

## Bureau of Indian Affairs, Interior

## § 41.22

with other funds expended by the Bureau of Indian Affairs.

### § 41.13 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 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.

## Subpart B—Navajo Community College

### § 41.20 Policy.

It is the policy of this Department to support and encourage the establishment, operation, and improvement of tribally controlled community colleges in order to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end for the Navajo Community College under the Navajo Community College Act, as amended (25 U.S.C. 640a–c).

### § 41.21 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Navajo Community College pursuant to the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646, 25 U.S.C. 640a–c) as amended by the Navajo Community College Assistance Act of 1978, title II of the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 1329, 25 U.S.C. 640c). Regulations applicable to Tribally Controlled Community Colleges other than Navajo Community College are found in subpart A of this part 41.

### § 41.22 Definitions.

As used in this subpart:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which the college normally subdivides

its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by the college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646) as amended by the Navajo Community College Assistance Act of 1978, (Pub. L. 95–471, title II, 92 Stat. 1329, 25 U.S.C. 640a *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior or his/her duly authorized representative.

(e) *College* means the institution known as Navajo Community College established by the Navajo Tribe.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE* means the number of Indian students (1) enrolled full-time for an entire academic term at the College, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at the College (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term divided by (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as  $FTE = FT + PTCR/12$  where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

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(h) *Indian* means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or Regional or Village Corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Operating and Maintenance Expenses of Education Programs* means the obligation and expenditures by the College for post-secondary education activities including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, and fixed charges, and other related expenses, but not including obligations or expenditures for the acquisition or construction of academic facilities (as defined in §41.3(l) of subpart A).

### §41.23 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating and maintenance expenses of education programs of the College. 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.

### §41.24 Grants.

(a) Navajo Community College is entitled to annual grants for operation and maintenance of the College in amounts based upon the number of Full-Time Equivalent Indian students in attendance.

(b) Annually, in the manner and within the deadline established by the Director of Education, the Navajo Community College shall submit an ap-

plication in the form of a statement of its FTE enrollment (total and Indian) for the next academic year. The statement shall include a description of the College's curriculum, which may be in the form of a College catalog or like publication, and a proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the academic year for which the information applies. The statement shall be certified by the chief executive officer of the College and shall certify that a copy of that statement has been submitted to the Navajo Tribe.

(c) Annual budget request for the College shall be separately identified in the Bureau of Indian Affairs Budget Justifications. Funds appropriated for grants under this subpart shall not be commingled with other funds appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(d) Within thirty (30) days of submission of the statement required under paragraph (b) of this section, the Director of Education shall make a grant award to the College in an amount determined under paragraph (e) of this section. The grant award shall be evidenced by a grant agreement signed by the Director of Education, incorporating the grant application and including the provisions required by §41.27 of this subpart.

(e) The College shall be eligible to receive a grant for the fiscal year beginning October 1, 1979, and for each succeeding year, in an amount equal to \$4,000 multiplied by the number of FTE Indian students in attendance at the College during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the College. The mathematical formula for calculating the base grant is  $BG$  (Base Grant)=

$$\$4,000 \times \frac{FTE_{\text{TERM 1}} + FTE_{\text{TERM 2}} + \dots + FTE_{\text{TERM N}}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 41.22(g) of this subpart and N is the number of academic terms in the academic year. The amount and payment of such grants shall be subject to the availability of annual appropriations.

(f) The Director of Education shall authorize payments to the College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section on or before October 1st of such academic year (except 1979-80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA, whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding year. On or before January 1st (or such other date that is the first day of the fifth month) of such academic year, payment shall be made in the form of such advance installments to the College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section, calculated on the basis of registrations as in effect at the conclusion of the sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of such academic year, the balance of the grant amount to which the College is entitled under paragraph (e) of this section shall be paid to the College. In the event that additional sums are appropriated for the benefit of the College, these sums shall be included in the final payment.

(g) Overpayments of grants under this subpart may be recovered in the

manner provided by § 41.8(g) of subpart A.

(h) Payments to the Navajo Community College under this subpart shall not disqualify the College from applying for or receiving grants or contracts under any other Federal programs for which it may qualify.

#### § 41.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

#### § 41.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this subpart and accounting, and other technical advice and assistance.

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### § 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,

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## 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