

**§ 39.63**

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each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan must provide that at least 80% of the funds generated by students served by the program be spent on those students;

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

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

**§ 39.63 Procedures for development of the plan.**

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

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

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

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

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial

plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

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

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

**§ 39.64 Procedures for financial plan appeals.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Subpart F—Contingency Funds

### § 39.70 Definitions.

As used in this subpart, the term:

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

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

### § 39.71 Establishment of the School Disaster Contingency Fund.

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

### § 39.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be added when appropriated but the Fund should not exceed a \$1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

### § 39.73 Purposes.

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

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