

Bureau of Indian Affairs, Interior

§ 39.50

ADM for the September count week of the current year.

[49 FR 36368, Sept. 17, 1984]

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

[49 FR 36368, Sept. 17, 1984]

§ 39.37 Auditing of student counts.

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

§ 39.38 Failure to provide timely and accurate student counts.

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

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

§ 39.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds

available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of § 39.78 in subpart F.

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

Subpart D—Direct Allotment of Formula Entitlements

§ 39.50 Definitions.

As used in this subpart, the term:

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

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

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

(d) *Final allotment* means that notice of funds available to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(e) *Initial allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

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

(g) *Tentative allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 36368, Sept. 17, 1984]

§ 39.51 Notice of allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under subpart B of this part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

[49 FR 36368, Sept. 17, 1984]

§ 39.52 Initial allotments.

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

§ 39.53 Obligation of funds.

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

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(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR part 900.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 39.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 39.75, 39.78, 39.90, 39.102 and 39.111.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

§ 39.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 39.55 of this part. Such quarterly apportionments will be made as determined in § 39.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25 CFR part 900 for effecting and adjusting contracts with tribally operated schools.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

§ 39.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

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

(b) Sign all documents required for the obligation and or payment of funds