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(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in §41.41.

§41.69 How must Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary will conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary will issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary will state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal will be final for the Department.

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PART 42—STUDENT RIGHTS

Sec.

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AUTHORITY: 5 U.S.C. 301, Pub. L. 107–110, 115 Stat. 1425.

SOURCE: 70 FR 22218, Apr. 28, 2005, unless otherwise noted.

§42.1 What general principles apply to this part?

(a) This part applies to every Bureau-funded school. The regulations in this part govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded schools. To comply with this part, each school must:

(1) Respect the constitutional, statutory, civil and human rights of individual students; and

(2) Respect the role of Tribal judicial systems where appropriate.

(b) All student rights, due process procedures, and educational practices should, where appropriate or possible, afford students consideration of and rights equal to the student's traditional Native customs and practices.

§42.2 What rights do individual students have?

Individual students at Bureau-funded schools have, and must be accorded, at least the following rights:

(a) The right to an education that may take into consideration Native American or Alaska Native values;

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(b) The right to an education that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals; and

(c) The right to due process in instances of disciplinary actions.

§ 42.3 How should a school address alleged violations of school policies?

(a) In addressing alleged violations of school policies, each school must consider, to the extent appropriate, the reintegration of the student into the school community.

(b) The school may address a student violation using alternative dispute resolution (ADR) processes or the formal disciplinary process.

(1) When appropriate, the school should first attempt to use the ADR processes described in § 42.4 that may allow resolution of the alleged violation without recourse to punitive action.

(2) Where ADR processes do not resolve matters or cannot be used, the school must address the alleged violation through a formal disciplinary proceeding under § 42.7 consistent with the due process rights described in § 42.7.

§ 42.4 What are alternative dispute resolution processes?

Alternative dispute resolution (ADR) processes are formal or informal processes that may allow resolution of the violation without recourse to punitive action.

(a) ADR processes may:

(1) Include peer adjudication, mediation, and conciliation; and

(2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: cadr@ios.doi.gov; or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street NW., MS 5258, Washington, DC 20240.

§ 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the Act requires immediate expulsion (“zero tolerance” laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105–17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.8.

§ 42.6 When does due process require a formal disciplinary hearing?

Unless local school policies and procedures provide for less, a formal disciplinary hearing is required before a suspension in excess of 10 days or expulsion.

§ 42.7 What does due process in a formal disciplinary proceeding include?

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts related to the alleged violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student’s record that the school will consider in rendering a disciplinary decision.

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(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the Act requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student's parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

§ 42.8 What are a student's due process rights in a formal disciplinary proceeding?

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student's parents or guardians (or their designee);

(b) The right to be represented by counsel (legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student's behalf and to confront and examine all witnesses;

(d) The right to the record of the disciplinary action, including written findings of fact and conclusions;

(e) The right to administrative review and appeal under school policy;

(f) The right not to be compelled to testify against himself or herself; and

(g) The right to have an allegation of misconduct and related information expunged from the student's school record if the student is found not guilty of the charges.

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§ 42.9 What are victims' rights in formal disciplinary proceedings?

In formal disciplinary proceedings, each school must consider victims' rights when appropriate.

(a) The victim's rights may include a right to:

(1) Participate in disciplinary proceedings either in writing or in person;

(2) Provide a statement concerning the impact of the incident on the victim; and

(3) Have the outcome explained to the victim and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the victim is the actual victim, not his or her parents or guardians.

§ 42.10 How must the school communicate individual student rights to students, parents or guardians, and staff?

Each school must:

(a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;

(b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;

(c) Provide all students and their parents or guardians a current and updated copy of student rights and responsibilities every school year upon enrollment; and

(d) Require students, school staff, and to the extent possible, parents and guardians, to confirm in writing that they have received a copy and understand the student rights and responsibilities.

§ 42.11 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part in

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§§ 42.6, 42.7, and 42.9 contains collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

PART 43—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

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AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

SOURCE: 43 FR 52024, Nov. 8, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 43.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 43.2 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) *Educational institution* means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) *Eligible student* means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an *eligible student*, the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) *Parent* means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term *parent* also includes a *surrogate* as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) *Student records* means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in § 43.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are