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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 or 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

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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:

(1) Educational materials and supplies.

(2) Equipment and furnishings.

(3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.

(4) Food services supplies, furnishings and equipment not a fixed part of structures.

(5) Office supplies and equipment for minimum essential administrative operations.

(6) Janitorial supplies and cleaning equipment.

(7) Student clothing and personal supplies if destroyed along with a school facility.

(8) Fuel supplies, tanks, lines, connections, meters, etc.

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(9) Transportation equipment not otherwise provided for through the General Services Administration.

(10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other "acts of God," until they can be reconstructed. These costs may include purchase of or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmarys, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

§ 39.74 Application procedures.

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review

and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity of the school operation at either the local school, Agency or Area levels.

§ 39.75 Disbursement procedures.

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

§ 39.76 Prohibitions of expenditures.

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of facilities no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been "condemned" or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

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(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audio-visual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

§ 39.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contin-

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gency fund shall be established to cover such costs.

§ 39.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed \$2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

§ 39.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

Subpart G—School Board Training

§ 39.90 Establishment of a school board training fund.

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95-561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at \$5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

§ 39.91 Other technical assistance and training.

The provision of funds under § 39.90 of this subpart does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible.