

## § 39.412

(1) Provide an initial draft report of its findings to the governing board or responsible Federal official for the school(s) involved; and

(2) Solicit, consider, and incorporate a response to the findings, where submitted, in the final audit report.

(b) The auditor must submit a final report to the Assistant Secretary—Indian Affairs and all tribes served by each school involved. The report must include all documented exceptions to the requirements of this part, including those exceptions that:

(1) The auditor regards as negligible;

(2) The auditor regards as significant, or as evidence of incompetence on the part of responsible officials, and that must be resolved in a manner similar to significant audit exceptions in a fiscal audit; or

(3) Involve fraud and abuse.

(c) The auditor must immediately report exceptions involving fraud and abuse directly to the Department of the Interior Inspector General's office.

### § 39.412 What sanctions apply for failure to comply with this subpart?

(a) The employer of a responsible administrative official must take appropriate personnel action if the official:

(1) Submits false or fraudulent ISEP-related counts;

(2) Submits willfully inaccurate counts of student participation in weighted program areas; or

(3) Certifies or verifies submissions described in paragraphs (a)(1) or (a)(2) of this section.

(b) Unless prohibited by law, the employer must report:

(1) Notice of final Federal personnel action to the tribal governing body and tribal school board; and

(2) Notice of final tribal or school board personnel action to the Director of OIEP.

### § 39.413 Can a school appeal the verification of the count?

Yes, a school may appeal to the Director any administrative action disallowing any academic, transportation, supplemental program or residential count. In this appeal, the school may provide evidence to indicate the student's eligibility, membership or residency or adequacy of a program for all

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or a portion of school year. The school must follow the applicable appeals process in 25 CFR part 2 or 25 CFR part 900, subpart L.

### Subpart E—Contingency Fund

SOURCE: 70 FR 22205, Apr. 28, 2005, unless otherwise noted.

#### § 39.500 What emergency and contingency funds are available?

The Secretary:

(a) Must reserve 1 percent of funds from the allotment formula to meet emergencies and unforeseen contingencies affecting educational programs;

(b) Can carry over to the next fiscal year a maximum of 1 percent the current year funds; and

(c) May distribute all funds in excess of 1 percent equally to all schools or distribute excess as a part of ISEP.

#### § 39.501 What is an emergency or unforeseen contingency?

An emergency or unforeseen contingency is an event that meets all of the following criteria:

(a) It could not be planned for;

(b) It is not the result of mismanagement, malfeasance, or willful neglect;

(c) It is not covered by an insurance policy in force at the time of the event;

(d) The Assistant Secretary determines that Bureau cannot reimburse the emergency from the facilities emergency repair fund; and

(e) It could not have been prevented by prudent action by officials responsible for the educational program.

#### § 39.502 How does a school apply for contingency funds?

To apply for contingency funds, a school must send a request to the ELO. The ELO must send the request to the Director for consideration within 48 hours of receipt. The Director will consider the severity of the event and will attempt to respond to the request as soon as possible, but in any event within 30 days.

#### § 39.503 How can a school use contingency funds?

Contingency funds can be used only for education services and programs,