

under section 1862(b) of this title may elect to receive funds pursuant to section 1862 of this title in accordance with an agreement between the tribally controlled postsecondary career and technical institution and the Secretary under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) if the agreement is in existence on August 14, 2008.

**(d) Other assistance**

Eligibility for, or receipt of, assistance under this subchapter shall not preclude the eligibility of a tribally controlled postsecondary career and technical institution to receive Federal financial assistance under—

- (1) any program under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);
- (2) any program under the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.]; or
- (3) any other applicable program under which a benefit is provided for—
  - (A) institutions of higher education;
  - (B) community colleges; or
  - (C) postsecondary educational institutions.

(Pub. L. 95-471, title V, §503, as added Pub. L. 110-315, title IX, §941(j)(1), Aug. 14, 2008, 122 Stat. 3464.)

REFERENCES IN TEXT

Title II, referred to in subsec. (a), is title II of Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1329, known as the Navajo Community College Assistance Act of 1978, which enacted section 640c-1 of this title, amended section 640c of this title, and enacted provisions set out as notes under sections 640a and 640c-1 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 640a of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (b) and (c), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (d)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (d)(2), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109-270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

**§ 1864. Authorization of appropriations**

There are authorized to be appropriated such sums as are necessary for fiscal year 2009 and each fiscal year thereafter to carry out this subchapter.

(Pub. L. 95-471, title V, §504, as added Pub. L. 110-315, title IX, §941(j)(1), Aug. 14, 2008, 122 Stat. 3465.)

**CHAPTER 21—INDIAN CHILD WELFARE**

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**§ 1901. Congressional findings**

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power \* \* \* To regulate Commerce \* \* \* with Indian tribes<sup>1</sup>" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

<sup>1</sup> So in original. Probably should be capitalized.

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

#### SHORT TITLE

Section 1 of Pub. L. 95-608 provided: "That this Act [enacting this chapter] may be cited as the 'Indian Child Welfare Act of 1978'."

### § 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

### § 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian

child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub. L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.)