

Bureau of Indian Affairs, Interior

§ 41.7

programs of Community Colleges. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.6 HHS participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Secretary for Education, Department of Health and Human Services, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

[44 FR 67042, Nov. 21, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 41.7 Feasibility studies.

(a) Grants under § 41.8 of this subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

- (1) Financial feasibility based upon potential enrollment;
- (2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;
- (3) Tribal, linguistics, or cultural differences;
- (4) Isolation;
- (5) Presence of alternate education sources;
- (6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College (or both) may present additional evidence or arguments to justify feasibility. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling either confirming, modifying, or reversing the original determination. The ruling, which shall be final for the Department, shall be mailed or otherwise delivered to the appealing Tribe and the Community College within one week of its issuance. In any case where the original negative determination is not reversed, the Assistant Secretary's ruling shall specify the grounds for the decision and state the manner in which the determination related to each of the factors specified.

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(f) A negative determination shall not prevent a Tribe from requesting another feasibility study, but no more than one feasibility study shall be requested for any given Community College per year.

§ 41.8 Grants.

(a) Each Community College which has received a positive feasibility study determination under § 41.7 of this subpart shall be entitled to apply for financial assistance under this subpart.

(b) Except with respect to applications for grants for the 1979-1980 academic year, each Community College shall make an application to the Director of Education before January 31, of the year preceding the academic year for which financial assistance is requested. Each application must contain the following information:

(1) The name and address of the Community College and the names of the members of the governing board and the number of its members who are Indian;

(2) A statement that the Community College has received a positive feasibility determination and the date thereof;

(3) A written statement of the goals, philosophy, or proposed plan of operation sufficient to demonstrate that its education program or proposed program is designed to meet the needs of Indians;

(4) In the case of a Community College which has been in operation for more than one year, a statement of the total number of FTE Indian students and the total number of all FTE students;

(5) If the Community College has not yet begun operations, a statement of expected enrollment, including the total number of FTE students and the number of FTE Indian students;

(6) The name and address of the Indian Tribe or Tribes which control or operate and manage, or have established, sanctioned, or chartered the Community College, and a statement as to which of those Tribes have not done so with respect to any other Community College;

(7) A curriculum, which may be in the form of a college catalog or like publication;

(8) A proposed budget, showing total expected operating expenses of education programs and expected revenues from all sources for the academic year to which the information applies;

(9) An assurance that the Community College will not deny admission to any Indian student because that student is not a member of a specific tribe or because such student is a member of a specific tribe, and will comply with the requirements set forth in § 41.11 of this subpart together with any request and justification for a specific waiver of any requirement of 25 CFR part 276 which the Community College believes to be inappropriate;

(10) Certification by the chief executive officer of the Community College that the information on the application is complete and correct and that the application has been filed with the governing body or bodies of the Tribe or Tribes which control or have sanctioned or chartered it.

(c)(1) Within thirty (30) days of receiving an application required under paragraph (b) of this section, the Director of Education shall review the application submitted by the Community College and any comments with respect thereto filed by the Tribe(s) or by any national Indian organization(s) whose assistance has been requested by the Community College, and make a grant award in an amount determined under paragraph (d) of this section to the Community College if the application qualifies the Community College to receive a grant.

(2) In the case of any Community College whose application is not approved, the Director shall promptly send a notice of such action to the Community College. Such notice shall include a statement of the specific reasons for not approving the application and a statement advising the College of its right within thirty (30) days to amend or supplement the application on file to rectify the defect.

(3) Final disapproval of a grant application by the Director after the thirty day period referred to in paragraph (c)(2) of this section, or a failure of the Director of Education to approve an application within thirty (30) days of its receipt may be appealed by a Community College in the same manner as