

## Bureau of Indian Affairs, Interior

## § 42.3

### § 41.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this subpart shall be provided in a fair and uniform manner, and admission to the College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, the College shall comply with part 276 of this title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

### § 41.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based,

may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

## PART 42—STUDENT RIGHTS AND DUE PROCESS PROCEDURES

Sec.

- 42.1 Purpose.
- 42.2 Application to Bureau schools.
- 42.3 Rights of the individual student.
- 42.4 Due process.
- 42.5 Application to schools under Bureau contract.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 39 FR 32741, Sept. 11, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 42.1 Purpose.

The regulations in this part govern establishing programs of student rights and due process procedures in Bureau of Indian Affairs schools and in schools that are operating under contract with the Bureau of Indian Affairs.

### § 42.2 Application to Bureau schools.

All Bureau of Indian Affairs schools shall be governed by the regulations set forth in this part and said regulations shall be expressly included as a part of the local school regulations of each Bureau of Indian Affairs school. Upon admission, all students of Bureau of Indian Affairs schools shall be given a copy of the school regulations governing the conduct of students and shall be notified of any amendments thereto.

### § 42.3 Rights of the individual student.

Individual students at Bureau of Indian Affairs schools have, and shall be accorded, the following rights:

- (a) The right to an education.
- (b) The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.
- (c) The right to make his or her own decisions where applicable.
- (d) The right to freedom of religion and culture.
- (e) The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of

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hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or endanger the health and safety of the student or others.

(f) The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

(g) The right to peaceably assemble and to petition the redress of grievances.

(h) The right to freedom from discrimination.

(i) The right to due process. Every student is entitled to due process in every instance of disciplinary action for alleged violation of school regulations for which the student may be subjected to penalties of suspension, expulsion, or transfer.

### § 42.4 Due process.

Due process shall include:

(a) Written notice of charges within a reasonable time prior to a hearing. Notice of the charges shall include reference to the regulation allegedly violated, the facts alleged to constitute the violation, and notice of access to all statements of persons relating to the charge and to those parts of the student's school record which will be considered in rendering a disciplinary decision.

(b) A fair and impartial hearing prior to the imposition of disciplinary action absent the actual existence of an emergency situation seriously and immediately endangering the health or safety of the student or others. In an emergency situation the official may impose disciplinary action not to exceed a temporary suspension, but shall immediately thereafter report in writing the facts (not conclusions) giving rise to the emergency and shall afford the student a hearing which fully comports with due process, as set forth herein, as soon as practicable thereafter.

(c) The right to have present at the hearing the student's parent(s) or guardian(s) (or their designee) and to be represented by lay or legal counsel of the student's choice. Private attorney's fees are to be borne by the student.

(d) The right to produce, and have produced, witnesses on the student's

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behalf and to confront and examine all witnesses.

(e) The right to a record of hearings of disciplinary actions, including written findings of fact and conclusions in all cases of disciplinary action.

(f) The right to administrative review and appeal.

(g) The student shall not be compelled to testify against himself.

(h) The right to have allegations of misconduct and information pertaining thereto expunged from the student's school record in the event the student is found not guilty of the charges.

### § 42.5 Application to schools under Bureau contract.

Non-Bureau of Indian Affairs schools which are funded under contract with the Bureau of Indian Affairs must also recognize these student rights.

## PART 43—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Sec.

- 43.1 Purpose and scope.
- 43.2 Definitions.
- 43.3 Student rights.
- 43.4 Annual notification of rights.
- 43.5 Access to records.
- 43.6 Limitations on access.
- 43.7 Access rights.
- 43.8 Destruction of records.
- 43.9 Procedures for granting access.
- 43.10 Right to challenge.
- 43.11 Informal proceedings.
- 43.12 Right to a hearing.
- 43.13 Right of appeal.
- 43.14 Consent.
- 43.15 Content of consent.
- 43.16 Copy to be provided to parents or eligible students.
- 43.17 Release of information for health or safety emergencies.
- 43.18 Record of access.
- 43.19 Transfer of information by third parties.
- 43.20 Directory information.
- 43.21 Standards for collection and maintenance of student records.
- 43.22 Assuring integrity of records.
- 43.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

SOURCE: 43 FR 52024, Nov. 8, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.