

§ 43.23

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to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 43.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to protect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted

under § 43.14 or made to the parent of the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

PART 44—GRANTS UNDER THE TRIBALLY CONTROLLED SCHOOLS ACT

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SOURCE: 70 FR 22219, Apr. 28, 2005, unless otherwise noted.

§ 44.101 What directives apply to a grantee under this part?

In making a grant under this part the Secretary will use only:

(a) The Tribally Controlled Schools Act;

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- (b) The regulations in this part; and
- (c) Guidelines, manuals, and policy directives agreed to by the grantee.

§ 44.102 Does this part affect existing tribal rights?

This part does not:

- (a) Affect in any way the sovereign immunity from suit enjoyed by Indian tribes;
- (b) Terminate or change the trust responsibility of the United States to any Indian tribe or individual Indian;
- (c) Require an Indian tribe to apply for a grant; or
- (d) Impede awards by any other Federal agency to any Indian tribe or tribal organization to administer any Indian program under any other law.

§ 44.103 Who is eligible for a grant?

The Secretary can make grants to Indian tribes and tribal organizations that operate:

- (a) A school under the provisions of 25 U.S.C. 450 *et seq.*;
- (b) A tribally controlled school (including a charter school, community-generated school or other type of school) approved by tribal governing body; or
- (c) A Bureau-funded school approved by tribal governing body.

§ 44.104 How can a grant be terminated?

A grant can be terminated only by one of the following methods:

- (a) Retrocession;
- (b) Revocation of eligibility by the Secretary; or
- (c) Reassumption by the Secretary.

§ 44.105 How does a tribal governing body retrocede a program to the Secretary?

(a) To retrocede a program, the tribal governing body must:

- (1) Notify the Bureau in writing, by formal action of the tribal governing body; and
 - (2) Consult with the Bureau to establish a mutually agreeable effective date. If no date is agreed upon, the retrocession is effective 120 days after the tribal governing body notifies the Bureau.
- (b) The Bureau must accept any request for retrocession that meets the

criteria in paragraph (a) of this section.

(c) After the tribal governing body retrocedes a program:

- (1) The tribal governing body decides whether the school becomes Bureau-operated or contracted under 25 U.S.C. 450 *et seq.*; and
- (2) If the tribal governing body decides that the school is to be Bureau-operated, the Bureau must provide education-related services in at least the same quantity and quality as those that were previously provided.

§ 44.106 How can the Secretary revoke an eligibility determination?

(a) In order to revoke eligibility, the Secretary must:

- (1) Provide the tribe or tribal organization with a written notice;
 - (2) Furnish the tribe or tribal organization with technical assistance to take remedial action; and
 - (3) Provide an appeal process.
- (b) The Secretary cannot revoke an eligibility determination if the tribe or tribal organization is in compliance with 25 U.S.C. 2505(c).
- (c) The Secretary can take corrective action if the school fails to be accredited by January 8, 2005.

(d) In order to revoke eligibility for a grant, the Secretary must send the tribe or tribal organization a written notice that:

- (1) States the specific deficiencies that are the basis of the revocation or reassumption; and
- (2) Explains what actions the tribe or tribal organization must take to remedy the deficiencies.

(e) The tribe or tribal organization may appeal a notice of revocation or reassumption by requesting a hearing under 25 CFR part 900, subpart L or P.

(f) After revoking eligibility, the Secretary will either contract the program under 25 U.S.C. 450 *et seq.* or operate the program directly.

§ 44.107 Under what circumstances may the Secretary reassume a program?

The Secretary may only reassume a program in compliance with 25 U.S.C. 450m and 25 CFR part 900, subpart P. The tribe or school board shall have a