwithstanding the boundaries of the geographical at-
13 tendance areas established under this section, each Bu-
14 reau funded school that is an off-reservation home-living
15 school shall implement special emphasis programs and
16 permit the attendance of students requiring the programs.
17 The programs provided for such students shall be coordi-
18 nated among education line officers, the families of the
19 students, the schools, and the entities operating programs
20 that referred the students to the schools.

21 **“SEC. 1124. FACILITIES CONSTRUCTION.**

22 “(a) NATIONAL SURVEY OF FACILITIES CONDI-
23 TIONS.—

24 “(1) IN GENERAL.—Not later than 12 months
25 after the date of enactment of the Native American

1 Education Improvement Act of 2001, the General
2 Accounting Office shall compile, collect, and secure
3 the data that is needed to prepare a national survey
4 of the physical conditions of all Bureau funded
5 school facilities.

6 “(2) DATA AND METHODOLOGIES.—In pre-
7 paring the national survey required under paragraph
8 (1), the General Accounting Office shall use the fol-
9 lowing data and methodologies:

10 “(A) The existing Department of Defense
11 formula for determining the condition and ade-
12 quacy of Department of Defense facilities.

13 “(B) Data related to conditions of Bureau
14 funded schools that has previously been com-
15 piled, collected, or secured from whatever
16 source derived so long as the data is relevant,
17 timely, and necessary to the survey.

18 “(C) The methodologies of the American
19 Institute of Architects, or other accredited and
20 reputable architecture or engineering associa-
21 tions.

22 “(3) CONSULTATIONS.—

23 “(A) IN GENERAL.—In carrying out the
24 survey required under paragraph (1), the Gen-
25 eral Accounting Office shall, to the maximum

1 extent practicable, consult (and if necessary
2 contract) with national, regional, and tribal In-
3 dian education organizations to ensure that a
4 complete and accurate national survey is
5 achieved.

6 “(B) REQUESTS FOR INFORMATION.—All
7 Bureau funded schools shall comply with rea-
8 sonable requests for information by the General
9 Accounting Office and shall respond to such re-
10 quests in a timely fashion.

11 “(4) SUBMISSION TO CONGRESS.—Not later
12 than 24 months after the date of enactment of the
13 Native American Education Improvement Act of
14 2001, the General Accounting Office shall submit
15 the results of the national survey conducted under
16 paragraph (1) to the Committee on Indian Affairs
17 and Committee on Appropriations of the Senate, and
18 the Committee on Resources and Committee on Ap-
19 propriations of the House.

20 “(5) NEGOTIATED RULEMAKING COMMITTEE.—

21 “(A) IN GENERAL.—Not later than 6
22 months after the date on which the submission
23 is made under paragraph (4), the Secretary
24 shall establish a negotiated rule making com-
25 mittee pursuant to section 1137(c). The nego-

1 tiated rulemaking committee shall prepare and
2 submit to the Secretary the following:

3 “(i) A catalogue of the condition of
4 school facilities at all Bureau funded
5 schools that—

6 “(I) rates such facilities with re-
7 spect to the rate of deterioration and
8 useful life structures and major sys-
9 tems;

10 “(II) establishes a routine main-
11 tenance schedule for each facility; and

12 “(III) makes projections on the
13 amount of funds needed to keep each
14 school viable, consistent with the
15 standards of this Act.

16 “(ii) A school replacement and new
17 construction report that determines re-
18 placement and new construction need, and
19 a formula for the equitable distribution of
20 funds to address such need, for Bureau
21 funded schools. Such formula shall utilize
22 necessary factors in determining an equi-
23 table distribution of funds, including—

24 “(I) the size of school;

25 “(II) school enrollment;

1 “(III) the age of the school;

2 “(IV) the condition of the school;

3 “(V) environmental factors at the
4 school; and

5 “(VI) school isolation.

6 “(iii) A renovation repairs report that
7 determines renovation need (major and
8 minor), and a formula for the equitable
9 distribution of funds to address such need,
10 for Bureau funded schools. Such report
11 shall identify needed repairs or renovations
12 with respect to a facility, or a part of a fa-
13 cility, or the grounds of the facility, to
14 remedy a need based on disabilities access
15 or health and safety changes to a facility.
16 The formula developed shall utilize nec-
17 essary factors in determining an equitable
18 distribution of funds, including the factors
19 described in subparagraph (B).

20 “(B) Not later 24 months after the nego-
21 tiated rulemaking committee is established
22 under subparagraph (A), the reports described
23 in clauses (ii) and (iii) of subparagraph (A)
24 shall be submitted to the committees of Con-
25 gress referred to in paragraph (4), the national

1 and regional Indian education organizations,
2 and to all Indian tribes.

3 “(6) FACILITIES INFORMATION SYSTEMS SUP-
4 PORT DATABASE.—The Secretary shall develop a
5 Facilities Information Systems Support Database to
6 maintain and update the information contained in
7 the reports under clauses (ii) and (iii) of paragraph
8 (5)(A) and the information contained in the survey
9 conducted under paragraph (1). The system shall be
10 updated every 3 years by the Bureau of Indian Af-
11 fairs and monitored by General Accounting Office,
12 and shall be made available to Indian tribes, Bureau
13 funded schools, and Congress.

14 “(b) COMPLIANCE WITH HEALTH AND SAFETY
15 STANDARDS.—The Secretary shall immediately begin to
16 bring all schools, dormitories, and other Indian education-
17 related facilities operated by the Bureau or under contract
18 or grant with the Bureau into compliance with all applica-
19 ble tribal, Federal, or State health and safety standards,
20 whichever provides greater protection (except that the
21 tribal standards to be applied shall be no greater than any
22 otherwise applicable Federal or State standards), with sec-
23 tion 504 of the Rehabilitation Act of 1973, and with the
24 Americans with Disabilities Act of 1990. Nothing in this
25 section shall require termination of the operations of any

1 facility which does not comply with such provisions and
2 which is in use on the date of the enactment of the Native
3 American Education Improvement Act of 2001.

4 “(c) COMPLIANCE PLAN.—At the time that the an-
5 nual budget request for Bureau educational services is
6 presented, the Secretary shall submit to the appropriate
7 committees of Congress a detailed plan to bring all facili-
8 ties covered under subsection (b) of this section into com-
9 pliance with the standards referred to in subsection (b).
10 Such plan shall include detailed information on the status
11 of each facility’s compliance with such standards, specific
12 cost estimates for meeting such standards at each school,
13 and specific timelines for bringing each school into compli-
14 ance with such standards.

15 “(d) CONSTRUCTION PRIORITIES.—

16 “(1) SYSTEM TO ESTABLISH PRIORITIES.—The
17 Secretary shall annually prepare and submit to the
18 appropriate committees of Congress, and publish in
19 the Federal Register, information describing the sys-
20 tem used by the Secretary to establish priorities for
21 replacement and construction projects for Bureau
22 funded schools and home-living schools, including
23 boarding schools, and dormitories. On making each
24 budget request described in subsection (c), the Sec-
25 retary shall publish in the Federal Register and sub-

1 mit with the budget request a list of all of the Bu-
2 reau funded school construction priorities, as de-
3 scribed in paragraph (2).

4 “(2) LONG-TERM CONSTRUCTION AND RE-
5 PLACEMENT LIST.—In addition to submitting the
6 plan described in subsection (c), the Secretary
7 shall—

8 “(A) not later than 18 months after the
9 date of enactment of the Native American Edu-
10 cation Improvement Act of 2001, establish a
11 long-term construction and replacement priority
12 list for all Bureau funded schools;

13 “(B) using the list prepared under sub-
14 paragraph (A), propose a list for the orderly re-
15 placement of all Bureau funded education-re-
16 lated facilities over a period of 40 years to fa-
17 cilitate planning and scheduling of budget re-
18 quests;

19 “(C) publish the list prepared under sub-
20 paragraph (B) in the Federal Register and
21 allow a period of not less than 120 days for
22 public comment;

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

1 “(E) publish a final list in the Federal
2 Register.

3 “(3) EFFECT ON OTHER LIST.—Nothing in this
4 section shall be construed as interfering with or
5 changing in any way the construction and replace-
6 ment priority list established by the Secretary, as
7 the list exists on the date of enactment of the Native
8 American Education Improvement Act of 2001.

9 “(e) HAZARDOUS CONDITION AT BUREAU FUNDED
10 SCHOOL.—

11 “(1) CLOSURE, CONSOLIDATION, OR CURTAIL-
12 MENT.—

13 “(A) IN GENERAL.—A Bureau funded
14 school may be closed or consolidated, and the
15 programs of a Bureau funded school may be
16 substantially curtailed by reason of facility con-
17 ditions that constitute an immediate hazard to
18 health and safety only if a health and safety of-
19 ficer of the Bureau and an individual des-
20 ignated by the tribe involved under subpara-
21 graph (B), determine that such conditions exist
22 at a facility of the Bureau funded school.

23 “(B) DESIGNATION OF INDIVIDUAL BY
24 TRIBE.—To be designated by a tribe for pur-

1 poses of subparagraph (A), an individual
2 shall—

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

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

8 or

9 “(iii) have a significant educational
10 background in the health and safety of fa-
11 cilities with respect to occupancy.

12 “(C) INSPECTION.—In making a deter-
13 mination described in subparagraph (A), the
14 Bureau health and safety officer and the indi-
15 vidual designated by the tribe shall conduct an
16 inspection of the conditions of such facility in
17 order to determine whether conditions at such
18 facility constitute an immediate hazard to
19 health and safety.

20 “(D) FAILURE TO CONCUR.—If the Bu-
21 reau health and safety officer, and the indi-
22 vidual designated by the tribe, conducting the
23 inspection of a facility required under subpara-
24 graph (A) do not concur that conditions at the
25 facility constitute an immediate hazard to

1 health and safety, such officer and individual
2 shall immediately notify the tribal governing
3 body and provide written information related to
4 their determinations.

5 “(E) CONSIDERATION BY TRIBAL GOV-
6 ERNING BODY.—Not later than 10 days after a
7 tribal governing body received notice under sub-
8 paragraph (D), the tribal governing body shall
9 consider all information related to the deter-
10 minations of the Bureau health and safety offi-
11 cer and the individual designated by the tribe
12 and make a determination regarding the clo-
13 sure, consolidation, or curtailment involved.

14 “(F) CESSATION OF CLOSURE, CONSOLIDA-
15 TION, OR CURTAILMENT.—If the Bureau health
16 and safety officer, and the individual designated
17 by the tribe, conducting the inspection of a fa-
18 cility required under subparagraph (A), concur
19 that conditions at the facility constitute an im-
20 mediate hazard to health and safety, or if the
21 tribal governing body makes such a determina-
22 tion under subparagraph (E) the facility in-
23 volved shall be closed immediately.

24 “(G) GENERAL CLOSURE REPORT.—If a
25 Bureau funded school is temporarily closed or

1 consolidated or the programs of a Bureau fund-
2 ed school are temporarily substantially curtailed
3 under this subsection and the Secretary deter-
4 mines that the closure, consolidation, or curtail-
5 ment will exceed 1 year, the Secretary shall
6 submit to the appropriate committees of Con-
7 gress, the affected tribe, and the local school
8 board, not later than 3 months after the date
9 on which the closure, consolidation, or curtail-
10 ment was initiated, a report that specifies—

11 “(i) the reasons for such temporary
12 action;

13 “(ii) the actions the Secretary is tak-
14 ing to eliminate the conditions that con-
15 stitute the hazard;

16 “(iii) an estimated date by which the
17 actions described in clause (ii) will be con-
18 cluded; and

19 “(iv) a plan for providing alternate
20 education services for students enrolled at
21 the school that is to be closed.

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

24 “(A) CLASSROOM ACTIVITIES.—The Sec-
25 retary shall permit the local school board to

1 temporarily utilize facilities adjacent to the
2 school, or satellite facilities, if such facilities are
3 suitable for conducting classroom activities. In
4 permitting the use of facilities under the pre-
5 ceding sentence, the Secretary may waive appli-
6 cable minor standards under section 1121 relat-
7 ing to such facilities (such as the required num-
8 ber of exit lights or configuration of restrooms)
9 so long as such waivers do not result in the cre-
10 ation of an environment that constitutes an im-
11 mediate and substantial threat to the health,
12 safety, and life of students and staff.

13 “(B) ADMINISTRATIVE ACTIVITIES.—The
14 provisions of subparagraph (A) shall apply with
15 respect to administrative personnel if the facili-
16 ties involved are suitable for activities per-
17 formed by such personnel.

18 “(C) TEMPORARY.—In this paragraph, the
19 term ‘temporary’ means—

20 “(i) with respect to a school that is to
21 be closed for not more than 1 year, 3
22 months or less; and

23 “(ii) with respect to a school that is to
24 be closed for not less than 1 year, a time

1 period determined appropriate by the Bu-
2 reau.

3 “(3) TREATMENT OF CLOSURE.—Any closure of
4 a Bureau funded school under this subsection for a
5 period that exceeds 1 month but is less than 1 year,
6 shall be treated by the Bureau as an emergency fa-
7 cility improvement and repair project.

8 “(4) USE OF FUNDS.—With respect to a Bu-
9 reau funded school that is closed under this sub-
10 section, the tribal governing body, or the designated
11 local school board of each Bureau funded school, in-
12 volved may authorize the use of school operations
13 funds, which have otherwise been allocated for such
14 school, to abate the hazardous conditions without
15 further action by Congress.

16 “(f) FUNDING REQUIREMENT.—

17 “(1) DISTRIBUTION OF FUNDS.—Beginning
18 with the first fiscal year following the date of enact-
19 ment of the Native American Education Improve-
20 ment Act of 2001, all funds appropriated to the
21 budget accounts for the operations and maintenance
22 of Bureau funded schools shall be distributed by for-
23 mula to the schools. No funds from these accounts
24 may be retained or segregated by the Bureau to pay

1 for administrative or other costs of any facilities
2 branch or office, at any level of the Bureau.

3 “(2) REQUIREMENTS FOR CERTAIN USES.—

4 “(A) AGREEMENT.—The Secretary shall
5 not withhold funds that would be distributed
6 under paragraph (1) to any grant or contract
7 school, in order to use the funds for mainte-
8 nance or any other facilities or road-related
9 purposes, unless such school—

10 “(i) has consented to the withholding
11 of such funds, including the amount of the
12 funds, the purpose for which the funds will
13 be used, and the timeline for the services
14 to be provided with the funds; and

15 “(ii) has provided the consent by en-
16 tering into an agreement that is—

17 “(I) a modification to the con-
18 tract; and

19 “(II) in writing (in the case of a
20 school that receives a grant).

21 “(B) CANCELLATION.—The school may, at
22 the end of any fiscal year, cancel an agreement
23 entered into under this paragraph, on giving
24 the Bureau 30 days notice of the intent of the
25 school to cancel the agreement.

1 “(g) NO REDUCTION IN FEDERAL FUNDING.—Noth-
2 ing in this section shall be construed to reduce any Federal
3 funding for a school because the school received funding
4 for facilities improvement or construction from a State or
5 any other source.

6 **“SEC. 1125. BUREAU OF INDIAN AFFAIRS EDUCATION FUNC-**
7 **TIONS.**

8 “(a) FORMULATION AND ESTABLISHMENT OF POL-
9 ICY AND PROCEDURE; SUPERVISION OF PROGRAMS AND
10 EXPENDITURES.—The Secretary shall vest in the Assist-
11 ant Secretary for Indian Affairs all functions with respect
12 to formulation and establishment of policy and procedure,
13 and supervision of programs and expenditures of Federal
14 funds for the purpose of Indian education administered
15 by the Bureau. The Assistant Secretary shall carry out
16 such functions through the Director of the Office of Indian
17 Education Programs.

18 “(b) DIRECTION AND SUPERVISION OF PERSONNEL
19 OPERATIONS.—

20 “(1) IN GENERAL.—Not later than 6 months
21 after the date of the enactment of the Native Amer-
22 ican Education Improvement Act of 2001, the Direc-
23 tor of the Office shall direct and supervise the oper-
24 ations of all personnel directly and substantially in-
25 volved in the provision of education services by the

1 Bureau, including school or institution custodial or
2 maintenance personnel, and facilities management,
3 contracting, procurement, and finance personnel.

4 “(2) TRANSFERS.—The Assistant Secretary for
5 Indian Affairs shall coordinate the transfer of func-
6 tions relating to procurements for, contracts of, op-
7 eration of, and maintenance of schools and other
8 support functions to the Director.

9 “(c) INHERENT FEDERAL FUNCTION.—For purposes
10 of this Act, all functions relating to education that are
11 located at the Area or Agency level and performed by an
12 education line officer shall be subject to contract under
13 the Indian Self-Determination and Education Assistance
14 Act, unless determined by the Secretary to be inherently
15 Federal functions.

16 “(d) EVALUATION OF PROGRAMS; SERVICES AND
17 SUPPORT FUNCTIONS; TECHNICAL AND COORDINATION
18 ASSISTANCE.—Education personnel who are under the di-
19 rection and supervision of the Director of the Office in
20 accordance with subsection (b)(1) shall—

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

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

1 “(3) provide technical and coordination assist-
2 ance in areas such as procurement, contracting,
3 budgeting, personnel, curricula, and operation and
4 maintenance of school facilities.

5 “(e) CONSTRUCTION, IMPROVEMENT, OPERATION,
6 AND MAINTENANCE OF FACILITIES.—

7 “(1) PLAN FOR CONSTRUCTION.—The Assistant
8 Secretary for Indian Affairs shall submit as part of
9 the annual budget request for educational services
10 (as contained in the President’s annual budget re-
11 quest under section 1105 of title 31, United States
12 Code) a plan—

13 “(A) for the construction of school facili-
14 ties in accordance with section 1124(d);

15 “(B) for the improvement and repair of
16 education facilities and for establishing prior-
17 ities among the improvement and repair
18 projects involved, which together shall form the
19 basis for the distribution of appropriated funds;
20 and

21 “(C) for capital improvements to education
22 facilities to be made over the 5 years succeeding
23 the year covered by the plan.

24 “(2) PROGRAM FOR OPERATION AND MAINTEN-
25 NANCE.—

1 “(A) IN GENERAL.—

2 “(i) PROGRAM.—The Assistant Sec-
3 retary shall establish a program, including
4 a program for the distribution of funds ap-
5 propriated under this part, for the oper-
6 ation and maintenance of education facili-
7 ties. Such program shall include—

8 “(I) a method of computing the
9 amount necessary for the operation
10 and maintenance of each education fa-
11 cility;

12 “(II) a requirement of similar
13 treatment of all Bureau funded
14 schools;

15 “(III) a notice of an allocation of
16 the appropriated funds from the Di-
17 rector of the Office directly to the ap-
18 propriate education line officers and
19 school officials;

20 “(IV) a method for determining
21 the need for, and priority of, facilities
22 improvement and repair projects, both
23 major and minor; and

24 “(V) a system for conducting
25 routine preventive maintenance.

1 “(ii) MEETINGS.—In making the de-
2 termination referred to in clause (i)(IV),
3 the Assistant Secretary shall cause a series
4 of meetings to be conducted at the area
5 and agency level with representatives of
6 the Bureau funded schools in the cor-
7 responding areas and served by cor-
8 responding agencies, to receive comment
9 on the projects described in clause (i)(IV)
10 and prioritization of such projects.

11 “(B) MAINTENANCE.—The appropriate
12 education line officers shall make arrangements
13 for the maintenance of the education facilities
14 with the local supervisors of the Bureau mainte-
15 nance personnel. The local supervisors of Bu-
16 reau maintenance personnel shall take appro-
17 priate action to implement the decisions made
18 by the appropriate education line officers. No
19 funds made available under this part may be
20 authorized for expenditure for maintenance of
21 such an education facility unless the appro-
22 priate education line officer is assured that the
23 necessary maintenance has been, or will be, pro-
24 vided in a reasonable manner.

1 “(3) IMPLEMENTATION.—The requirements of
2 this subsection shall be implemented as soon as
3 practicable after the date of enactment of the Native
4 American Education Improvement Act of 2001.

5 “(f) ACCEPTANCE OF GIFTS AND BEQUESTS.—

6 “(1) GUIDELINES.—Notwithstanding any other
7 provision of law, the Director of the Office shall pro-
8 mulgate guidelines for the establishment and admin-
9 istration of mechanisms for the acceptance of gifts
10 and bequests for the use and benefit of particular
11 schools or designated Bureau operated education
12 programs, including, in appropriate cases, the estab-
13 lishment and administration of trust funds.

14 “(2) MONITORING AND REPORTS.—Except as
15 provided in paragraph (3), in a case in which a Bu-
16 reau operated education program is the beneficiary
17 of such a gift or bequest, the Director shall—

18 “(A) make provisions for monitoring use of
19 the gift or bequest; and

20 “(B) submit a report to the appropriate
21 committees of Congress that describes the
22 amount and terms of such gift or bequest, the
23 manner in which such gift or bequest shall be
24 used, and any results achieved by such use.

1 “(3) EXCEPTION.—The requirements of para-
 2 graph (2) shall not apply in the case of a gift or be-
 3 quest that is valued at \$5,000 or less.

4 “(g) FUNCTIONS CLARIFIED.—In this section, the
 5 term ‘functions’ includes powers and duties.

6 **“SEC. 1126. ALLOTMENT FORMULA.**

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

9 “(1) FORMULA.—The Secretary shall establish,
 10 by regulation adopted in accordance with section
 11 1137, a formula for determining the minimum an-
 12 nual amount of funds necessary to operate each Bu-
 13 reau funded school. In establishing such formula,
 14 the Secretary shall consider—

15 “(A) the number of eligible Indian stu-
 16 dents served by the school and the total student
 17 population of the school;

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

19 “(i) the isolation of the school;

20 “(ii) the need for special staffing,
 21 transportation, or educational programs;

22 “(iii) food and housing costs;

23 “(iv) maintenance and repair costs as-
 24 sociated with the physical condition of the
 25 educational facilities;

1 “(v) special transportation and other
2 costs of an isolated or small school;

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

7 “(vii) costs associated with greater
8 lengths of service by education personnel;

9 “(viii) the costs of therapeutic pro-
10 grams for students requiring such pro-
11 grams; and

12 “(ix) special costs for gifted and tal-
13 ented students;

14 “(C) the costs of providing academic serv-
15 ices that are at least equivalent to the services
16 provided by public schools in the State in which
17 the school is located;

18 “(D) whether the available funding will en-
19 able the school involved to comply with the ac-
20 creditation standards applicable to the school
21 under section 1121; and

22 “(E) such other relevant factors as the
23 Secretary determines are appropriate.

1 “(2) REVISION OF FORMULA.—On the estab-
2 lishment of the standards required in sections 1121
3 and 1122, the Secretary shall—

4 “(A) revise the formula established under
5 paragraph (1) to reflect the cost of compliance
6 with such standards; and

7 “(B)(i) by not later than January 1, 2002,
8 review the formula established under paragraph
9 (1) and take such action as may be necessary
10 to increase the availability of counseling and
11 therapeutic programs for students in off-res-
12 ervation home-living schools and other Bureau
13 operated residential facilities; and

14 “(ii) concurrently with any actions taken
15 under clause (i), review the standards estab-
16 lished under section 1121 to be certain that the
17 standards adequately provide for parental noti-
18 fication regarding, and consent for, such coun-
19 seling and therapeutic programs.

20 “(b) PRO RATA ALLOTMENT.—Notwithstanding any
21 other provision of law, Federal funds appropriated for the
22 general local operation of Bureau funded schools shall be
23 allotted on a pro rata basis in accordance with the formula
24 established under subsection (a).

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

3 “(1) ANNUAL ADJUSTMENT.—

4 “(A) IN GENERAL.—For fiscal year 2002,
5 and for each subsequent fiscal year, the Sec-
6 retary shall adjust the formula established
7 under subsection (a) to—

8 “(i) use a weighted factor of 1.2 for
9 each eligible Indian student enrolled in the
10 seventh and eighth grades of the school in
11 considering the number of eligible Indian
12 students served by the school;

13 “(ii) consider a school with an enroll-
14 ment of fewer than 50 eligible Indian stu-
15 dents as having an average daily attend-
16 ance of 50 eligible Indian students for pur-
17 poses of implementing the adjustment fac-
18 tor for small schools;

19 “(iii) take into account the provision
20 of residential services on less than a 9-
21 month basis at a school in a case in which
22 the school board and supervisor of the
23 school determine that the school will pro-
24 vide the services for fewer than 9 months
25 for the academic year involved;

1 “(iv) use a weighted factor of 2.0 for
2 each eligible Indian student that—

3 “(I) is gifted and talented; and

4 “(II) is enrolled in the school on
5 a full-time basis,

6 in considering the number of eligible In-
7 dian students served by the school; and

8 “(v) use a weighted factor of 0.25 for
9 each eligible Indian student who is enrolled
10 in a year long credit course in an Indian
11 or Native language as part of the regular
12 curriculum of a school, in considering the
13 number of eligible Indian students served
14 by such school.

15 “(B) TIMING.—The Secretary shall make
16 the adjustment required under subparagraph
17 (A)(v) for such school after—

18 “(i) the school board of such school
19 provides a certification of the Indian or
20 Native language curriculum of the school
21 to the Secretary, together with an estimate
22 of the number of full-time students ex-
23 pected to be enrolled in the curriculum in
24 the second academic year after the aca-

1 demic year for which the certification is
2 made; and

3 “(ii) the funds appropriated for allot-
4 ments under this section are designated, in
5 the appropriations Act appropriating such
6 funds, as the funds necessary to implement
7 such adjustment at such school without re-
8 ducing an allotment made under this sec-
9 tion to any school by virtue of such adjust-
10 ment.

11 “(2) RESERVATION OF AMOUNT.—

12 “(A) IN GENERAL.—From the funds allot-
13 ted in accordance with the formula established
14 under subsection (a) for each Bureau school,
15 the local school board of such school may re-
16 serve an amount which does not exceed the
17 greater of—

18 “(i) \$8,000; or

19 “(ii) the lesser of—

20 “(I) \$15,000; or

21 “(II) 1 percent of such allotted
22 funds,

23 for school board activities for such school, in-
24 cluding (notwithstanding any other provision of
25 law) meeting expenses and the cost of member-

1 ship in, and support of, organizations engaged
2 in activities on behalf of Indian education.

3 “(B) TRAINING.—Each local school board,
4 and any agency school board that serves as a
5 local school board for any grant or contract
6 school, shall ensure that each individual who is
7 a new member of the school board receives,
8 within 12 months after the individual becomes
9 a member of the school board, 40 hours of
10 training relevant to that individual’s service on
11 the board. Such training may include training
12 concerning legal issues pertaining to Bureau
13 funded schools, legal issues pertaining to school
14 boards, ethics, and other topics determined to
15 be appropriate by the school board.

16 “(d) RESERVATION OF AMOUNT FOR EMER-
17 GENCIES.—

18 “(1) IN GENERAL.—The Secretary shall reserve
19 from the funds available for allotment for each fiscal
20 year under this section an amount that, in the ag-
21 gregate, equals 1 percent of the funds available for
22 allotment for that fiscal year.

23 “(2) USE OF FUNDS.—Amounts reserved under
24 paragraph (1) shall be used, at the discretion of the
25 Director of the Office, to meet emergencies and un-

1 foreseen contingencies affecting the education pro-
2 grams funded under this section. Funds reserved
3 under this subsection may only be expended for edu-
4 cation services or programs, including emergency re-
5 pairs of education facilities, at a school site (as de-
6 fined in section 5204(c)(2) of the Tribally Controlled
7 Schools Act of 1988).

8 “(3) FUNDS REMAINING AVAILABLE.—Funds
9 reserved under this subsection shall remain available
10 without fiscal year limitation until expended. The
11 aggregate amount of such funds, from all fiscal
12 years, that is available for expenditure in a fiscal
13 year may not exceed an amount equal to 1 percent
14 of the funds available for allotment under this sec-
15 tion for that fiscal year.

16 “(4) REPORTS.—If the Secretary makes funds
17 available under this subsection, the Secretary shall
18 submit a report describing such action to the appro-
19 priate committees of Congress as part of the Presi-
20 dent’s next annual budget request under section
21 1105 of title 31, United States Code).

22 “(e) SUPPLEMENTAL APPROPRIATIONS.—Any funds
23 provided in a supplemental appropriations Act to meet in-
24 creased pay costs attributable to school level personnel of
25 Bureau funded schools shall be allotted under this section.

1 “(f) ELIGIBLE INDIAN STUDENT DEFINED.—In this
2 section, the term ‘eligible Indian student’ means a student
3 who—

4 “(1) is a member of, or is at least $\frac{1}{4}$ degree In-
5 dian blood descendant of a member of, a tribe that
6 is eligible for the special programs and services pro-
7 vided by the United States through the Bureau to
8 Indians because of their status as Indians;

9 “(2) resides on or near a reservation or meets
10 the criteria for attendance at a Bureau off-reserva-
11 tion home-living school; and

12 “(3) is enrolled in a Bureau funded school.

13 “(g) TUITION.—

14 “(1) IN GENERAL.—A Bureau school or con-
15 tract or grant school may not charge an eligible In-
16 dian student tuition for attendance at the school. A
17 Bureau school may not charge a student attending
18 the school under the circumstances described in
19 paragraph (2)(C) tuition for attendance at the
20 school.

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

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

6 “(ii) the local school board consents; and

7 “(B)(i) the student is a dependent of a
 8 Bureau, Indian Health Service, or tribal gov-
 9 ernment employee who lives on or near the
 10 school site; or

11 “(ii) tuition is paid for the student in an
 12 amount that is not more than the amount of
 13 tuition charged by the nearest public school dis-
 14 trict for out-of-district students, and is paid in
 15 addition to the school’s allotment under this
 16 section.

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

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

1 law, at the election of the local school board of a Bureau
 2 school made at any time during a fiscal year, a portion
 3 equal to not more than 15 percent of the funds allotted
 4 for the school under this section for the fiscal year shall
 5 remain available to the school for expenditure without fis-
 6 cal year limitation. The Assistant Secretary for Indian Af-
 7 fairs shall take such steps as may be necessary to imple-
 8 ment this subsection.

9 “(i) STUDENTS AT RICHFIELD DORMITORY, RICH-
 10 FIELD, UTAH.—Tuition for the instruction of each out-
 11 of-State Indian student in a home-living situation at the
 12 Richfield dormitory in Richfield, Utah, who attends Sevier
 13 County high schools in Richfield, Utah, for an academic
 14 year, shall be paid from Indian school equalization pro-
 15 gram funds authorized in this section and section 1129,
 16 at a rate not to exceed the weighted amount provided for
 17 under subsection (b) for a student for that year. No addi-
 18 tional administrative cost funds shall be provided under
 19 this part to pay for administrative costs relating to the
 20 instruction of the students.

21 **“SEC. 1127. ADMINISTRATIVE COST GRANTS.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) ADMINISTRATIVE COST.—

1 “(A) IN GENERAL.—The term ‘administra-
2 tive cost’ means the cost of necessary adminis-
3 trative functions which—

4 “(i) the tribe or tribal organization incurs
5 as a result of operating a tribal elementary or
6 secondary educational program;

7 “(ii) are not customarily paid by com-
8 parable Bureau operated programs out of direct
9 program funds; and

10 “(iii) are either—

11 “(I) normally provided for comparable
12 Bureau programs by Federal officials
13 using resources other than Bureau direct
14 program funds; or

15 “(II) are otherwise required of tribal
16 self-determination program operators by
17 law or prudent management practice.

18 “(B) INCLUSIONS.—The term ‘administra-
19 tive cost’ may include—

20 “(i) contract or grant (or other agreement)
21 administration;

22 “(ii) executive, policy, and corporate lead-
23 ership and decisionmaking;

24 “(iii) program planning, development, and
25 management;

1 “(iv) fiscal, personnel, property, and pro-
2 curement management;

3 “(v) related office services and record
4 keeping; and

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

7 “(2) BUREAU ELEMENTARY AND SECONDARY
8 FUNCTIONS.—The term ‘Bureau elementary and sec-
9 ondary functions’ means—

10 “(A) all functions funded at Bureau
11 schools by the Office;

12 “(B) all programs—

13 “(i) funds for which are appropriated
14 to other agencies of the Federal Govern-
15 ment; and

16 “(ii) which are administered for the
17 benefit of Indians through Bureau schools;
18 and

19 “(C) all operation, maintenance, and repair
20 funds for facilities and government quarters
21 used in the operation or support of elementary
22 and secondary education functions for the ben-
23 efit of Indians, from whatever source derived.

24 “(3) DIRECT COST BASE.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided in subparagraph (B), the direct cost
3 base of a tribe or tribal organization for the fis-
4 cal year is the aggregate direct cost program
5 funding for all tribal elementary or secondary
6 educational programs operated by the tribe or
7 tribal organization during—

8 “(i) the second fiscal year preceding such
9 fiscal year; or

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

14 “(B) FUNCTIONS NOT PREVIOUSLY OPER-
15 ATED.—In the case of Bureau elementary or
16 secondary education functions which have not
17 previously been operated by a tribe or tribal or-
18 ganization under contract, grant, or agreement
19 with the Bureau, the direct cost base for the
20 initial year shall be the projected aggregate di-
21 rect cost program funding for all Bureau ele-
22 mentary and secondary functions to be operated
23 by the tribe or tribal organization during that
24 fiscal year.

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

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

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

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

21 “(b) GRANTS; EFFECT UPON APPROPRIATED
22 AMOUNTS.—

23 “(1) GRANTS.—

24 “(A) IN GENERAL.—Subject to the avail-
25 ability of appropriated funds, the Secretary

1 shall provide a grant to each tribe or tribal or-
 2 ganization operating a contract or grant school,
 3 in an amount determined under this section, for
 4 the purpose of paying the administrative and
 5 indirect costs incurred in operating the contract
 6 or grant school, in order to—

7 “(i) enable the tribe or tribal organi-
 8 zation operating the school, without reduc-
 9 ing direct program services to the bene-
 10 ficiaries of the program, to provide all re-
 11 lated administrative overhead services and
 12 operations necessary to meet the require-
 13 ments of law and prudent management
 14 practice; and

15 “(ii) carry out other necessary sup-
 16 port functions that would otherwise be pro-
 17 vided by the Secretary or other Federal of-
 18 ficers or employees, from resources other
 19 than direct program funds, in support of
 20 comparable Bureau operated programs.

21 “(B) AMOUNT.—No school operated as a
 22 stand-alone institution shall receive less than
 23 \$200,000 per year under this paragraph.

24 “(2) EFFECT UPON APPROPRIATED
 25 AMOUNTS.—Amounts appropriated to fund the

1 grants provided for under this section shall be in ad-
2 dition to, and shall not reduce, the amounts appro-
3 priated for the program being administered by the
4 contract or grant school.

5 “(c) DETERMINATION OF GRANT AMOUNT.—

6 “(1) IN GENERAL.—The amount of the grant
7 provided to each tribe or tribal organization under
8 this section for each fiscal year shall be determined
9 by applying the administrative cost percentage rate
10 determined under subsection (d) of the tribe or trib-
11 al organization to the aggregate cost of the Bureau
12 elementary and secondary functions operated by the
13 tribe or tribal organization for which funds are re-
14 ceived from or through the Bureau. The administra-
15 tive cost percentage rate does not apply to programs
16 not relating to such functions that are operated by
17 the tribe or tribal organization.

18 “(2) DIRECT COST BASE FUNDS.—The Sec-
19 retary shall—

20 “(A) reduce the amount of the grant deter-
21 mined under paragraph (1) to the extent that
22 payments for administrative costs are actually
23 received by a tribe or tribal organization under
24 any Federal education program that is included

1 in the direct cost base of the tribe or tribal or-
2 ganization; and

3 “(B) take such actions as may be nec-
4 essary to be reimbursed by any other depart-
5 ment or agency of the Federal Government
6 (other than the Department of the Interior) for
7 the portion of grants made under this section
8 for the costs of administering any program for
9 Indians that is funded by appropriations made
10 to such other department or agency.

11 “(3) REDUCTIONS.—If the total amount of
12 funds necessary to provide grants to tribes and trib-
13 al organizations in the amounts determined under
14 paragraph (1) and (2) for a fiscal year exceeds the
15 amount of funds appropriated to carry out this sec-
16 tion for such fiscal year, the Secretary shall reduce
17 the amount of each grant determined under this
18 subsection for such fiscal year by an amount that
19 bears the same relationship to such excess as the
20 amount of such grants determined under this sub-
21 section bears to the total of all grants determined
22 under this subsection for all tribes and tribal organi-
23 zations for such fiscal year.

24 “(d) ADMINISTRATIVE COST PERCENTAGE RATE.—

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

5 “(A) the sum of—

6 “(i) the amount equal to—

7 “(I) the direct cost base of the
 8 tribe or tribal organization for the fis-
 9 cal year; multiplied by

10 “(II) the minimum base rate;

11 plus

12 “(ii) the amount equal to—

13 “(I) the standard direct cost
 14 base; multiplied by

15 “(II) the maximum base rate; by

16 “(B) the sum of—

17 “(i) the direct cost base of the tribe or
 18 tribal organization for the fiscal year; and

19 “(ii) the standard direct cost base.

20 “(2) ROUNDING.—The administrative cost per-
 21 centage rate shall be determined to $\frac{1}{100}$ of a per-
 22 cent.

23 “(e) COMBINING FUNDS.—

24 “(1) IN GENERAL.—Funds received by a tribe,
 25 tribal organization, or contract or grant school

1 through grants made under this section for tribal el-
2 ementary or secondary educational programs may be
3 combined by the tribe, tribal organization, or con-
4 tract or grant school and placed into a single admin-
5 istrative cost account without the necessity of main-
6 taining separate funding source accounting.

7 “(2) INDIRECT COST FUNDS.—Indirect cost
8 funds for programs at the school that share common
9 administrative services with the tribal elementary or
10 secondary educational programs may be included in
11 the administrative cost account described in para-
12 graph (1).

13 “(f) AVAILABILITY OF FUNDS.—Funds received
14 through a grant made under this section with respect to
15 tribal elementary or secondary educational programs at a
16 contract or grant school shall remain available to the con-
17 tract or grant school—

18 “(1) without fiscal year limitation; and

19 “(2) without reducing the amount of any grants
20 otherwise payable to the school under this section
21 for any fiscal year after the fiscal year for which the
22 grant is provided.

23 “(g) TREATMENT OF FUNDS.—Funds received
24 through a grant made under this section for Bureau fund-
25 ed programs operated by a tribe or tribal organization

1 under a contract or grant shall not be taken into consider-
2 ation for purposes of indirect cost underrecovery and over-
3 recovery determinations by any Federal agency for any
4 other funds, from whatever source derived.

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

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

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

1 “(i) APPLICABILITY TO SCHOOLS OPERATING UNDER
2 TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—The
3 provisions of this section that apply to contract or grant
4 schools shall also apply to those schools receiving assist-
5 ance under the Tribally Controlled Schools Act of 1988.

6 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as may be
8 necessary to carry out this section.

9 **“SEC. 1128. DIVISION OF BUDGET ANALYSIS.**

10 “(a) ESTABLISHMENT.—Not later than 12 months
11 after the date of enactment of the Native American Edu-
12 cation Improvement Act of 2001, the Secretary shall es-
13 tablish within the Office of Indian Education Programs
14 a Division of Budget Analysis (referred to in this section
15 as the ‘Division’). Such Division shall be under the direct
16 supervision and control of the Director of the Office.

17 “(b) FUNCTIONS.—In consultation with the tribal
18 governing bodies and local school boards the Director of
19 the Office, through the head of the Division, shall conduct
20 studies, surveys, or other activities to gather demographic
21 information on Bureau funded schools and project the
22 amounts necessary to provide to Indian students in such
23 schools the educational program set forth in this part.

24 “(c) ANNUAL REPORTS.—Not later than the date
25 that the Assistant Secretary for Indian Affairs submits

1 the annual budget request as part of the President’s an-
2 nual budget request under section 1105 of title 31, United
3 States Code for each fiscal year after the date of enact-
4 ment of the Native American Education Improvement Act
5 of 2001, the Director of the Office shall submit to the
6 appropriate committees of Congress (including the Com-
7 mittee on Appropriations of the House of Representatives
8 and the Committee on Appropriations of the Senate), all
9 Bureau funded schools, and the tribal governing bodies re-
10 lating to such schools, a report that shall contain—

11 “(1) projections, based on the information gath-
12 ered pursuant to subsection (b) and any other rel-
13 evant information, of amounts necessary to provide
14 to Indian students in Bureau funded schools the
15 educational program set forth in this part;

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

19 “(3) such other information as the Director of
20 the Office considers to be appropriate.

21 “(d) USE OF REPORTS.—The Director of the Office
22 and the Assistant Secretary for Indian Affairs shall use
23 the information contained in the annual report required
24 by subsection (c) in preparing their annual budget re-
25 quests.

1 **“SEC. 1129. UNIFORM DIRECT FUNDING AND SUPPORT.**

2 “(a) ESTABLISHMENT OF SYSTEM AND FORWARD
3 FUNDING.—

4 “(1) IN GENERAL.—The Secretary shall estab-
5 lish, by regulation adopted in accordance with sec-
6 tion 1137, a system for the direct funding and sup-
7 port of all Bureau funded schools. Such system shall
8 allot funds in accordance with section 1126. All
9 amounts appropriated for distribution in accordance
10 with this section may be made available in accord-
11 ance with paragraph (2).

12 “(2) TIMING FOR USE OF FUNDS.—

13 “(A) AVAILABILITY.—With regard to
14 funds for affected schools under this part that
15 become available for obligation on October 1 of
16 the fiscal year for which such funds are appro-
17 priated, the Secretary shall make payments to
18 such affected schools not later than December
19 1 of the fiscal year, except that operations and
20 maintenance funds shall be forward funded and
21 shall be available for obligation not later than
22 July 15 and December 1 of each fiscal year,
23 and shall remain available for obligation
24 through the succeeding fiscal year.

1 “(B) PUBLICATIONS.—The Secretary shall,
2 on the basis of the amounts appropriated as de-
3 scribed in this paragraph—

4 “(i) publish, not later than July 1 of
5 the fiscal year for which the amounts are
6 appropriated, information indicating the
7 amount of the allotments to be made to
8 each affected school under section 1126, of
9 85 percent of such appropriated amounts;
10 and

11 “(ii) publish, not later than Sep-
12 tember 30 of such fiscal year, information
13 indicating the amount of the allotments to
14 be made under section 1126, from the re-
15 maining 15 percent of such appropriated
16 amounts, adjusted to reflect the actual stu-
17 dent attendance.

18 “(3) LIMITATION.—

19 “(A) EXPENDITURES.—Notwithstanding
20 any other provision of law (including a regula-
21 tion), the supervisor of a Bureau school may ex-
22 pend an aggregate of not more than \$50,000 of
23 the amount allotted to the school under section
24 1126 to acquire materials, supplies, equipment,
25 operation services, maintenance services, and

1 other services for the school, and amounts re-
2 ceived as operations and maintenance funds,
3 funds received from the Department of Edu-
4 cation, or funds received from other Federal
5 sources, without competitive bidding if—

6 “(i) the cost for any single item ac-
7 quired does not exceed \$15,000;

8 “(ii) the school board approves the ac-
9 quisition;

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

12 “(iv) the documents relating to the ac-
13 quisition executed by the supervisor of the
14 school or other school staff cite this para-
15 graph as authority for the acquisition; and

16 “(v) the acquisition transaction is doc-
17 umented in a journal maintained at the
18 school that clearly identifies when the
19 transaction occurred, the item that was ac-
20 quired and from whom, the price paid, the
21 quantities acquired, and any other infor-
22 mation the supervisor or the school board
23 considers to be relevant.

24 “(B) NOTICE.—Not later than 6 months
25 after the date of enactment of the Native Amer-

1 ican Education Improvement Act of 2001, the
 2 Secretary shall send notice of the provisions of
 3 this paragraph to each supervisor of a Bureau
 4 school and associated school board chairperson,
 5 the education line officer of each agency and
 6 area, and the Bureau division in charge of pro-
 7 curement, at both the local and national levels.

8 “(C) APPLICATION AND GUIDELINES.—

9 The Director of the Office shall be responsible
 10 for—

11 “(i) determining the application of
 12 this paragraph, including the authorization
 13 of specific individuals to carry out this
 14 paragraph;

15 “(ii) ensuring that there is at least 1
 16 such individual at each Bureau facility;
 17 and

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

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

23 “(1) PLAN REQUIRED.—

24 “(A) IN GENERAL.—Each Bureau school
 25 that receives an allotment under section 1126

1 shall prepare a local financial plan that speci-
2 fies the manner in which the school will expend
3 the funds made available under the allotment
4 and ensures that the school will meet the ac-
5 creditation requirements or standards for the
6 school established pursuant to section 1121.

7 “(B) REQUIREMENT.—A local financial
8 plan under subparagraph (A) shall comply with
9 all applicable Federal and tribal laws.

10 “(C) PREPARATION AND REVISION.—The
11 financial plan for a school under subparagraph
12 (A) shall be prepared by the supervisor of the
13 school in active consultation with the local
14 school board for the school. The local school
15 board for each school shall have the authority
16 to ratify, reject, or amend such financial plan
17 and, at the initiative of the local school board
18 or in response to the supervisor of the school,
19 to revise such financial plan to meet needs not
20 foreseen at the time of preparation of the finan-
21 cial plan.

22 “(D) ROLE OF SUPERVISOR.—The super-
23 visor of the school—

1 “(i) shall put into effect the decisions
2 of the school board relating to the financial
3 plan under subparagraph (A); and

4 “(ii) shall provide the appropriate
5 local union representative of the education
6 employees of the school with copies of pro-
7 posed financial plans relating to the school
8 and all modifications and proposed modi-
9 fications to the plans, and at the same
10 time submit such copies to the local school
11 board.

12 “(iii) may appeal any such action of
13 the local school board to the appropriate
14 education line officer of the Bureau agency
15 by filing a written statement describing the
16 action and the reasons the supervisor be-
17 lieves such action should be overturned.

18 A copy of statement under clause (iii) shall be
19 submitted to the local school board and such
20 board shall be afforded an opportunity to re-
21 spond, in writing, to such appeal. After review-
22 ing such written appeal and response, the ap-
23 propriate education line officer may, for good
24 cause, overturn the action of the local school
25 board. The appropriate education line officer

1 shall transmit the determination of such appeal
2 in the form of a written opinion to such board
3 and to such supervisor identifying the reasons
4 for overturning such action.

5 “(2) REQUIREMENT.—A Bureau school shall
6 expend amounts received under an allotment under
7 section 1126 in accordance with the local financial
8 plan prepared under paragraph (1).

9 “(c) TRIBAL DIVISION OF EDUCATION, SELF-DE-
10 TERMINATION GRANT AND CONTRACT FUNDS.—The Sec-
11 retary may approve applications for funding tribal divi-
12 sions of education and developing tribal codes of edu-
13 cation, from funds made available pursuant to section
14 103(a) of the Indian Self-Determination and Education
15 Assistance Act.

16 “(d) TECHNICAL ASSISTANCE AND TRAINING.—A
17 local school board may, in the exercise of the authority
18 of the school board under this section, request technical
19 assistance and training from the Secretary. The Secretary
20 shall, to the greatest extent possible, provide such assist-
21 ance and training, and make appropriate provision in the
22 budget of the Office for such assistance and training.

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

1 “(1) IN GENERAL.—A financial plan prepared
2 under subsection (b) for a school may include, at the
3 discretion of the supervisor and the local school
4 board of such school, a provision for funding a sum-
5 mer program of academic and support services for
6 students of the school. Any such program may in-
7 clude activities related to the prevention of alcohol
8 and substance abuse. The Assistant Secretary for
9 Indian Affairs shall provide for the utilization of fa-
10 cilities of the school for such program during any
11 summer in which such utilization is requested.

12 “(2) USE OF OTHER FUNDS.—Notwithstanding
13 any other provision of law, funds authorized under
14 the Act of April 16, 1934 (commonly known as the
15 ‘Johnson-O’Malley Act’; 48 Stat. 596, chapter 147)
16 and this Act may be used to augment the services
17 provided in each summer program referred to in
18 paragraph (1) at the option of the tribe or school re-
19 ceiving such funds. The augmented services shall be
20 under the control of the tribe or school.

21 “(3) TECHNICAL ASSISTANCE AND PROGRAM
22 COORDINATION.—The Assistant Secretary for Indian
23 Affairs, acting through the Director of the Office,
24 shall provide technical assistance and coordination of
25 activities for any program described in paragraph

1 (1) and shall, to the extent possible, encourage the
2 coordination of such programs with any other sum-
3 mer programs that might benefit Indian youth, re-
4 gardless of the funding source or administrative en-
5 tity of such programs.

6 “(f) COOPERATIVE AGREEMENTS.—

7 “(1) IN GENERAL.—From funds allotted to a
8 Bureau school under section 1126, the Secretary
9 shall, if specifically requested by the appropriate
10 tribal governing body, implement a cooperative
11 agreement that is entered into between the tribe, the
12 Bureau, the local school board, and a local public
13 school district that meets the requirements of para-
14 graph (2) and involves the school. The tribe, the Bu-
15 reau, the school board, and the local public school
16 district shall determine the terms of the agreement.

17 “(2) COORDINATION PROVISIONS.—An agree-
18 ment under paragraph (1) may, with respect to the
19 Bureau school and schools in the school district in-
20 volved, encompass coordination of all or any part of
21 the following:

22 “(A) The academic program and cur-
23 riculum, unless the Bureau school is accredited
24 by a State or regional accrediting entity and
25 would not continue to be so accredited if the

1 agreement encompassed the program and cur-
2 riculum.

3 “(B) Support services, including procure-
4 ment and facilities maintenance.

5 “(C) Transportation.

6 “(3) EQUAL BENEFIT AND BURDEN.—

7 “(A) IN GENERAL.—Each agreement en-
8 tered into pursuant to the authority provided in
9 paragraph (1) shall confer a benefit upon the
10 Bureau school commensurate with the burden
11 assumed by the school.

12 “(B) LIMITATION.—Subparagraph (A)
13 shall not be construed to require equal expendi-
14 tures, or an exchange of similar services, by the
15 Bureau school and schools in the school district.

16 “(g) PRODUCT OR RESULT OF STUDENT
17 PROJECTS.—Notwithstanding any other provision of law,
18 where there is agreement on action between the super-
19 intendent and the school board of a Bureau funded school,
20 the product or result of a project conducted in whole or
21 in major part by a student may be given to that student
22 upon the completion of such project.

23 “(h) MATCHING FUND REQUIREMENTS.—

24 “(1) NOT CONSIDERED FEDERAL FUNDS.—Not-
25 withstanding any other provision of law, funds re-

1 ceived by a Bureau funded school under this title for
2 education-related activities (not including funds for
3 construction, maintenance and facilities, improve-
4 ment or repair) shall not be considered to be Federal
5 funds for the purposes of meeting a matching funds
6 requirement for any Federal program.

7 “(2) NONAPPLICATION OF REQUIREMENTS.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, no requirement relating
10 to the provision of matching funds or the provi-
11 sion of services or in-kind activity as a condi-
12 tion of participation in a program or project or
13 receipt of a grant, shall apply to a Bureau
14 funded school unless the provision of law au-
15 thorizing such requirement specifies that such
16 requirement applies to such a school.

17 “(B) LIMITATION.—In considering an ap-
18 plication from a Bureau funded school for par-
19 ticipation in a program or project that has a re-
20 quirement described in subparagraph (A), the
21 entity administering such program or project or
22 receiving such grant shall not give positive or
23 negative weight to such application based solely
24 on the provisions of this paragraph. Such an

1 application shall be considered as if it fully met
2 any matching requirement.

3 **“SEC. 1130. POLICY FOR INDIAN CONTROL OF INDIAN EDU-**
4 **CATION.**

5 “(a) FACILITATION OF INDIAN CONTROL.—It shall
6 be the policy of the Secretary and the Bureau, in carrying
7 out the functions of the Bureau, to facilitate Indian con-
8 trol of Indian affairs in all matters relating to education.

9 “(b) CONSULTATION WITH TRIBES.—

10 “(1) IN GENERAL.—All actions under this Act
11 shall be done with active consultation with tribes.
12 The Bureau and tribes shall work in a government-
13 to-government relationship to ensure quality edu-
14 cation for all tribal members.

15 “(2) REQUIREMENTS.—The consultation re-
16 quired under paragraph (1) means a process involv-
17 ing the open discussion and joint deliberation of all
18 options with respect to potential issues or changes
19 between the Bureau and all interested parties. Dur-
20 ing such discussions and joint deliberations, inter-
21 ested parties (including tribes and school officials)
22 shall be given an opportunity to present issues in-
23 cluding proposals regarding changes in current prac-
24 tices or programs which will be considered for future
25 action by the Bureau. All interested parties shall be

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

14 **“SEC. 1131. INDIAN EDUCATION PERSONNEL.**

15 “(a) DEFINITIONS.—In this section:

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

19 “(A) are performed on a school-year basis
20 principally in a Bureau school and involve—

21 “(i) classroom or other instruction or
22 the supervision or direction of classroom or
23 other instruction;

24 “(ii) any activity (other than teach-
25 ing) that requires academic credits in edu-

1 cational theory and practice equal to the
2 academic credits in educational theory and
3 practice required for a bachelor’s degree in
4 education from an accredited institution of
5 higher education;

6 “(iii) any activity in or related to the
7 field of education, whether or not academic
8 credits in educational theory and practice
9 are a formal requirement for the conduct
10 of such activity; or

11 “(iv) provision of support services at,
12 or associated with, the site of the school;
13 or

14 “(B) are performed at the agency level of
15 the Bureau and involve the implementation of
16 education-related programs, other than the po-
17 sition of agency superintendent for education.

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

21 “(b) CIVIL SERVICE AUTHORITIES INAPPLICABLE.—
22 Chapter 51, subchapter III of chapter 53, and chapter 63
23 of title 5, United States Code, relating to classification,
24 pay, and leave, respectively, and the sections of such title
25 relating to the appointment, promotion, hours of work,

1 and removal of civil service employees, shall not apply to
2 educators or to education positions.

3 “(c) REGULATIONS.—Not later than 60 days after
4 the date of enactment of the Native American Education
5 Improvement Act of 2001, the Secretary shall prescribe
6 regulations to carry out this section. Such regulations
7 shall include provisions relating to—

8 “(1) the establishment of education positions;

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

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

13 “(4) the appointment of educators;

14 “(5) the discharge of educators;

15 “(6) the entitlement of educators to compensa-
16 tion;

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

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

19 “(9) the leave system for educators;

20 “(10) the length of the school year applicable to
21 education positions described in subsection

22 (a)(1)(A); and

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

24 “(d) QUALIFICATIONS OF EDUCATORS.—

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

4 “(A) that lists of qualified and interviewed
5 applicants for education positions be main-
6 tained in the appropriate agency or area office
7 of the Bureau or, in the case of individuals ap-
8 plying at the national level, the Office;

9 “(B)(i) that a local school board have the
10 authority to waive, on a case-by-case basis, any
11 formal education or degree qualification estab-
12 lished by regulation, in order for a tribal mem-
13 ber to be hired in an education position to teach
14 courses on tribal culture and language; and

15 “(ii) that a determination by a local school
16 board that such a tribal member be hired shall
17 be instituted by the supervisor of the school in-
18 volved; and

19 “(C) that it shall not be a prerequisite to
20 the employment of an individual in an edu-
21 cation position at the local level—

22 “(i) that such individual’s name ap-
23 pear on a list maintained pursuant to sub-
24 paragraph (A); or

1 “(ii) that such individual have applied
2 at the national level for an education posi-
3 tion.

4 “(2) EXCEPTION FOR CERTAIN TEMPORARY EM-
5 PLOYMENT.—The Secretary may authorize the tem-
6 porary employment in an education position of an
7 individual who has not met the certification stand-
8 ards established pursuant to regulations, if the Sec-
9 retary determines that failure to authorize the em-
10 ployment would result in that position remaining va-
11 cant.

12 “(e) HIRING OF EDUCATORS.—

13 “(1) REQUIREMENTS.—In prescribing regula-
14 tions to govern the appointment of educators, the
15 Secretary shall require—

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

20 “(II) that, in a case in which there are no
21 qualified applicants available to fill a vacancy at
22 a Bureau school, the supervisor may consult a
23 list maintained pursuant to subsection
24 (d)(1)(A);

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

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

9 “(iv) each education line officer and educa-
10 tor employed in the office of the Director of the
11 Office shall be hired by the Director;

12 “(B)(i) that, before an individual is em-
13 ployed in an education position in a Bureau
14 school by the supervisor of the school (or, with
15 respect to the position of supervisor, by the ap-
16 propriate agency education line officer), the
17 local school board for the school shall be con-
18 sulted; and

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

1 “(C)(i) that, before an individual is em-
2 ployed in an education position in an agency of-
3 fice of the Bureau, the appropriate agency
4 school board shall be consulted; and

5 “(ii) that a determination by such school
6 board, as evidenced by school board records,
7 that such individual should or should not be
8 employed shall be instituted by the super-
9 intendent for education of the agency office;

10 “(D) that before an individual is employed
11 in an education position (as described in sub-
12 section (a)(1)(B)) in the office of the Director
13 of the Office (other than the position of Direc-
14 tor), the school boards representing all Bureau
15 schools shall be consulted; and

16 “(E) that all employment decisions or ac-
17 tions be in compliance with all applicable Fed-
18 eral, State and tribal laws.

19 “(2) INFORMATION REGARDING APPLICATION
20 AT NATIONAL LEVEL.—

21 “(A) IN GENERAL.—Any individual who
22 applies at the local level for an education posi-
23 tion shall state on such individual’s application
24 whether or not such individual has applied at
25 the national level for an education position.

1 “(B) EFFECT OF INACCURATE STATE-
2 MENT.—If an individual described in subpara-
3 graph (A) is employed at the local level, such
4 individual’s name shall be immediately for-
5 warded to the Secretary by the local employer.
6 The Secretary shall, as soon as practicable but
7 in no event later than 30 days after the receipt
8 of the name, ascertain the accuracy of the
9 statement made by such individual pursuant to
10 subparagraph (A). Notwithstanding subsection
11 (g), if the Secretary finds that the individual’s
12 statement was false, such individual, at the Sec-
13 retary’s discretion, may be disciplined or dis-
14 charged.

15 “(C) EFFECT OF APPLICATION AT NA-
16 TIONAL LEVEL.—If an individual described in
17 subparagraph (A) has applied at the national
18 level for an education position, the appointment
19 of such individual at the local level shall be con-
20 ditional for a period of 90 days. During that
21 period, the Secretary may appoint a more quali-
22 fied individual (as determined by the Secretary)
23 from a list maintained pursuant to subsection
24 (e)(1)(A) to the position to which such indi-
25 vidual was appointed.

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

7 “(4) APPEALS.—

8 “(A) BY SUPERVISOR.—The supervisor of
9 a school may appeal to the appropriate agency
10 education line officer any determination by the
11 local school board for the school that an indi-
12 vidual be employed, or not be employed, in an
13 education position in the school (other than
14 that of supervisor) by filing a written statement
15 describing the determination and the reasons
16 the supervisor believes such determination
17 should be overturned. A copy of such statement
18 shall be submitted to the local school board and
19 such board shall be afforded an opportunity to
20 respond, in writing, to such appeal. After re-
21 viewing such written appeal and response, the
22 education line officer may, for good cause, over-
23 turn the determination of the local school
24 board. The education line officer shall transmit
25 the determination of such appeal in the form of

1 a written opinion to such board and to such su-
2 pervisor identifying the reasons for overturning
3 such determination.

4 “(B) BY EDUCATION LINE OFFICER.—The
5 education line officer of an agency office of the
6 Bureau may appeal to the Director of the Of-
7 fice any determination by the local school board
8 for the school that an individual be employed,
9 or not be employed, as the supervisor of a
10 school by filing a written statement describing
11 the determination and the reasons the super-
12 visor believes such determination should be
13 overturned. A copy of such statement shall be
14 submitted to the local school board and such
15 board shall be afforded. an opportunity to re-
16 spond, in writing, to such appeal. After review-
17 ing such written appeal and response, the Di-
18 rector may, for good cause, overturn the deter-
19 mination of the local school board. The Director
20 shall transmit the determination of such appeal
21 in the form of a written opinion to such board
22 and to such education line officer identifying
23 the reasons for overturning such determination.

24 “(5) OTHER APPEALS.—The education line offi-
25 cer of an agency office of the Bureau may appeal to

1 the Director of the Office any determination by the
2 agency school board that an individual be employed,
3 or not be employed, in an education position in such
4 agency office by filing a written statement describing
5 the determination and the reasons the supervisor be-
6 lieves such determination should be overturned. A
7 copy of such statement shall be submitted to the
8 agency school board and such board shall be af-
9 forded an opportunity to respond, in writing, to such
10 appeal. After reviewing such written appeal and re-
11 sponse, the Director may, for good cause, overturn
12 the determination of the agency school board. The
13 Director shall transmit the determination of such
14 appeal in the form of a written opinion to such
15 board and to such education line officer identifying
16 the reasons for overturning such determination.

17 “(f) DISCHARGE AND CONDITIONS OF EMPLOYMENT
18 OF EDUCATORS.—

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

22 “(A) that procedures shall be established
23 for the rapid and equitable resolution of griev-
24 ances of educators;

1 “(B) that no educator may be discharged
2 without notice of the reasons for the discharge
3 and an opportunity for a hearing under proce-
4 dures that comport with the requirements of
5 due process; and

6 “(C) that each educator employed in a Bu-
7 reau school shall be notified 30 days prior to
8 the end of an academic year whether the em-
9 ployment contract of the individual will be re-
10 newed for the following year.

11 “(2) PROCEDURES FOR DISCHARGE.—

12 “(A) DETERMINATIONS.—The supervisor
13 of a Bureau school may discharge (subject to
14 procedures established under paragraph (1)(B))
15 for cause (as determined under regulations pre-
16 scribed by the Secretary) any educator em-
17 ployed in such school. On giving notice to an
18 educator of the supervisor’s intention to dis-
19 charge the educator, the supervisor shall imme-
20 diately notify the local school board of the pro-
21 posed discharge. A determination by the local
22 school board that such educator shall not be
23 discharged shall be followed by the supervisor.

24 “(B) APPEALS.—The supervisor shall have
25 the right to appeal a determination by a local

1 school board under subparagraph (A), as evi-
 2 denced by school board records, not to dis-
 3 charge an educator to the education line officer
 4 of the appropriate agency office of the Bureau.
 5 Upon hearing such an appeal, the agency edu-
 6 cation line officer may, for good cause, issue a
 7 decision overturning the determination of the
 8 local school board with respect to the employ-
 9 ment of such individual. The education line offi-
 10 cer shall make the decision in writing and sub-
 11 mit the decision to the local school board.

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

15 “(A) to recommend to the supervisor that
 16 an educator employed in the school be dis-
 17 charged; and

18 “(B) to recommend to the education line
 19 officer of the appropriate agency office of the
 20 Bureau and to the Director of the Office, that
 21 the supervisor of the school be discharged.

22 “(g) APPLICABILITY OF INDIAN PREFERENCE
 23 LAWS.—

24 “(1) IN GENERAL.—Notwithstanding any provi-
 25 sion of the Indian preference laws, such laws shall

1 not apply in the case of any personnel action carried
2 out under this section with respect to an applicant
3 or employee not entitled to an Indian preference if
4 each tribal organization concerned grants a written
5 waiver of the application of such laws with respect
6 to such personnel action and states that such waiver
7 is necessary. This paragraph shall not be construed
8 to relieve the Bureau's responsibility to issue timely
9 and adequate announcements and advertisements
10 concerning any such personnel action if such action
11 is intended to fill a vacancy (no matter how such va-
12 cancy is created).

13 “(2) DEFINITIONS.—In this subsection:

14 “(A) INDIAN PREFERENCE LAWS.—The
15 term ‘Indian preference laws’ means section 12
16 of the Act of June 18, 1934 (48 Stat. 986,
17 chapter 576) or any other provision of law
18 granting a preference to Indians in promotions
19 and other personnel actions. Such term shall
20 not include section 7(b) of the Indian Self-De-
21 termination and Education Assistance Act.

22 “(B) TRIBAL ORGANIZATION.—The term
23 ‘tribal organization’ means—

24 “(i) the recognized governing body of
25 any Indian tribe, band, nation, pueblo, or

1 other organized community, including a
 2 Native village (as defined in section 3(c)
 3 of the Alaska Native Claims Settlement
 4 Act); or

5 “(ii) in connection with any personnel
 6 action referred to in this subsection, any
 7 local school board to which the governing
 8 body has delegated the authority to grant
 9 a waiver under this subsection with respect
 10 to a personnel action.

11 “(h) COMPENSATION OR ANNUAL SALARY.—

12 “(1) IN GENERAL.—

13 “(A) COMPENSATION FOR EDUCATORS AND
 14 EDUCATION POSITIONS.—Except as otherwise
 15 provided in this section, the Secretary shall fix
 16 the basic compensation for educators and edu-
 17 cation positions—

18 “(i) at rates in effect under the Gen-
 19 eral Schedule for individuals with com-
 20 parable qualifications, and holding com-
 21 parable positions, to whom chapter 51 of
 22 title 5, United States Code, is applicable;
 23 or

24 “(ii) on the basis of the Federal Wage
 25 System schedule in effect for the locality

1 involved, and for the comparable positions,
2 at the rates of compensation in effect for
3 the senior executive service.

4 “(B) COMPENSATION OR SALARY FOR
5 TEACHERS AND COUNSELORS.—The Secretary
6 shall establish the rate of basic compensation,
7 or annual salary rate, for the positions of teach-
8 ers and counselors (including dormitory coun-
9 selors and home-living counselors) at the rate of
10 basic compensation applicable (on the date of
11 enactment of the Native American Education
12 Improvement Act of 2001 and thereafter) for
13 comparable positions in the overseas schools
14 under the Defense Department Overseas Teach-
15 ers Pay and Personnel Practices Act. The Sec-
16 retary shall allow the local school boards in-
17 volved authority to implement only the aspects
18 of the Defense Department Overseas Teachers
19 Pay and Personnel Practices Act pay provisions
20 that are considered essential for recruitment
21 and retention of teachers and counselors. Imple-
22 mentation of such provisions shall not be con-
23 strued to require the implementation of that en-
24 tire Act.

25 “(C) RATES FOR NEW HIRES.—

1 “(i) IN GENERAL.—Beginning with
2 the first fiscal year following the date of
3 enactment of the Native American Edu-
4 cation Improvement Act of 2001, each
5 local school board of a Bureau school may
6 establish a rate of compensation or annual
7 salary rate described in clause (ii) for
8 teachers and counselors (including aca-
9 demic counselors) who are new hires at the
10 school and who had not worked at the
11 school, as of the first day of such fiscal
12 year.

13 “(ii) CONSISTENT RATES.—The rates
14 established under clause (i) shall be con-
15 sistent with the rates paid for individuals
16 in the same positions, with the same ten-
17 ure and training, as the teachers and coun-
18 selors, in any other school within whose
19 boundaries the Bureau school is located.

20 “(iii) DECREASES.—In an instance in
21 which the establishment of rates under
22 clause (i) causes a reduction in compensa-
23 tion at a school from the rate of compensa-
24 tion that was in effect for the first fiscal
25 year following the date of enactment of the

1 Native American Education Improvement
2 Act of 2001, the new rates of compensa-
3 tion may be applied to the compensation of
4 employees of the school who worked at the
5 school as of such date of enactment by ap-
6 plying those rates at each contract renewal
7 for the employees so that the reduction
8 takes effect in 3 equal installments.

9 “(iv) INCREASES.—In an instance in
10 which the establishment of such rates at a
11 school causes an increase in compensation
12 from the rate of compensation that was in
13 effect for the first fiscal year following the
14 date of enactment of the Native American
15 Education Improvement Act of 2001, the
16 school board may apply the new rates at
17 the next contract renewal so that either—

18 “(I) the entire increase occurs on

19 1 date; or

20 “(II) the increase takes effect in

21 3 equal installments.

22 “(D) ESTABLISHED REGULATIONS, PROCE-
23 DURES, AND ARRANGEMENTS.—

24 “(i) PROMOTIONS AND ADVANCE-
25 MENTS.—The establishment of rates of

1 basic compensation and annual salary
2 rates under subparagraphs (B) and (C)
3 shall not preclude the use of regulations
4 and procedures used by the Bureau prior
5 to April 28, 1988, in making determina-
6 tions regarding promotions and advance-
7 ments through levels of pay that are based
8 on the merit, education, experience, or ten-
9 ure of an educator.

10 “(ii) CONTINUED EMPLOYMENT OR
11 COMPENSATION.—The establishment of
12 rates of basic compensation and annual
13 salary rates under subparagraphs (B) and
14 (C) shall not affect the continued employ-
15 ment or compensation of an educator who
16 was employed in an education position on
17 October 31, 1979, and who did not make
18 an election under subsection (o), as in ef-
19 fect on January 1, 1990.

20 “(2) POST DIFFERENTIAL RATES.—

21 “(A) IN GENERAL.—The Secretary may
22 pay a post differential rate not to exceed 25
23 percent of the rate of basic compensation, for
24 educators or education positions, on the basis of
25 conditions of environment or work that warrant

1 additional pay, as a recruitment and retention
2 incentive.

3 “(B) SUPERVISOR’S AUTHORITY.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii) on the request of the
6 supervisor and the local school board of a
7 Bureau school, the Secretary shall grant
8 the supervisor of the school authorization
9 to provide 1 or more post differential rates
10 under subparagraph (A).

11 “(ii) EXCEPTION.—The Secretary
12 shall disapprove, or approve with a modi-
13 fication, a request for authorization to pro-
14 vide a post differential rate if the Sec-
15 retary determines for clear and convincing
16 reasons (and advises the board in writing
17 of those reasons) that the rate should be
18 disapproved or decreased because the dis-
19 parity of compensation between the appro-
20 priate educators or positions in the Bureau
21 school, and the comparable educators or
22 positions at the nearest public school, is—

23 “(I)(aa) at least 5 percent; or

24 “(bb) less than 5 percent; and

1 “(II) does not affect the recruit-
2 ment or retention of employees at the
3 school.

4 “(iii) APPROVAL OF REQUESTS.—A
5 request made under clause (i) shall be con-
6 sidered to be approved at the end of the
7 60th day after the request is received in
8 the Central Office of the Bureau unless be-
9 fore that time the request is approved, ap-
10 proved with a modification, or disapproved
11 by the Secretary.

12 “(iv) DISCONTINUATION OF OR DE-
13 CREASE IN RATES.—The Secretary or the
14 supervisor of a Bureau school may dis-
15 continue or decrease a post differential
16 rate provided for under this paragraph at
17 the beginning of an academic year if—

18 “(I) the local school board re-
19 quests that such differential be dis-
20 continued or decreased; or

21 “(II) the Secretary or the super-
22 visor, respectively, determines for
23 clear and convincing reasons (and ad-
24 vises the board in writing of those
25 reasons) that there is no disparity of

1 compensation that would affect the re-
2 cruitment or retention of employees at
3 the school after the differential is dis-
4 continued or decreased.

5 “(v) REPORTS.—On or before Feb-
6 ruary 1 of each year, the Secretary shall
7 submit to Congress a report describing the
8 requests and approvals of authorization
9 made under this paragraph during the pre-
10 vious year and listing the positions receiv-
11 ing post differential rates under contracts
12 entered into under those authorizations.

13 “(i) LIQUIDATION OF REMAINING LEAVE UPON TER-
14 MINATION.—Upon termination of employment with the
15 Bureau, any annual leave remaining to the credit of an
16 individual within the purview of this section shall be liq-
17 uidated in accordance with sections 5551(a) and 6306 of
18 title 5, United States Code, except that leave earned or
19 accrued under regulations prescribed pursuant to sub-
20 section (c)(9) shall not be so liquidated.

21 “(j) TRANSFER OF REMAINING LEAVE UPON TRANS-
22 FER, PROMOTION, OR REEMPLOYMENT.—In the case of
23 any educator who—

24 “(1) is transferred, promoted, or reappointed,
25 without a break in service, to a position in the Fed-

1 eral Government under a different leave system than
2 the system for leave described in subsection (c)(9);
3 and

4 “(2) earned or was credited with leave under
5 the regulations prescribed under subsection (c)(9)
6 and has such leave remaining to the credit of such
7 educator;

8 such leave shall be transferred to such educator’s credit
9 in the employing agency for the position on an adjusted
10 basis in accordance with regulations that shall be pre-
11 scribed by the Director of the Office of Personnel Manage-
12 ment.

13 “(k) INELIGIBILITY FOR EMPLOYMENT OF VOLUN-
14 TARILY TERMINATED EDUCATORS.—An educator who vol-
15 untarily terminates employment under an employment
16 contract with the Bureau before the expiration of the em-
17 ployment contract shall not be eligible to be employed in
18 another education position in the Bureau during the re-
19 mainder of the term of such contract.

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

23 “(1) is employed at the end of an academic
24 year;

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

3 “(3) is employed in another position during the
4 recess period immediately preceding such next aca-
5 demic year, or during such recess period receives ad-
6 ditional compensation referred to in section 5533 of
7 title 5, United States Code, relating to dual com-
8 pensation;

9 such section 5533 shall not apply to such educator by rea-
10 son of any such employment during the recess period with
11 respect to any receipt of additional compensation.

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

24 “(n) PRORATION OF PAY.—

1 “(1) ELECTION OF EMPLOYEE.—Notwith-
2 standing any other provision of law, including laws
3 relating to dual compensation, the Secretary, at the
4 election of an educator, shall prorate the salary of
5 the educator for an academic year over a 12-month
6 period. Each educator employed for the academic
7 year shall annually elect to be paid on a 12-month
8 basis or for those months while school is in session.
9 No educator shall suffer a loss of pay or benefits, in-
10 cluding benefits under unemployment or other Fed-
11 eral or federally assisted programs, because of such
12 election.

13 “(2) CHANGE OF ELECTION.—During the
14 course of such academic year, the employee may
15 change the election made under paragraph (1) once.

16 “(3) LUMP-SUM PAYMENT.—That portion of
17 the employee’s pay that would be paid between aca-
18 demic years may be paid in a lump sum at the elec-
19 tion of the employee.

20 “(4) APPLICATION.—This subsection applies to
21 educators, whether employed under this section or
22 title 5, United States Code.

23 “(o) EXTRACURRICULAR ACTIVITIES.—

24 “(1) STIPEND.—Notwithstanding any other
25 provision of law, the Secretary may provide, for Bu-

1 reau employees in each Bureau area, a stipend in
2 lieu of overtime premium pay or compensatory time
3 off for overtime work. Any employee of the Bureau
4 who performs overtime work that consists of addi-
5 tional activities to provide services to students or
6 otherwise support the school's academic and social
7 programs may elect to be compensated for all such
8 work on the basis of the stipend. Such stipend shall
9 be paid as a supplement to the employee's base pay.

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

15 “(3) APPLICATION.—This subsection applies to
16 Bureau employees, whether employed under this sec-
17 tion or title 5, United States Code.

18 “(p) COVERED INDIVIDUALS; ELECTION.—This sec-
19 tion shall apply with respect to any educator hired after
20 November 1, 1979 (and to any educator who elected to
21 be covered under this section or a corresponding provision
22 after November 1, 1979) and to the position in which such
23 educator is employed. The enactment of this section shall
24 not affect the continued employment of an individual em-
25 ployed on October 31, 1979 in an education position, or

1 such person's right to receive the compensation attached
2 to such position.

3 “(q) FURLOUGH WITHOUT CONSENT.—

4 “(1) IN GENERAL.—An educator who was em-
5 ployed in an education position on October 31, 1979,
6 who was eligible to make an election under sub-
7 section (p) at that time, and who did not make the
8 election under paragraph such subsection, may not
9 be placed on furlough (within the meaning of section
10 7511(a)(5) of title 5, United States Code, without
11 the consent of such educator for an aggregate of
12 more than 4 weeks within the same calendar year,
13 unless—

14 “(A) the supervisor, with the approval of
15 the local school board (or of the education line
16 officer upon appeal under paragraph (2)), of
17 the Bureau school at which such educator pro-
18 vides services determines that a longer period of
19 furlough is necessary due to an insufficient
20 amount of funds available for personnel com-
21 pensation at such school, as determined under
22 the financial plan process as determined under
23 section 1129(b); and

24 “(B) all educators (other than principals
25 and clerical employees) providing services at

1 such Bureau school are placed on furloughs of
2 equal length, except that the supervisor, with
3 the approval of the local school board (or of the
4 agency education line officer upon appeal under
5 paragraph (2)), may continue 1 or more edu-
6 cators in pay status if—

7 “(i) such educators are needed to op-
8 erate summer programs, attend summer
9 training sessions, or participate in special
10 activities including curriculum development
11 committees; and

12 “(ii) such educators are selected based
13 upon such educator’s qualifications after
14 public notice of the minimum qualifications
15 reasonably necessary and without discrimi-
16 nation as to supervisory, nonsupervisory,
17 or other status of the educators who apply.

18 “(2) APPEALS.—The supervisor of a Bureau
19 school may appeal to the appropriate agency edu-
20 cation line officer any refusal by the local school
21 board to approve any determination of the super-
22 visor that is described in paragraph (1)(A) by filing
23 a written statement describing the determination
24 and the reasons the supervisor believes such deter-
25 mination should be approved. A copy of such state-

1 ment shall be submitted to the local school board
2 and such board shall be afforded an opportunity to
3 respond, in writing, to such appeal. After reviewing
4 such written appeal and response, the education line
5 officer may, for good cause, approve the determina-
6 tion of the supervisor. The educational line officer
7 shall transmit the determination of such appeal in
8 the form of a written opinion to such local school
9 board and to the supervisor identifying the reasons
10 for approving such determination.

11 **“SEC. 1132. COMPUTERIZED MANAGEMENT INFORMATION**
12 **SYSTEM.**

13 “(a) ESTABLISHMENT OF SYSTEM.—Not later than
14 July 1, 2002, the Secretary shall establish within the Of-
15 fice a computerized management information system,
16 which shall provide processing and information to the Of-
17 fice. The information provided shall include information
18 regarding—

- 19 “(1) student enrollment;
20 “(2) curricula;
21 “(3) staffing;
22 “(4) facilities;
23 “(5) community demographics;
24 “(6) student assessment information;

1 “(7) information on the administrative and pro-
2 gram costs attributable to each Bureau program, di-
3 vided into discrete elements;

4 “(8) relevant reports;

5 “(9) personnel records;

6 “(10) finance and payroll; and

7 “(11) such other items as the Secretary deter-
8 mines to be appropriate.

9 “(b) IMPLEMENTATION OF SYSTEM.—Not later than
10 July 1, 2003, the Secretary shall complete implementation
11 of such a system at each Bureau field office and Bureau
12 funded school.

13 **“SEC. 1133. UNIFORM EDUCATION PROCEDURES AND PRAC-**
14 **TICES.**

15 “Not later than 90 days after the date of enactment
16 of the Native American Education Improvement Act of
17 2001, the Secretary shall cause the various divisions of
18 the Bureau to formulate uniform procedures and practices
19 with respect to such concerns of those divisions as relate
20 to education, and shall submit a report on the procedures
21 and practices to Congress.

22 **“SEC. 1134. RECRUITMENT OF INDIAN EDUCATORS.**

23 “‘The Secretary shall institute a policy for the recruit-
24 ment of qualified Indian educators and a detailed plan to
25 promote employees from within the Bureau. Such plan

1 shall include provisions for opportunities for acquiring
2 work experience prior to receiving an actual work assign-
3 ment.

4 **“SEC. 1135. ANNUAL REPORT; AUDITS.**

5 “(a) ANNUAL REPORTS.—The Secretary shall submit
6 to each appropriate committee of Congress, all Bureau
7 funded schools, and the tribal governing bodies of such
8 schools, a detailed annual report on the state of education
9 within the Bureau and any problems encountered in In-
10 dian education during the period covered by the report.
11 Such report shall contain suggestions for the improvement
12 of the Bureau educational system and for increasing tribal
13 or local Indian control of such system. Such report shall
14 also include information on the status of tribally controlled
15 community colleges.

16 “(b) BUDGET REQUEST.—The annual budget request
17 for the Bureau’s education programs, as submitted as part
18 of the President’s next annual budget request under sec-
19 tion 1105 of title 31, United States Code) shall include
20 the plans required by sections 1121(g), 1122(c), and
21 1124(c).

22 “(c) FINANCIAL AND COMPLIANCE AUDITS.—The In-
23 spector General of the Department of the Interior shall
24 establish a system to ensure that financial and compliance
25 audits are conducted for each Bureau school at least once

1 in every 3 years. Such an audit of a Bureau school shall
2 examine the extent to which such school has complied with
3 the local financial plan prepared by the school under sec-
4 tion 1129(b).

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

11 **“SEC. 1136. RIGHTS OF INDIAN STUDENTS.**

12 “The Secretary shall prescribe such rules and regula-
13 tions as may be necessary to ensure the protection of the
14 constitutional and civil rights of Indian students attending
15 Bureau funded schools, including such students’ right to
16 privacy under the laws of the United States, such stu-
17 dents’ right to freedom of religion and expression, and
18 such students’ right to due process in connection with dis-
19 ciplinary actions, suspensions, and expulsions.

20 **“SEC. 1137. REGULATIONS.**

21 “(a) IN GENERAL.—The Secretary may issue only
22 such regulations as may be necessary to ensure compliance
23 with the specific provisions of this part. In issuing the reg-
24 ulations, the Secretary shall publish proposed regulations
25 in the Federal Register, and shall provide a period of not

1 less than 120 days for public comment and consultation
2 on the regulations. The regulations shall contain, imme-
3 diately following each regulatory section, a citation to any
4 statutory provision providing authority to issue such regu-
5 latory section.

6 “(b) REGIONAL MEETINGS.—Prior to publishing any
7 proposed regulations under subsection (a) and prior to es-
8 tablishing the negotiated rulemaking committee under
9 subsection (c), the Secretary shall convene regional meet-
10 ings to consult with personnel of the Office of Indian Edu-
11 cation Programs, educators at Bureau schools, representa-
12 tives of Bureau employees, and tribal officials, parents,
13 teachers and school board members of tribes served by Bu-
14 reau funded schools to provide guidance to the Secretary
15 on the content of regulations authorized to be issued under
16 this part and the Tribally Controlled Schools Act of 1988.

17 “(c) NEGOTIATED RULEMAKING.—

18 “(1) IN GENERAL.—Notwithstanding sections
19 563(a) and 565(a) of title 5, United States Code,
20 the Secretary shall promulgate regulations author-
21 ized under subsection (a) and under the Tribally
22 Controlled Schools Act of 1988, in accordance with
23 the negotiated rulemaking procedures provided for
24 under subchapter III of chapter 5 of title 5, United

1 States Code, and shall publish final regulations in
2 the Federal Register.

3 “(2) EXPIRATION OF AUTHORITY.—The author-
4 ity of the Secretary to promulgate regulations under
5 this part and under the Tribally Controlled Schools
6 Act of 1988, shall expire on the date that is 18
7 months after the date of enactment of this part. If
8 the Secretary determines that an extension of the
9 deadline under this paragraph is appropriate, the
10 Secretary may submit proposed legislation to Con-
11 gress for an extension of such deadline.

12 “(3) RULEMAKING COMMITTEE.—The Secretary
13 shall establish a negotiated rulemaking committee to
14 carry out this subsection. In establishing such com-
15 mittee, the Secretary shall—

16 “(A) apply the procedures provided for
17 under subchapter III of chapter 5 of title 5,
18 United States Code, in a manner that reflects
19 the unique government-to-government relation-
20 ship between Indian tribes and the United
21 States;

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

1 “(C) select the tribal representatives of the
2 committee from among individuals nominated
3 by the representatives of the tribal and tribally-
4 operated schools;

5 “(D) ensure, to the maximum extent pos-
6 sible, that the tribal representative membership
7 on the committee reflects the proportionate
8 share of students from tribes served by the Bu-
9 reau funded school system; and

10 “(E) comply with the Federal Advisory
11 Committee Act (5 U.S.C. App. 2).

12 “(4) AUTHORIZATION OF APPROPRIATIONS.—
13 There is authorized to be appropriated such sums as
14 necessary to carry out the negotiated rulemaking
15 provided for under this section. In the absence of a
16 specific appropriation to carry out this subsection,
17 the Secretary shall pay the costs of the negotiated
18 rulemaking proceedings from the general administra-
19 tive funds of the Department of the Interior.

20 “(d) APPLICATION OF SECTION.—

21 “(1) SUPREMACY OF PROVISIONS.—The provi-
22 sions of this section shall supersede any conflicting
23 provisions of law (including any conflicting regula-
24 tions) in effect on the day before the date of enact-
25 ment of this part, and the Secretary may repeal any

1 regulation that is inconsistent with the provisions of
2 this part.

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

7 **“SEC. 1138. EARLY CHILDHOOD DEVELOPMENT PROGRAM.**

8 “(a) GRANTS.—The Secretary shall make grants to
9 tribes, tribal organizations, and consortia of tribes and
10 tribal organizations to fund early childhood development
11 programs that are operated by such tribes, organizations,
12 or consortia.

13 “(b) AMOUNT OF GRANTS.—

14 “(1) IN GENERAL.—The amount of the grant
15 made under subsection (a) to each eligible tribe,
16 tribal organization, or consortium of tribes or tribal
17 organizations for each fiscal year shall be equal to
18 the amount that bears the same relationship to the
19 total amount appropriated under subsection (g) for
20 such fiscal year (other than amounts reserved under
21 subsection (f)) as—

22 “(A) the total number of children under
23 age 6 who are members of—

24 “(i) such tribe;

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

3 “(iii) any tribe that—

4 “(I) is a member of such consor-
5 tium; or

6 “(II) so authorizes any tribal or-
7 ganization that is a member of such
8 consortium; bears to

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

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

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

15 “(iii) is authorized by any tribal orga-
16 nization that is eligible to receive such
17 funds.

18 “(2) LIMITATION.—No grant may be made
19 under subsection (a)—

20 “(A) to any tribe that has fewer than 500
21 members;

22 “(B) to any tribal organization that is au-
23 thorized to act—

24 “(i) on behalf of only 1 tribe that has
25 fewer than 500 members; or

1 “(ii) on behalf of 1 or more tribes
2 that have a combined total membership of
3 fewer than 500 members; or

4 “(C) to any consortium composed of tribes,
5 or tribal organizations authorized by tribes to
6 act on behalf of the tribes, that have a com-
7 bined total tribal membership of fewer than 500
8 members.

9 “(c) APPLICATIONS.—

10 “(1) IN GENERAL.—To be eligible to receive a
11 grant under subsection (a), a tribe, tribal organiza-
12 tion, or consortium shall submit to the Secretary an
13 application for the grant at such time, in such man-
14 ner, and containing such information as the Sec-
15 retary shall prescribe.

16 “(2) CONTENTS.—An application submitted
17 under paragraph (1) shall describe the early child-
18 hood development program that the applicant desires
19 to operate.

20 “(d) REQUIREMENT OF PROGRAMS FUNDED.—In op-
21 erating an early childhood development program that is
22 funded through a grant made under subsection (a), a
23 tribe, tribal organization, or consortium—

24 “(1) shall coordinate the program with other
25 childhood development programs and may provide

1 services that meet identified needs of parents, and
2 children under age 6, that are not being met by the
3 programs, including needs for—

4 “(A) prenatal care;

5 “(B) nutrition education;

6 “(C) health education and screening;

7 “(D) family literacy services;

8 “(E) educational testing; and

9 “(F) other educational services;

10 “(2) may include, in the early childhood devel-
11 opment program funded through the grant, instruc-
12 tion in the language, art, and culture of the tribe
13 served by the program; and

14 “(3) shall provide for periodic assessments of
15 the program.

16 “(e) COORDINATION OF FAMILY LITERACY PRO-
17 GRAMS.—An entity that operates a family literacy pro-
18 gram under this section or another similar program fund-
19 ed by the Bureau shall coordinate the program involved
20 with family literacy programs for Indian children carried
21 out under part B of title I of the Elementary and Sec-
22 ondary Education Act of 1965 in order to avoid duplica-
23 tion and to encourage the dissemination of information on
24 quality family literacy programs serving Indians.

1 “(f) ADMINISTRATIVE COSTS.—The Secretary shall
2 reserve funds appropriated under subsection (g) to include
3 in each grant made under subsection (a) an amount for
4 administrative costs incurred by the tribe, tribal organiza-
5 tion, or consortium involved in establishing and maintain-
6 ing the early childhood development program.

7 “(g) AUTHORIZATION OF APPROPRIATIONS.—For the
8 purpose of carrying out this section, there are authorized
9 to be appropriated such sums as may be necessary for
10 each of fiscal years 2002, 2003, 2004, 2005, and 2006.

11 **“SEC. 1139. TRIBAL DEPARTMENTS OR DIVISIONS OF EDU-**
12 **CATION.**

13 “(a) IN GENERAL.—Subject to the availability of ap-
14 propriations, the Secretary shall make grants and provide
15 technical assistance to tribes for the development and op-
16 eration of tribal departments or divisions of education for
17 the purpose of planning and coordinating all educational
18 programs of the tribe.

19 “(b) APPLICATIONS.—For a tribe to be eligible to re-
20 ceive a grant under this section, the governing body of
21 the tribe shall submit an application to the Secretary at
22 such time, in such manner, and containing such informa-
23 tion as the Secretary may require.

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

4 “(d) USE.—Tribes that receive grants under this sec-
5 tion shall use the funds made available through the
6 grants—

7 “(1) to facilitate tribal control in all matters re-
8 lating to the education of Indian children on reserva-
9 tions (and on former Indian reservations in Okla-
10 homa);

11 “(2) to provide for the development of coordi-
12 nated educational programs (including all preschool,
13 elementary, secondary, and higher or vocational edu-
14 cational programs funded by tribal, Federal, or
15 other sources) on reservations (and on former Indian
16 reservations in Oklahoma) by encouraging tribal ad-
17 ministrative support of all Bureau funded edu-
18 cational programs as well as encouraging tribal co-
19 operation and coordination with entities carrying out
20 all educational programs receiving financial support
21 from other Federal agencies, State agencies, or pri-
22 vate entities; and

23 “(3) to provide for the development and en-
24 forcement of tribal educational codes, including trib-
25 al educational policies and tribal standards applica-

1 ble to curriculum, personnel, students, facilities, and
2 support programs.

3 “(e) PRIORITIES.—In making grants under this sec-
4 tion, the Secretary shall give priority to any application
5 that—

6 “(1) includes—

7 “(A) assurances that the applicant serves
8 3 or more separate Bureau funded schools; and

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

14 “(2) includes assurances that all education pro-
15 grams for which funds are provided by such a con-
16 tract or grant will be monitored and audited, by or
17 through the tribal department of education, to en-
18 sure that the programs meet the requirements of
19 law; and

20 “(3) provides a plan and schedule that—

21 “(A) provides for—

22 “(i) the assumption, by the tribal de-
23 partment of education, of all assets and
24 functions of the Bureau agency office asso-

1 ciated with the tribe, to the extent the as-
2 sets and functions relate to education; and

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

6 “(B) provides that the assumption shall
7 occur over the term of the grant made under
8 this section, except that, when mutually agree-
9 able to the tribal governing body and the As-
10 sistant Secretary, the period in which such as-
11 sumption is to occur may be modified, reduced,
12 or extended after the initial year of the grant.

13 “(e) TIME PERIOD OF GRANT.—Subject to the avail-
14 ability of appropriated funds, a grant provided under this
15 section shall be provided for a period of 3 years. If the
16 performance of the grant recipient is satisfactory to the
17 Secretary, the grant may be renewed for additional 3-year
18 terms.

19 “(f) TERMS, CONDITIONS, OR REQUIREMENTS.—A
20 tribe that receives a grant under this section shall comply
21 with regulations relating to grants made under section
22 103(a) of the Indian Self-Determination and Education
23 Assistance Act that are in effect on the date that the tribal
24 governing body submits the application for the grant
25 under subsection (c). The Secretary shall not impose any

1 terms, conditions, or requirements on the provision of
2 grants under this section that are not specified in this sec-
3 tion.

4 “(g) AUTHORIZATION OF APPROPRIATIONS.—For the
5 purpose of carrying out this section, there are authorized
6 to be appropriated \$2,000,000 for fiscal year 2002 and
7 such sums as may be necessary for each of fiscal years
8 2003, 2004, 2005, and 2006.

9 **“SEC. 1140. DEFINITIONS.**

10 “In this part, unless otherwise specified:

11 “(1) AGENCY SCHOOL BOARD.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the term ‘agency school
14 board’ means a body, for which—

15 “(i) the members are appointed by all
16 of the school boards of the schools located
17 within an agency, including schools oper-
18 ated under contracts or grants; and

19 “(ii) the number of such members
20 shall be determined by the Secretary in
21 consultation with the affected tribes.

22 “(B) EXCEPTIONS.—In the case of an
23 agency serving a single school, the school board
24 of such school shall be considered to be the
25 agency school board. In the case of an agency

1 serving a school or schools operated under a
2 contract or grant, at least 1 member of the
3 body described in subparagraph (A) shall be
4 from such a school.

5 “(2) BUREAU.—The term ‘Bureau’ means the
6 Bureau of Indian Affairs of the Department of the
7 Interior.

8 “(3) BUREAU FUNDED SCHOOL.—The term
9 ‘Bureau funded school’ means—

10 “(A) a Bureau school;

11 “(B) a contract or grant school; or

12 “(C) a school for which assistance is pro-
13 vided under the Tribally Controlled Schools Act
14 of 1988.

15 “(4) BUREAU SCHOOL.—The term ‘Bureau
16 school’ means—

17 “(A) a Bureau operated elementary school
18 or secondary school that is a day or boarding
19 school; or

20 “(B) a Bureau operated dormitory for stu-
21 dents attending a school other than a Bureau
22 school.

23 “(5) CONTRACT OR GRANT SCHOOL.—The term
24 ‘contract or grant school’ means an elementary
25 school, secondary school, or dormitory that receives

1 financial assistance for its operation under a con-
2 tract, grant, or agreement with the Bureau under
3 section 102, 103(a), or 208 of the Indian Self-Deter-
4 mination and Education Assistance Act, or under
5 the Tribally Controlled Schools Act of 1988.

6 “(6) EDUCATION LINE OFFICER.—The term
7 ‘education line officer’ means a member of the edu-
8 cation personnel under the supervision of the Direc-
9 tor of the Office, whether located in a central, area,
10 or agency office.

11 “(7) FINANCIAL PLAN.—The term ‘financial
12 plan’ means a plan of services provided by each Bu-
13 reau school.

14 “(8) INDIAN ORGANIZATION.—The term ‘Indian
15 organization’ means any group, association, partner-
16 ship, corporation, or other legal entity owned or con-
17 trolled by a federally recognized Indian tribe or
18 tribes, or a majority of whose members are members
19 of federally recognized tribes.

20 “(9) INHERENTLY FEDERAL FUNCTIONS.—The
21 term ‘inherently Federal functions’ means functions
22 and responsibilities which, under section 1125(c),
23 are non-contractible, including—

1 “(A) the allocation and obligation of Fed-
2 eral funds and determinations as to the
3 amounts of expenditures;

4 “(B) the administration of Federal per-
5 sonnel laws for Federal employees;

6 “(C) the administration of Federal con-
7 tracting and grant laws, including the moni-
8 toring and auditing of contracts and grants in
9 order to maintain the continuing trust, pro-
10 grammatic, and fiscal responsibilities of the
11 Secretary;

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

14 “(E) the determination of the Secretary’s
15 views and recommendations concerning admin-
16 istrative appeals or litigation and the represen-
17 tation of the Secretary in administrative ap-
18 peals and litigation;

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

22 “(G) reporting to Congress and the Presi-
23 dent;

1 “(H) the formulation of the Secretary’s
2 and the President’s policies and their budgetary
3 and legislative recommendations and views; and

4 “(I) the non-delegable statutory duties of
5 the Secretary relating to trust resources.

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

15 “(11) LOCAL SCHOOL BOARD.—The term ‘local
16 school board’, when used with respect to a Bureau
17 school, means a body chosen in accordance with the
18 laws of the tribe to be served or, in the absence of
19 such laws, elected by the parents of the Indian chil-
20 dren attending the school, except that, for a school
21 serving a substantial number of students from dif-
22 ferent tribes—

23 “(A) the members of the body shall be ap-
24 pointed by the tribal governing bodies of the
25 tribes affected; and

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

4 “(12) OFFICE.—The term ‘Office’ means the
5 Office of Indian Education Programs within the Bu-
6 reau.

7 “(13) SECRETARY.—The term ‘Secretary’
8 means the Secretary of the Interior.

9 “(14) SUPERVISOR.—The term ‘supervisor’
10 means the individual in the position of ultimate au-
11 thority at a Bureau school.

12 “(15) TRIBAL GOVERNING BODY.—The term
13 ‘tribal governing body’ means, with respect to any
14 school, the tribal governing body, or tribal governing
15 bodies, that represent at least 90 percent of the stu-
16 dents served by such school.

17 “(16) TRIBE.—The term ‘tribe’ means any In-
18 dian tribe, band, nation, or other organized group or
19 community, including an Alaska Native Regional
20 Corporation or Village Corporation (as defined in or
21 established pursuant to the Alaska Native Claims
22 Settlement Act), which is recognized as eligible for
23 the special programs and services provided by the
24 United States to Indians because of their status as
25 Indians.”.

1 **TITLE II—TRIBALLY CON-**
2 **TROLLED SCHOOLS ACT OF**
3 **1988**

4 **SEC. 201. TRIBALLY CONTROLLED SCHOOLS.**

5 Sections 5202 through 5213 of the Tribally Con-
6 trolled Schools Act of 1988 (25 U.S.C. 2501 et seq.) are
7 amended to read as follows:

8 **“SEC. 5202. FINDINGS.**

9 “Congress, after careful review of the Federal Gov-
10 ernment’s historical and special legal relationship with,
11 and resulting responsibilities to, Indians, finds that—

12 “(1) the Indian Self-Determination and Edu-
13 cation Assistance Act, which was a product of the le-
14 gitimate aspirations and a recognition of the inher-
15 ent authority of Indian nations, was and is a crucial
16 positive step towards tribal and community control;

17 “(2) because of the Bureau of Indian Affairs’
18 administration and domination of the contracting
19 process under such Act, Indians have not been pro-
20 vided with the full opportunity to develop leadership
21 skills crucial to the realization of self-government
22 and have been denied an effective voice in the plan-
23 ning and implementation of programs for the benefit
24 of Indians that are responsive to the true needs of
25 Indian communities;

1 “(3) Indians will never surrender their desire to
2 control their relationships both among themselves
3 and with non-Indian governments, organizations,
4 and persons;

5 “(4) true self-determination in any society of
6 people is dependent upon an educational process
7 that will ensure the development of qualified people
8 to fulfill meaningful leadership roles;

9 “(5) the Federal administration of education
10 for Indian children have not effected the desired
11 level of educational achievement or created the di-
12 verse opportunities and personal satisfaction that
13 education can and should provide;

14 “(6) true local control requires the least pos-
15 sible Federal interference; and

16 “(7) the time has come to enhance the concepts
17 made manifest in the Indian Self-Determination and
18 Education Assistance Act.

19 **“SEC. 5203. DECLARATION OF POLICY.**

20 “(a) **RECOGNITION.**—Congress recognizes the obliga-
21 tion of the United States to respond to the strong expres-
22 sion of the Indian people for self-determination by assur-
23 ing maximum Indian participation in the direction of edu-
24 cational services so as to render the persons administering

1 such services and the services themselves more responsive
2 to the needs and desires of Indian communities.

3 “(b) COMMITMENT.—Congress declares its commit-
4 ment to the maintenance of the Federal Government’s
5 unique and continuing trust relationship with and respon-
6 sibility to the Indian people through the establishment of
7 a meaningful Indian self-determination policy for edu-
8 cation that will deter further perpetuation of Federal bu-
9 reaucratic domination of programs.

10 “(c) NATIONAL GOAL.—Congress declares that a
11 major national goal of the United States is to provide the
12 resources, processes, and structure that will enable tribes
13 and local communities to obtain the quantity and quality
14 of educational services and opportunities that will permit
15 Indian children—

16 “(1) to compete and excel in the life areas of
17 their choice; and

18 “(2) to achieve the measure of self-determina-
19 tion essential to their social and economic well-being.

20 “(d) EDUCATIONAL NEEDS.—Congress affirms—

21 “(1) the reality of the special and unique edu-
22 cational needs of Indian people, including the need
23 for programs to meet the linguistic and cultural as-
24 pirations of Indian tribes and communities; and

1 “(2) that the needs may best be met through a
2 grant process.

3 “(e) FEDERAL RELATIONS.—Congress declares a
4 commitment to the policies described in this section and
5 support, to the full extent of congressional responsibility,
6 for Federal relations with the Indian nations.

7 “(f) TERMINATION.—Congress repudiates and rejects
8 House Concurrent Resolution 108 of the 83d Congress
9 and any policy of unilateral termination of Federal rela-
10 tions with any Indian Nation.

11 **“SEC. 5204. GRANTS AUTHORIZED.**

12 “(a) IN GENERAL.—

13 “(1) ELIGIBILITY.—The Secretary shall provide
14 grants to Indian tribes and tribal organizations
15 that—

16 “(A) operate contract schools under title
17 XI of the Education Amendments of 1978 and
18 notify the Secretary of their election to operate
19 the schools with assistance under this part
20 rather than continuing to operate such schools
21 as contract schools under such title;

22 “(B) operate other tribally controlled
23 schools eligible for assistance under this part
24 and submit applications (which are approved by

1 their tribal governing bodies) to the Secretary
2 for such grants; or

3 “(C) elect to assume operation of Bureau
4 funded schools with the assistance provided
5 under this part and submit applications (which
6 are approved by their tribal governing bodies)
7 to the Secretary for such grants.

8 “(2) DEPOSIT OF FUNDS.—Funds made avail-
9 able through a grant provided under this part shall
10 be deposited into the general operating fund of the
11 tribally controlled school with respect to which the
12 grant is made.

13 “(3) USE OF FUNDS.—

14 “(A) EDUCATION RELATED ACTIVITIES.—
15 Except as otherwise provided in this paragraph,
16 funds made available through a grant provided
17 under this part shall be used to defray, at the
18 discretion of the school board of the tribally
19 controlled school with respect to which the
20 grant is provided, any expenditures for edu-
21 cation related activities for which the grant may
22 be used under the laws described in section
23 5205(a), or any similar activities, including ex-
24 penditures for—

1 “(i) school operations, and academic,
2 educational, residential, guidance and
3 counseling, and administrative purposes;
4 and

5 “(ii) support services for the school,
6 including transportation.

7 “(B) OPERATIONS AND MAINTENANCE EX-
8 PENDITURES.—Funds made available through a
9 grant provided under this part may, at the dis-
10 cretion of the school board of the tribally con-
11 trolled school with respect to which such grant
12 is provided, be used to defray operations and
13 maintenance expenditures for the school if any
14 funds for the operation and maintenance of the
15 school are allocated to the school under the pro-
16 visions of any of the laws described in section
17 5205(a).

18 “(4) WAIVER OF FEDERAL TORT CLAIMS
19 ACT.—Notwithstanding section 314 of the Depart-
20 ment of Interior and Related Agencies Appropria-
21 tions Act, 1991 (Public Law 101-512), the Federal
22 Tort Claims Act shall not apply to a program oper-
23 ated by a tribally controlled school if the program is
24 not funded by the Federal agency. Nothing in the
25 preceding sentence shall be construed to apply to—

1 “(A) the employees of the school involved;
2 and

3 “(B) any entity that enters into a contract
4 with a grantee under this section.

5 “(b) LIMITATIONS.—

6 “(1) 1 GRANT PER TRIBE OR ORGANIZATION
7 PER FISCAL YEAR.—Not more than 1 grant may be
8 provided under this part with respect to any Indian
9 tribe or tribal organization for any fiscal year.

10 “(2) NONSECTARIAN USE.—Funds made avail-
11 able through any grant provided under this part may
12 not be used in connection with religious worship or
13 sectarian instruction.

14 “(3) ADMINISTRATIVE COSTS LIMITATION.—
15 Funds made available through any grant provided
16 under this part may not be expended for administra-
17 tive cost (as defined in section 1127(a) of the Edu-
18 cation Amendments of 1978) in excess of the
19 amount generated for such cost under section 1127
20 of such Act.

21 “(c) LIMITATION ON TRANSFER OF FUNDS AMONG
22 SCHOOL SITES.—

23 “(1) IN GENERAL.—In the case of a recipient
24 of a grant under this part that operates schools at

1 more than 1 school site, the grant recipient may ex-
 2 pend not more than the lesser of—

3 “(A) 10 percent of the funds allocated for
 4 such school site, under section 1127 of the
 5 Education Amendments of 1978; or

6 “(B) \$400,000 of such funds;
 7 at any other school site.

8 “(2) DEFINITION OF SCHOOL SITE.—In this
 9 subsection, the term ‘school site’ means the physical
 10 location and the facilities of an elementary or sec-
 11 ondary educational or residential program operated
 12 by, or under contract or grant with, the Bureau for
 13 which a discrete student count is identified under
 14 the funding formula established under section 1126
 15 of the Education Amendments of 1978.

16 “(d) NO REQUIREMENT TO ACCEPT GRANTS.—
 17 Nothing in this part may be construed—

18 “(1) to require a tribe or tribal organization to
 19 apply for or accept; or

20 “(2) to allow any person to coerce any tribe or
 21 tribal organization to apply for, or accept,

22 a grant under this part to plan, conduct, and administer
 23 all of, or any portion of, any Bureau program. The sub-
 24 mission of such applications and the timing of such appli-
 25 cations shall be strictly voluntary. Nothing in this part

1 may be construed as allowing or requiring the grant recipi-
2 ent to make any grant under this part to any other entity.

3 “(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—
4 Grants provided under this part shall not terminate, mod-
5 ify, suspend, or reduce the responsibility of the Federal
6 Government to provide an educational program.

7 “(f) RETROCESSION.—

8 “(1) IN GENERAL.—Whenever a tribal gov-
9 erning body requests retrocession of any program for
10 which assistance is provided under this part, such
11 retrocession shall become effective on a date speci-
12 fied by the Secretary that is not later than 120 days
13 after the date on which the tribal governing body re-
14 quests the retrocession. A later date may be speci-
15 fied if mutually agreed upon by the Secretary and
16 the tribal governing body. If such a program is
17 retroceded, the Secretary shall provide to any Indian
18 tribe served by such program at least the same
19 quantity and quality of services that would have
20 been provided under such program at the level of
21 funding provided under this part prior to the ret-
22 rocession.

23 “(2) STATUS AFTER RETROCESSION.—The tribe
24 requesting retrocession shall specify whether the ret-
25 rocession relates to status as a Bureau operated

1 school or as a school operated under a contract
2 under the Indian Self-Determination Act.

3 “(3) TRANSFER OF EQUIPMENT AND MATE-
4 RIALS.—Except as otherwise determined by the Sec-
5 retary, the tribe or tribal organization operating the
6 program to be retroceded shall transfer to the Sec-
7 retary (or to the tribe or tribal organization that will
8 operate the program as a contract school) the exist-
9 ing equipment and materials that were acquired—

10 “(A) with assistance under this part; or

11 “(B) upon assumption of operation of the
12 program under this part if the school was a Bu-
13 reau funded school under title XI of the Edu-
14 cation Amendments of 1978 before receiving as-
15 sistance under this part.

16 “(g) PROHIBITION OF TERMINATION FOR ADMINIS-
17 TRATIVE CONVENIENCE.—Grants provided under this
18 part may not be terminated, modified, suspended, or re-
19 duced solely for the convenience of the administering agen-
20 cy.

21 **“SEC. 5205. COMPOSITION OF GRANTS.**

22 “(a) IN GENERAL.—The funds made available
23 through a grant provided under this part to an Indian
24 tribe or tribal organization for any fiscal year shall consist
25 of—

1 “(1) the total amount of funds allocated for
2 such fiscal year under sections 1126 and 1127 of the
3 Education Amendments of 1978 with respect to the
4 tribally controlled school eligible for assistance under
5 this part that is operated by such Indian tribe or
6 tribal organization, including funds provided under
7 such sections, or under any other provision of law,
8 for transportation costs for such school;

9 “(2) to the extent requested by such Indian
10 tribe or tribal organization, the total amount of
11 funds provided from operations and maintenance ac-
12 counts and, notwithstanding section 105 of the In-
13 dian Self-Determination and Education Assistance
14 Act or any other provision of law, other facilities ac-
15 counts for such school for such fiscal year (including
16 accounts for facilities referred to in section 1125(d)
17 of the Education Amendments of 1978 or any other
18 law); and

19 “(3) the total amount of funds that are allo-
20 cated to such school for such fiscal year under—

21 “(A) title I of the Elementary and Sec-
22 ondary Education Act of 1965;

23 “(B) the Individuals with Disabilities Edu-
24 cation Act; and

25 “(C) any other Federal education law.

1 “(b) SPECIAL RULES.—

2 “(1) IN GENERAL.—

3 “(A) APPLICABLE PROVISIONS.—Funds al-
4 located to a tribally controlled school by reason
5 of paragraph (1) or (2) of subsection (a) shall
6 be subject to the provisions of this part and
7 shall not be subject to any additional restric-
8 tion, priority, or limitation that is imposed by
9 the Bureau with respect to funds provided
10 under—

11 “(i) title I of the Elementary and Sec-
12 ondary Education Act of 1965;

13 “(ii) the Individuals with Disabilities
14 Education Act; or

15 “(iii) any Federal education law other
16 than title XI of the Education Amend-
17 ments of 1978.

18 “(B) OTHER BUREAU REQUIREMENTS.—
19 Indian tribes and tribal organizations to which
20 grants are provided under this part, and trib-
21 ally controlled schools for which such grants are
22 provided, shall not be subject to any require-
23 ments, obligations, restrictions, or limitations
24 imposed by the Bureau that would otherwise
25 apply solely by reason of the receipt of funds

1 provided under any law referred to in clause (i),
 2 (ii) or (iii) of subparagraph (A).

3 “(2) SCHOOLS CONSIDERED CONTRACT
 4 SCHOOLS.—Tribally controlled schools for which
 5 grants are provided under this part shall be treated
 6 as contract schools for the purposes of allocation of
 7 funds under sections 1125(d), 1126, and 1127 of
 8 the Education Amendments of 1978.

9 “(3) SCHOOLS CONSIDERED BUREAU
 10 SCHOOLS.—Tribally controlled schools for which
 11 grants are provided under this part shall be treated
 12 as Bureau schools for the purposes of allocation of
 13 funds provided under—

14 “(A) title I of the Elementary and Sec-
 15 ondary Education Act of 1965;

16 “(B) the Individuals with Disabilities Edu-
 17 cation Act; and

18 “(C) any other Federal education law, that
 19 are distributed through the Bureau.

20 “(4) ACCOUNTS; USE OF CERTAIN FUNDS.—

21 “(A) SEPARATE ACCOUNT.—Notwith-
 22 standing section 5204(a)(2), with respect to
 23 funds from facilities improvement and repair,
 24 alteration and renovation (major or minor),
 25 health and safety, or new construction accounts

1 included in the grant provided under section
2 5204(a), the grant recipient shall maintain a
3 separate account for such funds. At the end of
4 the period designated for the work covered by
5 the funds received, the grant recipient shall
6 submit to the Secretary a separate accounting
7 of the work done and the funds expended.
8 Funds received from those accounts may only
9 be used for the purpose for which the funds
10 were appropriated and for the work encom-
11 passed by the application or submission for
12 which the funds were received.

13 “(B) REQUIREMENTS FOR PROJECTS.—

14 “(i) REGULATORY REQUIREMENTS.—

15 With respect to a grant to a tribally con-
16 trolled school under this part for new con-
17 struction or facilities improvements and re-
18 pair in excess of \$100,000, such grant
19 shall be subject to the Administrative and
20 Audit Requirements and Cost Principles
21 for Assistance Programs contained in part
22 12 of title 43, Code of Federal Regula-
23 tions.

24 “(ii) EXCEPTION.—Notwithstanding
25 clause (i), grants described in such clause

1 shall not be subject to section 12.61 of
2 title 43, Code of Federal Regulations. The
3 Secretary and the grantee shall negotiate
4 and determine a schedule of payments for
5 the work to be performed.

6 “(iii) APPLICATIONS.—In considering
7 applications for a grant described in clause
8 (i), the Secretary shall consider whether
9 the Indian tribe or tribal organization in-
10 volved would be deficient in assuring that
11 the construction projects under the pro-
12 posed grant conform to applicable building
13 standards and codes and Federal, tribal, or
14 State health and safety standards as re-
15 quired under section 1124 of the Edu-
16 cation Amendments of 1978 (25 U.S.C.
17 2005(a)) with respect to organizational
18 and financial management capabilities.

19 “(iv) DISPUTES.—Any disputes be-
20 tween the Secretary and any grantee con-
21 cerning a grant described in clause (i) shall
22 be subject to the dispute provisions con-
23 tained in section 5209(e).

24 “(C) NEW CONSTRUCTION.—Notwith-
25 standing subparagraph (A), a school receiving a

1 grant under this part for facilities improvement
2 and repair may use such grant funds for new
3 construction if the tribal governing body or trib-
4 al organization that submits the application for
5 the grant provides funding for the new con-
6 struction equal to at least 25 percent of the
7 total cost of such new construction.

8 “(D) PERIOD.—Where the appropriations
9 measure under which the funds described in
10 subparagraph (A) are made available or the ap-
11 plication submitted for the funds does not stip-
12 ulate a period for the work covered by the
13 funds, the Secretary and the grant recipient
14 shall consult and determine such a period prior
15 to the transfer of the funds. A period so deter-
16 mined may be extended upon mutual agreement
17 of the Secretary and the grant recipient.

18 “(5) ENFORCEMENT OF REQUEST TO INCLUDE
19 FUNDS.—

20 “(A) IN GENERAL.—If the Secretary fails
21 to carry out a request filed by an Indian tribe
22 or tribal organization to include in such tribe or
23 organization’s grant under this part the funds
24 described in subsection (a)(2) within 180 days

1 after the filing of the request, the Secretary
2 shall—

3 “(i) be deemed to have approved such
4 request; and

5 “(ii) immediately upon the expiration
6 of such 180-day period amend the grant
7 accordingly.

8 “(B) RIGHTS.—A tribe or organization de-
9 scribed in subparagraph (A) may enforce its
10 rights under subsection (a)(2) and this para-
11 graph, including rights relating to any denial or
12 failure to act on such tribe’s or organization’s
13 request, pursuant to the dispute authority de-
14 scribed in section 5209(e).

15 **“SEC. 5206. ELIGIBILITY FOR GRANTS.**

16 “(a) RULES.—

17 “(1) IN GENERAL.—A tribally controlled school
18 is eligible for assistance under this part if the
19 school—

20 “(A) on April 28, 1988, was a contract
21 school under title XI of the Education Amend-
22 ments of 1978 and the tribe or tribal organiza-
23 tion operating the school submits to the Sec-
24 retary a written notice of election to receive a
25 grant under this part;

1 “(B) was a Bureau operated school under
2 title XI of the Education Amendments of 1978
3 and has met the requirements of subsection (b);

4 “(C) is not a Bureau funded school, but
5 has met the requirements of subsection (c); or

6 “(D) is a school with respect to which an
7 election has been made under paragraph (2)
8 and that has met the requirements of sub-
9 section (b).

10 “(2) NEW SCHOOLS.—Notwithstanding para-
11 graph (1), for purposes of determining eligibility for
12 assistance under this part, any application that has
13 been submitted under the Indian Self-Determination
14 and Education Assistance Act by an Indian tribe or
15 tribal organization for a school that is not in oper-
16 ation on the date of enactment of the Native Amer-
17 ican Education Improvement Act of 2001 shall be
18 reviewed under the guidelines and regulations for
19 applications submitted under the Indian Self-Deter-
20 mination and Education Assistance Act that were in
21 effect at the time the application was submitted, un-
22 less the Indian tribe or tribal organization elects to
23 have the application reviewed under the provisions of
24 subsection (b).

1 “(b) ADDITIONAL REQUIREMENTS FOR BUREAU
2 FUNDED SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

3 “(1) BUREAU FUNDED SCHOOLS.—A school
4 that was a Bureau funded school under title XI of
5 the Education Amendments of 1978 on the date of
6 enactment of the Native American Education Im-
7 provement Act of 2001, and any school with respect
8 to which an election is made under subsection
9 (a)(2), meets the requirements of this subsection
10 if—

11 “(A) the Indian tribe or tribal organization
12 that operates, or desires to operate, the school
13 submits to the Secretary an application request-
14 ing that the Secretary—

15 “(i) transfer operation of the school to
16 the Indian tribe or tribal organization, if
17 the Indian tribe or tribal organization is
18 not already operating the school; and

19 “(ii) make a determination as to
20 whether the school is eligible for assistance
21 under this part; and

22 “(B) the Secretary makes a determination
23 that the school is eligible for assistance under
24 this part.

25 “(2) CERTAIN ELECTING SCHOOLS.—

1 “(A) DETERMINATION.—By not later than
2 120 days after the date on which an application
3 is submitted to the Secretary under paragraph
4 (1)(A), the Secretary shall determine—

5 “(i) in the case of a school that is not
6 being operated by the Indian tribe or tribal
7 organization, whether to transfer operation
8 of the school to the Indian tribe or tribal
9 organization; and

10 “(ii) whether the school is eligible for
11 assistance under this part.

12 “(B) CONSIDERATION; TRANSFERS AND
13 ELIGIBILITY.—In considering applications sub-
14 mitted under paragraph (1)(A), the Secretary—

15 “(i) shall transfer operation of the
16 school to the Indian tribe or tribal organi-
17 zation, if the tribe or tribal organization is
18 not already operating the school; and

19 “(ii) shall determine that the school is
20 eligible for assistance under this part, un-
21 less the Secretary finds by clear and con-
22 vincing evidence that the services to be
23 provided by the Indian tribe or tribal orga-
24 nization will be deleterious to the welfare

1 of the Indians served by the school and will
2 not carry out the purposes of this Act.

3 “(C) CONSIDERATION; POSSIBLE DEFICIENCIES.—In considering applications sub-
4 mitted under paragraph (1)(A), the Secretary
5 shall only consider whether the Indian tribe or
6 tribal organization would be deficient in oper-
7 ating the school with respect to—

8 “(i) equipment;

9 “(ii) bookkeeping and accounting pro-
10 cedures;

11 “(iii) ability to adequately manage a
12 school; or

13 “(iv) adequately trained personnel.

14 “(e) ADDITIONAL REQUIREMENTS FOR A SCHOOL
15 THAT IS NOT A BUREAU FUNDED SCHOOL.—

16 “(1) IN GENERAL.—A school that is not a Bu-
17 reau funded school under title XI of the Education
18 Amendments of 1978 meets the requirements of this
19 subsection if—

20 “(A) the Indian tribe or tribal organization
21 that operates, or desires to operate, the school
22 submits to the Secretary an application request-
23 ing a determination by the Secretary as to
24

1 whether the school is eligible for assistance
2 under this part; and

3 “(B) the Secretary makes a determination
4 that the school is eligible for assistance under
5 this part.

6 “(2) DEADLINE FOR DETERMINATION BY SEC-
7 RETARY.—

8 “(A) DETERMINATION.—By not later than
9 180 days after the date on which an application
10 is submitted to the Secretary under paragraph
11 (1)(A), the Secretary shall determine whether
12 the school is eligible for assistance under this
13 part.

14 “(B) FACTORS.—In making the determina-
15 tion under subparagraph (A), the Secretary
16 shall give equal consideration to each of the fol-
17 lowing factors:

18 “(i) With respect to the applicant’s
19 proposal—

20 “(I) the adequacy of facilities or
21 the potential to obtain or provide ade-
22 quate facilities;

23 “(II) geographic and demo-
24 graphic factors in the affected areas;

1 “(III) adequacy of the applicant’s
2 program plans;

3 “(IV) geographic proximity of
4 comparable public education; and

5 “(V) the needs to be met by the
6 school, as expressed by all affected
7 parties, including but not limited to
8 students, families, tribal governments
9 at both the central and local levels,
10 and school organizations.

11 “(ii) With respect to all education
12 services already available—

13 “(I) geographic and demographic
14 factors in the affected areas;

15 “(II) adequacy and comparability
16 of programs already available;

17 “(III) consistency of available
18 programs with tribal education codes
19 or tribal legislation on education; and

20 “(IV) the history and success of
21 those services for the proposed popu-
22 lation to be served, as determined
23 from all factors including, if relevant,
24 standardized examination perform-
25 ance.

1 “(C) EXCEPTION REGARDING PROX-
2 IMITY.—The Secretary may not make a deter-
3 mination under this paragraph that is primarily
4 based upon the geographic proximity of com-
5 parable public education.

6 “(D) INFORMATION ON FACTORS.—An ap-
7 plication submitted under paragraph (1)(A)
8 shall include information on the factors de-
9 scribed in subparagraph (B)(i), but the appli-
10 cant may also provide the Secretary such infor-
11 mation relative to the factors described in sub-
12 paragraph (B)(ii) as the applicant considers to
13 be appropriate.

14 “(E) TREATMENT OF LACK OF DETER-
15 MINATION.—If the Secretary fails to make a de-
16 termination under subparagraph (A) with re-
17 spect to an application within 180 days after
18 the date on which the Secretary received the
19 application—

20 “(i) the Secretary shall be deemed to
21 have made a determination that the trib-
22 ally controlled school is eligible for assist-
23 ance under this part; and

24 “(ii) the grant shall become effective
25 18 months after the date on which the

1 Secretary received the application, or on an
2 earlier date, at the Secretary's discretion.

3 “(d) FILING OF APPLICATIONS AND REPORTS.—

4 “(1) IN GENERAL.—Each application or report
5 submitted to the Secretary under this part, and any
6 amendment to such application or report, shall be
7 filed with the education line officer designated by
8 the Director of the Office of Indian Education Pro-
9 grams of the Bureau of Indian Affairs. The date on
10 which the filing occurs shall, for purposes of this
11 part, be treated as the date on which the applica-
12 tion, report, or amendment was submitted to the
13 Secretary.

14 “(2) SUPPORTING DOCUMENTATION.—

15 “(A) IN GENERAL.—Any application that
16 is submitted under this part shall be accom-
17 panied by a document indicating the action
18 taken by the appropriate tribal governing body
19 concerning authorizing such application.

20 “(B) AUTHORIZATION ACTION.—The Sec-
21 retary shall administer the requirement of sub-
22 paragraph (A) in a manner so as to ensure that
23 the tribe involved, through the official action of
24 the tribal governing body, has approved of the
25 application for the grant.

1 “(C) RULE OF CONSTRUCTION.—Nothing
2 in this paragraph shall be construed as making
3 a tribal governing body (or tribe) that takes an
4 action described in subparagraph (A) a party to
5 the grant (unless the tribal governing body or
6 the tribe is the grantee) or as making the tribal
7 governing body or tribe financially or program-
8 matically responsible for the actions of the
9 grantee.

10 “(3) RULES OF CONSTRUCTION.—Nothing in
11 this subsection shall be construed as making a tribe
12 act as a surety for the performance of a grantee
13 under a grant under this part.

14 “(4) CLARIFICATION.—The provisions of para-
15 graphs (2) and (3) shall be construed as a clarifica-
16 tion of policy in existence on the date of enactment
17 of the Native American Education Improvement Act
18 of 2001 with respect to grants under this part and
19 shall not be construed as altering such policy or as
20 a new policy.

21 “(e) EFFECTIVE DATE FOR APPROVED APPLICA-
22 TIONS.—Except as provided in subsection (c)(2)(E), a
23 grant provided under this part shall be made, and any
24 transfer of the operation of a Bureau school made under
25 subsection (b) shall become effective, beginning on the

1 first day of the academic year succeeding the fiscal year
2 in which the application for the grant or transfer is made,
3 or on an earlier date determined by the Secretary.

4 “(f) DENIAL OF APPLICATIONS.—

5 “(1) IN GENERAL.—If the Secretary dis-
6 approves a grant under this part, disapproves the
7 transfer of operations of a Bureau school under sub-
8 section (b), or determines that a school is not eligi-
9 ble for assistance under this part, the Secretary
10 shall—

11 “(A) state the objections in writing to the
12 tribe or tribal organization involved within the
13 allotted time;

14 “(B) provide assistance to the tribe or trib-
15 al organization to cure all stated objections;

16 “(C) at the request of the tribe or tribal
17 organization, provide to the tribe or tribal orga-
18 nization a hearing on the record regarding the
19 refusal or determination involved, under the
20 same rules and regulations as apply under the
21 Indian Self-Determination and Education As-
22 sistance Act; and

23 “(D) provide to the tribe or tribal organi-
24 zation an opportunity to appeal the decision re-
25 sulting from the hearing.

1 “(2) **TIMELINE FOR RECONSIDERATION OF**
2 **AMENDED APPLICATIONS.**—The Secretary shall re-
3 consider any amended application submitted under
4 this part within 60 days after the amended applica-
5 tion is submitted to the Secretary and shall submit
6 the determinations of the Secretary with respect to
7 such reconsideration to the tribe or the tribal organi-
8 zation.

9 “(g) **REPORT.**—The Bureau shall prepare and submit
10 to Congress an annual report on all applications received,
11 and actions taken (including the costs associated with
12 such actions), under this section on the same date as the
13 date on which the President is required to submit to Con-
14 gress a budget of the United States Government under
15 section 1105 of title 31, United States Code.

16 **“SEC. 5207. DURATION OF ELIGIBILITY DETERMINATION.**

17 “(a) **IN GENERAL.**—If the Secretary determines that
18 a tribally controlled school is eligible for assistance under
19 this part, the eligibility determination shall remain in ef-
20 fect until the determination is revoked by the Secretary,
21 and the requirements of subsection (b) or (c) of section
22 5206, if applicable, shall be considered to have been met
23 with respect to such school until the eligibility determina-
24 tion is revoked by the Secretary.

25 “(b) **ANNUAL REPORTS.**—

1 “(1) IN GENERAL.—Each recipient of a grant
2 provided under this part for a school shall prepare
3 an annual report concerning the school involved, the
4 contents of which shall be limited to—

5 “(A) an annual financial statement report-
6 ing revenue and expenditures as defined by the
7 cost accounting standards established by the
8 grant recipient;

9 “(B) a biannual financial audit conducted
10 pursuant to the standards of chapter 71 of title
11 31, United States Code;

12 “(C) a biannual compliance audit of the
13 procurement of personal property during the
14 period for which the report is being prepared
15 that shall be in compliance with written pro-
16 curement standards that are developed by the
17 local school board;

18 “(D) an annual submission to the Sec-
19 retary containing information on the number of
20 students served and a brief description of pro-
21 grams offered through the grant; and

22 “(E) a program evaluation conducted by
23 an impartial evaluation review team, to be
24 based on the standards established for purposes
25 of subsection (c)(1)(A)(ii).

1 “(2) EVALUATION REVIEW TEAMS.—In appro-
2 priate cases, representatives of other tribally con-
3 trolled schools and representatives of tribally con-
4 trolled community colleges shall be members of the
5 evaluation review teams.

6 “(3) EVALUATIONS.—In the case of a school
7 that is accredited, the evaluations required under
8 this subsection shall be conducted at intervals under
9 the terms of the accreditation.

10 “(4) SUBMISSION OF REPORT.—

11 “(A) TO TRIBAL GOVERNING BODY.—Upon
12 completion of the annual report required under
13 paragraph (1), the recipient of the grant shall
14 send (via first class mail, return receipt re-
15 quested) a copy of such annual report to the
16 tribal governing body.

17 “(B) TO SECRETARY.—Not later than 30
18 days after receiving written confirmation that
19 the tribal governing body has received the re-
20 port sent pursuant to subparagraph (A), the re-
21 cipient of the grant shall send a copy of the re-
22 port to the Secretary.

23 “(c) REVOCATION OF ELIGIBILITY.—

24 “(1) IN GENERAL.—

1 “(A) NONREVOICATION CONDITIONS.—The
2 Secretary shall not revoke a determination that
3 a school is eligible for assistance under this
4 part if—

5 “(i) the Indian tribe or tribal organi-
6 zation submits the reports required under
7 subsection (b) with respect to the school;
8 and

9 “(ii) at least 1 of the following condi-
10 tions applies with respect to the school:

11 “(I) The school is certified or ac-
12 credited by a State certification or re-
13 gional accrediting association or is a
14 candidate in good standing for such
15 certification or accreditation under the
16 rules of the State certification or re-
17 gional accrediting association, showing
18 that credits achieved by the students
19 within the education programs of the
20 school are, or will be, accepted at
21 grade level by a State certified or re-
22 gionally accredited institution.

23 “(II) The Secretary determines
24 that there is a reasonable expectation
25 that the certification or accreditation

1 described in subclause (I), or can-
2 didacy in good standing for such cer-
3 tification or accreditation, will be
4 achieved by the school within 3 years
5 and that the program offered by the
6 school is beneficial to Indian students.

7 “(III) The school is accredited by
8 a tribal department of education if
9 such accreditation is accepted by a
10 generally recognized State certifi-
11 cation or regional accrediting agency.

12 “(IV) The school accepts the
13 standards issued under section 1121
14 of the Education Amendments of
15 1978 and an impartial evaluator cho-
16 sen by the grant recipient conducts a
17 program evaluation for the school
18 under this section in conformance
19 with the regulations pertaining to Bu-
20 reau operated schools, but no grant
21 recipient shall be required to comply
22 with the standards to a greater degree
23 than a comparable Bureau operated
24 school.

1 “(V)(aa) Every 3 years, an im-
2 partial evaluator agreed upon by the
3 Secretary and the grant recipient con-
4 ducts evaluations of the school, and
5 the school receives a positive assess-
6 ment under such evaluations. The
7 evaluations are conducted under
8 standards adopted by a contractor
9 under a contract for the school en-
10 tered into under the Indian Self-De-
11 termination and Education Assistance
12 Act (or revisions of such standards
13 agreed to by the Secretary and the
14 grant recipient) prior to the date of
15 enactment of the Native American
16 Education Improvement Act of 2001.

17 “(bb) If the Secretary and a
18 grant recipient other than a tribal
19 governing body fail to agree on such
20 an evaluator, the tribal governing
21 body shall choose the evaluator or per-
22 form the evaluation. If the Secretary
23 and a grant recipient that is a tribal
24 governing body fail to agree on such

1 an evaluator, item (aa) shall not
2 apply.

3 “(B) STANDARDS.—The choice of stand-
4 ards employed for the purposes of subpara-
5 graph (A)(ii) shall be consistent with section
6 1121(e) of the Education Amendments of 1978.

7 “(2) NOTICE REQUIREMENTS FOR REVOCA-
8 TION.—The Secretary shall not revoke a determina-
9 tion that a school is eligible for assistance under this
10 part, or reassume control of a school that was a Bu-
11 reau school prior to approval of an application sub-
12 mitted under section 5206(b)(1)(A), until the
13 Secretary—

14 “(A) provides notice, to the tribally con-
15 trolled school involved and the appropriate trib-
16 al governing body (within the meaning of sec-
17 tion 1140 of the Education Amendments of
18 1978) for the tribally controlled school, which
19 states—

20 “(i) the specific deficiencies that led
21 to the revocation or reassumption deter-
22 mination; and

23 “(ii) the actions that are needed to
24 remedy such deficiencies; and

1 “(B) affords such school and governing
2 body an opportunity to carry out the remedial
3 actions.

4 “(3) TECHNICAL ASSISTANCE.—The Secretary
5 shall provide such technical assistance to enable the
6 school and governing body to carry out such reme-
7 dial actions.

8 “(4) HEARING AND APPEAL.—In addition to
9 notice and technical assistance under this sub-
10 section, the Secretary shall provide to the school and
11 governing body—

12 “(A) at the request of the school or gov-
13 erning body, a hearing on the record regarding
14 the revocation or reassumption determination,
15 to be conducted under the rules and regulations
16 described in section 5206(f)(1)(C); and

17 “(B) an opportunity to appeal the decision
18 resulting from the hearing.

19 “(d) APPLICABILITY OF SECTION PURSUANT TO
20 ELECTION UNDER SECTION 5209(b).—With respect to a
21 tribally controlled school that receives assistance under
22 this part pursuant to an election made under section
23 5209(b)—

24 “(1) subsection (b) shall apply; and

1 “(2) the Secretary may not revoke eligibility for
2 assistance under this part except in conformance
3 with subsection (c).

4 **“SEC. 5208. PAYMENT OF GRANTS; INVESTMENT OF FUNDS;**
5 **STATE PAYMENTS TO SCHOOLS.**

6 “(a) PAYMENTS.—

7 “(1) MANNER OF PAYMENTS.—

8 “(A) IN GENERAL.—Except as otherwise
9 provided in this subsection, the Secretary shall
10 make payments to grant recipients under this
11 part in 2 payments, of which—

12 “(i) the first payment shall be made
13 not later than July 15 of each year in an
14 amount equal to 80 percent of the amount
15 that the grant recipient was entitled to re-
16 ceive during the preceding academic year;
17 and

18 “(ii) the second payment, consisting
19 of the remainder to which the grant recipi-
20 ent was entitled for the academic year,
21 shall be made not later than December 1
22 of each year.

23 “(B) EXCESS FUNDING.—In a case in
24 which the amount provided to a grant recipient
25 under subparagraph (A)(i) is in excess of the

1 amount that the recipient is entitled to receive
2 for the academic year involved, the recipient
3 shall return to the Secretary such excess
4 amount. The amount returned to the Secretary
5 under this subparagraph shall be distributed
6 equally to all schools in the system.

7 “(2) NEWLY FUNDED SCHOOLS.—For any
8 school for which no payment under this part was
9 made from Bureau funds in the academic year pre-
10 ceding the year for which the payments are being
11 made, full payment of the amount computed for the
12 school for the first academic year of eligibility under
13 this part shall be made not later than December 1
14 of the academic year.

15 “(3) LATE FUNDING.—With regard to funds for
16 grant recipients under this part that become avail-
17 able for obligation on October 1 of the fiscal year for
18 which such funds are appropriated, the Secretary
19 shall make payments to the grant recipients not
20 later than December 1 of the fiscal year, except that
21 operations and maintenance funds shall be forward
22 funded and shall be available for obligation not later
23 than July 15 and December 1 of each fiscal year.

24 “(4) APPLICABILITY OF CERTAIN TITLE 31 PRO-
25 VISIONS.—The provisions of chapter 39 of title 31,

1 United States Code, shall apply to the payments re-
2 quired to be made under paragraphs (1), (2), and
3 (3).

4 “(5) RESTRICTIONS.—Payments made under
5 paragraphs (1), (2), and (3) shall be subject to any
6 restriction on amounts of payments under this part
7 that is imposed by a continuing resolution or other
8 Act appropriating the funds involved.

9 “(b) INVESTMENT OF FUNDS.—

10 “(1) TREATMENT OF INTEREST AND INVEST-
11 MENT INCOME.—Notwithstanding any other provi-
12 sion of law, any interest or investment income that
13 accrues on or is derived from any funds provided
14 under this part for a school after such funds are
15 paid to an Indian tribe or tribal organization and be-
16 fore such funds are expended for the purpose for
17 which such funds were provided under this part shall
18 be the property of the Indian tribe or tribal organi-
19 zation. The interest or income shall not be taken
20 into account by any officer or employee of the Fed-
21 eral Government in determining whether to provide
22 assistance, or the amount of assistance to be pro-
23 vided, under any provision of Federal law.

24 “(2) PERMISSIBLE INVESTMENTS.—Funds pro-
25 vided under this part may be invested by an Indian

1 tribe or tribal organization, as approved by the
2 grantee, before such funds are expended for the ob-
3 jectives of this part if such funds are—

4 “(A) invested by the Indian tribe or tribal
5 organization only—

6 “(i) in obligations of the United
7 States;

8 “(ii) in obligations or securities that
9 are guaranteed or insured by the United
10 States; or

11 “(iii) in mutual (or other) funds that
12 are registered with the Securities and Ex-
13 change Commission and that only invest in
14 obligations of the United States, or securi-
15 ties that are guaranteed or insured by the
16 United States; or

17 “(B) deposited only into accounts that are
18 insured by an agency or instrumentality of the
19 United States, or are fully supported by collat-
20 eral to ensure protection of the funds, even in
21 the event of a bank failure.

22 “(c) RECOVERIES.—Funds received under this part
23 shall not be taken into consideration by any Federal agen-
24 cy for the purposes of making underrecovery and over-

1 recovery determinations for any other funds, from what-
2 ever source derived.

3 “(d) PAYMENTS BY STATES.—

4 “(1) IN GENERAL.—With respect to a school
5 that receives assistance under this part, a State
6 shall not—

7 “(A) take into account the amount of such
8 assistance in determining the amount of funds
9 that such school is eligible to receive under ap-
10 plicable State law; or

11 “(B) reduce any State payments that such
12 school is eligible to receive under applicable
13 State law because of the assistance received by
14 the school under this part.

15 “(2) VIOLATIONS.—

16 “(A) IN GENERAL.—Upon receipt of any
17 information from any source that a State is in
18 violation of paragraph (1), the Secretary shall
19 immediately, but in no case later than 90 days
20 after the receipt of such information, conduct
21 an investigation and make a determination of
22 whether such violation has occurred.

23 “(B) DETERMINATION.—If the Secretary
24 makes a determination under subparagraph (A)
25 that a State has violated paragraph (1), the

1 Secretary shall inform the Secretary of Edu-
2 cation of such determination and the basis for
3 the determination. The Secretary of Education
4 shall, in an expedient manner, pursue penalties
5 under paragraph (3) with respect to the State.

6 “(3) PENALTIES.—A State determined to have
7 violated paragraph (1) shall be subject to penalties
8 similar to the penalties described in section 8809(e)
9 of the Elementary and Secondary Education Act of
10 1965 for a violation of title VIII of such Act.

11 **“SEC. 5209. APPLICATION WITH RESPECT TO INDIAN SELF-**
12 **DETERMINATION AND EDUCATION ASSIST-**
13 **ANCE ACT.**

14 “(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—
15 The following provisions of the Indian Self-Determination
16 and Education Assistance Act (and any subsequent revi-
17 sions thereto or renumbering thereof), shall apply to
18 grants provided under this part and the schools funded
19 under such grants:

20 “(1) Section 5(f) (relating to single agency au-
21 dits).

22 “(2) Section 6 (relating to criminal activities;
23 penalties).

24 “(3) Section 7 (relating to wage and labor
25 standards).

1 “(4) Section 104 (relating to retention of Fed-
2 eral employee coverage).

3 “(5) Section 105(f) (relating to Federal prop-
4 erty).

5 “(6) Section 105(k) (relating to access to Fed-
6 eral sources of supply).

7 “(7) Section 105(l) (relating to lease of facility
8 used for administration and delivery of services).

9 “(8) Section 106(e) (relating to limitation on
10 remedies relating to cost allowances).

11 “(9) Section 106(i) (relating to use of funds for
12 matching or cost participation requirements).

13 “(10) Section 106(j) (relating to allowable uses
14 of funds).

15 “(11) The portions of section 108(c) that con-
16 sist of model agreements provisions 1(b)(5) (relating
17 to limitations of costs), 1(b)(7) (relating to records
18 and monitoring), 1(b)(8) (relating to property), and
19 1(b)(9) (relating to availability of funds).

20 “(12) Section 109 (relating to reassumption).

21 “(13) Section 111 (relating to sovereign immu-
22 nity and trusteeship rights unaffected).

23 “(b) ELECTION FOR GRANT IN LIEU OF CON-
24 TRACT.—

1 “(1) IN GENERAL.—A contractor that carries
2 out an activity to which this part applies and who
3 has entered into a contract under the Indian Self-
4 Determination and Education Assistance Act that is
5 in effect on the date of enactment of the Native
6 American Education Improvement Act of 2001 may,
7 by giving notice to the Secretary, elect to receive a
8 grant under this part in lieu of such contract and
9 to have the provisions of this part apply to such ac-
10 tivity.

11 “(2) EFFECTIVE DATE OF ELECTION.—Any
12 election made under paragraph (1) shall take effect
13 on the first day of July immediately following the
14 date of such election.

15 “(3) EXCEPTION.—In any case in which the
16 first day of July immediately following the date of
17 an election under paragraph (1) is less than 60 days
18 after such election, such election shall not take effect
19 until the first day of July of year following the year
20 in which the election is made.

21 “(c) NO DUPLICATION.—No funds may be provided
22 under any contract entered into under the Indian Self-De-
23 termination and Education Assistance Act to pay any ex-
24 penses incurred in providing any program or services if

1 a grant has been made under this part to pay such ex-
2 penses.

3 “(d) TRANSFERS AND CARRYOVERS.—

4 “(1) BUILDINGS, EQUIPMENT, SUPPLIES, MATE-
5 RIALS.—A tribe or tribal organization assuming the
6 operation of—

7 “(A) a Bureau school with assistance
8 under this part shall be entitled to the transfer
9 or use of buildings, equipment, supplies, and
10 materials to the same extent as if the tribe or
11 tribal organization were contracting under the
12 Indian Self-Determination and Education As-
13 sistance Act; or

14 “(B) a contract school with assistance
15 under this part shall be entitled to funding for
16 improvements, alterations, replacement and
17 code compliance in facilities where programs
18 approved under this part were used in the oper-
19 ation of the contract school to the same extent
20 as if it were contracting under the Indian Self-
21 Determination and Education Assistance Act
22 and to the transfer or use of buildings, equip-
23 ment, supplies, and materials that were used in
24 the operation of the contract school to the same

1 extent as if the tribe or tribal organization were
2 contracting under such Act.

3 “(2) FUNDS.—Any tribe or tribal organization
4 that assumes operation of a Bureau school with as-
5 sistance under this part and any tribe or tribal orga-
6 nization that elects to operate a school with assist-
7 ance under this part rather than to continue to oper-
8 ate the school as a contract school shall be entitled
9 to any funds that would remain available from the
10 previous fiscal year if such school remained a Bu-
11 reau school or was operated as a contract school, re-
12 spectively.

13 “(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—

14 “(1) IN GENERAL.—Any exception or problem
15 cited in an audit conducted pursuant to section
16 5207(b)(1)(B), any dispute regarding a grant au-
17 thorized to be made pursuant to this part or any
18 modification of such grant, and any dispute involv-
19 ing an administrative cost grant under section 1127
20 of the Education Amendments of 1978, shall be ad-
21 ministered under the provisions governing such ex-
22 ceptions, problems, or disputes described in this
23 paragraph in the case of contracts under the Indian
24 Self-Determination and Education Assistance Act.

1 “(2) ADMINISTRATIVE APPEALS.—The Equal
2 Access to Justice Act (as amended) and the amend-
3 ments made by such Act shall apply to an adminis-
4 trative appeal filed after September 8, 1988, by a
5 grant recipient regarding a grant provided under
6 this part, including an administrative cost grant.

7 **“SEC. 5210. ROLE OF THE DIRECTOR.**

8 “Applications for grants under this part, and all
9 modifications to the applications, shall be reviewed and ap-
10 proved by personnel under the direction and control of the
11 Director of the Office of Indian Education Programs. Re-
12 ports required under this part shall be submitted to edu-
13 cation personnel under the direction and control of the Di-
14 rector of such Office.

15 **“SEC. 5211. REGULATIONS.**

16 “The Secretary is authorized to issue regulations re-
17 lating to the discharge of duties specifically assigned to
18 the Secretary in this part. For all other matters relating
19 to the details of planning, developing, implementing, and
20 evaluating grants under this part, the Secretary shall not
21 issue regulations. Regulations issued pursuant to this part
22 shall not have the standing of a Federal statute for pur-
23 poses of judicial review.

1 **“SEC. 5212. THE TRIBALLY CONTROLLED GRANT SCHOOL**
2 **ENDOWMENT PROGRAM.**

3 “(a) IN GENERAL.—

4 “(1) ESTABLISHMENT.—Each school receiving
5 a grant under this part may establish, at a federally
6 insured financial institution, a trust fund for the
7 purposes of this section.

8 “(2) DEPOSITS AND USE.—The school may
9 provide—

10 “(A) for deposit into the trust fund, only
11 funds from non-Federal sources, except that the
12 interest on funds received from grants provided
13 under this part may be used for that purpose;

14 “(B) for deposit into the trust fund, any
15 earnings on funds deposited in the fund; and

16 “(C) for the sole use of the school any
17 noncash, in-kind contributions of real or per-
18 sonal property, which may at any time be used,
19 sold, or otherwise disposed of.

20 “(b) INTEREST.—Interest from the fund established
21 under subsection (a) may periodically be withdrawn and
22 used, at the discretion of the school, to defray any ex-
23 penses associated with the operation of the school con-
24 sistent with the purposes of this Act.

25 **“SEC. 5213. DEFINITIONS.**

26 “In this part:

1 “(1) BUREAU.—The term ‘Bureau’ means the
2 Bureau of Indian Affairs of the Department of the
3 Interior.

4 “(2) ELIGIBLE INDIAN STUDENT.—The term
5 ‘eligible Indian student’ has the meaning given such
6 term in section 1126(a) of the Education Amend-
7 ments of 1978.

8 “(3) INDIAN.—The term ‘Indian’ means a
9 member of an Indian tribe, and includes individuals
10 who are eligible for membership in a tribe, and the
11 child or grandchild of such an individual.

12 “(4) INDIAN TRIBE.—The term ‘Indian tribe’
13 means any Indian tribe, band, nation, or other orga-
14 nized group or community, including an Alaska Na-
15 tive Village Corporation or Regional Corporation (as
16 defined in or established pursuant to the Alaskan
17 Native Claims Settlement Act), which is recognized
18 as eligible for the special programs and services pro-
19 vided by the United States to Indians because of
20 their status as Indians.

21 “(5) LOCAL EDUCATIONAL AGENCY.—The term
22 ‘local educational agency’ means a public board of
23 education or other public authority legally con-
24 stituted within a State for either administrative con-
25 trol or direction of, or to perform a service function

1 for, public elementary schools or secondary schools
2 in a city, county, township, school district, or other
3 political subdivision of a State or such combination
4 of school districts or counties as are recognized in a
5 State as an administrative agency for the State’s
6 public elementary schools or secondary schools. Such
7 term includes any other public institution or agency
8 having administrative control and direction of a pub-
9 lic elementary school or secondary school.

10 “(6) SECRETARY.—The term ‘Secretary’ means
11 the Secretary of the Interior.

12 “(7) TRIBAL GOVERNING BODY.—The term
13 ‘tribal governing body’ means, with respect to any
14 school that receives assistance under this Act, the
15 recognized governing body of the Indian tribe in-
16 volved.

17 “(8) TRIBAL ORGANIZATION.—

18 “(A) IN GENERAL.—The term ‘tribal orga-
19 nization’ means—

20 “(i) the recognized governing body of
21 any Indian tribe; or

22 “(ii) any legally established organiza-
23 tion of Indians that—

24 “(I) is controlled, sanctioned, or
25 chartered by such governing body or

1 is democratically elected by the adult
2 members of the Indian community to
3 be served by such organization; and

4 “(II) includes the maximum par-
5 ticipation of Indians in all phases of
6 the organization’s activities.

7 “(B) AUTHORIZATION.—In any case in
8 which a grant is provided under this part to an
9 organization to provide services through a trib-
10 ally controlled school benefiting more than 1 In-
11 dian tribe, the approval of the governing bodies
12 of Indian tribes representing 80 percent of the
13 students attending the tribally controlled school
14 shall be considered a sufficient tribal authoriza-
15 tion for such grant.

16 “(9) TRIBALLY CONTROLLED SCHOOL.—The
17 term ‘tribally controlled school’ means a school
18 that—

19 “(A) is operated by an Indian tribe or a
20 tribal organization, enrolling students in kinder-
21 garten through grade 12, including a preschool;

22 “(B) is not a local educational agency; and

23 “(C) is not directly administered by the
24 Bureau of Indian Affairs.”.

○