

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

**§ 2502a. Retrocession or re-assumption of Indian education funds**

Beginning July 1, 2008, and thereafter, any funds (including investments and interest earned, except for construction funds) held by a Public Law 100-297 grant or a Public Law 93-638 contract school shall, upon retrocession to or re-assumption by the Bureau of Indian Education, remain available to the Bureau of Indian Education for a period of 5 years from the date of retrocession or re-assumption for the benefit of the programs approved for the school on October 1, 1995.

(Pub. L. 113-76, div. G, title I, §110, Jan. 17, 2014, 128 Stat. 312.)

**Editorial Notes**

## REFERENCES IN TEXT

Public Law 100-297, referred to in text, is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

Public Law 93-638, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

## CODIFICATION

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2014, and also as part of the Consolidated Appropriations Act, 2014, and not as part of the Tribally Controlled Schools Act of 1988 which comprises this chapter.

**§ 2503. Composition of grants****(a) In general**

The grant provided under this chapter to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1127 and 1128 of the Education Amendments of 1978 [25 U.S.C. 2007, 2008] with respect to the tribally controlled schools eligible for assistance under this chapter which are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs;

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 5324 of this title, or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to those referenced under section 1126(d) of the Education Amendments of 1978 [25 U.S.C. 2006(d)] or any other law); and

(3) the total amount of funds that are allocated to such schools for such fiscal year under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are allocated to such schools for such fiscal year.<sup>1</sup>

**(b) Special rules****(1) In general****(A) Applicability of certain laws**

Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) shall be subject to the provisions of this chapter and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

(i) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(ii) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; or

(iii) any Federal education law other than title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.].

**(B) Applicability of Bureau provisions**

Indian tribes and tribal organizations to which grants are provided under this chapter, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).

**(2) Schools considered contract schools**

Tribally controlled schools for which grants are provided under this chapter shall be treated as contract schools for the purposes of allocation of funds under sections 1126(e), 1127, and 1128 of the Education Amendments of 1978 [25 U.S.C. 2006(e), 2007, 2008].

**(3) Schools considered Bureau schools**

Tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools for the purposes of allocation of funds provided under—

(A) title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(B) the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]; and

(C) any other Federal education law, that are distributed through the Bureau.

**(4) Accounts; use of certain funds****(A) Separate account****(i) In general**

Notwithstanding section 2503(a)(2)<sup>2</sup> of this title, with respect to funds from fa-

<sup>1</sup>So in original. The words “, that are allocated to such schools for such fiscal year” probably should not appear.

<sup>2</sup>So in original. Probably should be “2502(a)(2)”.

cilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant provided under section 2503(a)<sup>3</sup> of this title, the grant recipient shall maintain a separate account for such funds.

**(ii) Submission of accounting**

At the end of the period designated for the work covered by the funds received, the grant recipient shall submit to the Secretary a separate accounting of the work done and the funds expended.

**(iii) Use of funds**

Funds received from those accounts may only be used for the purpose for which the funds were appropriated and for the work encompassed by the application or submission for which the funds were received.

**(iv) Completion of project**

Upon completion of a project for which a separate account is established under this paragraph, the portion of the grant related to such project may be closed out upon agreement by the grantee and the Secretary.

**(B) Requirements for projects**

**(i) Regulatory requirements**

With respect to a grant to a tribally controlled school under this chapter for new construction or facilities improvements and repair in excess of \$100,000, such grant shall be subject to the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in part 12 of title 43, Code of Federal Regulations.

**(ii) Exception**

Notwithstanding clause (i), grants described in such clause shall not be subject to section 12.61 of title 43, Code of Federal Regulations. The Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed.

**(iii) Applications**

In considering applications for a grant described in clause (i), the Secretary shall consider whether the Indian tribe or tribal organization involved would be deficient in ensuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a))<sup>4</sup> with respect to organizational and financial management capabilities.

**(iv) Disputes**

Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 2508(e)<sup>5</sup> of this title.

**(C) New construction**

Notwithstanding subparagraph (A), a school receiving a grant under this chapter for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

**(D) Period**

In a case in which the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

**(5) Enforcement of request to include funds**

**(A) In general**

If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe<sup>6</sup> or organization's grant under this chapter the funds described in subsection (a)(2) within 180 days after the filing of the request, the Secretary shall—

(i) be deemed to have approved such request; and

(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

**(B) Rights**

A tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 2508(e)<sup>5</sup> of this title.

(Pub. L. 100-297, title V, § 5204, as added Pub. L. 107-110, title X, § 1043, Jan. 8, 2002, 115 Stat. 2066.)

**Editorial Notes**

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(3)(A) and (b)(1)(A)(i), (3)(A), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(3)(B) and (b)(1)(A)(ii), (3)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Education Amendments of 1978, referred to in subsec. (b)(1)(A)(iii), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143. Title XI of the Act is classified principally

<sup>3</sup> So in original. Probably should be "2502(a)".

<sup>4</sup> See References in Text note below.

<sup>5</sup> So in original. Probably should be "2507(e)".

<sup>6</sup> So in original. Probably should be "tribe's".

to chapter 22 (§2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

Section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)), referred to in subsec. (b)(4)(B)(iii), probably should be section 1125 of the Education Amendments of 1978, Pub. L. 95-561, which is classified to section 2005 of this title and requires, in subsec. (b), compliance with health and safety standards. Section 1124 of Pub. L. 95-561, which is classified to section 2004 of this title, relates to school boundaries.

#### PRIOR PROVISIONS

A prior section 2503, Pub. L. 100-297, title V, §5204, Apr. 28, 1988, 102 Stat. 386; Pub. L. 100-427, §10(a), (b), Sept. 9, 1988, 102 Stat. 1607; Pub. L. 102-119, §26(f), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §394(m)(1), Oct. 20, 1994, 108 Stat. 4029, authorized grants, prior to repeal by Pub. L. 107-110, title X, §1043, Jan. 8, 2002, 115 Stat. 2063. See section 2502 of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

### § 2504. Eligibility for grants

#### (a) Rules

##### (1) In general

A tribally controlled school is eligible for assistance under this chapter if the school—

(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this chapter;

(B) was a Bureau-operated school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] and has met the requirements of subsection (b);

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c); or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b).

##### (2) New schools

Any application which has been submitted under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] by an Indian tribe for a school which is not in operation on January 8, 2002, shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

#### (b) Additional requirements for Bureau-funded schools and certain electing schools

##### (1) Bureau-funded schools

A school that was a Bureau-funded school under title XI of the Education Amendments

of 1978 [25 U.S.C. 2000 et seq.] on January 8, 2002, and any school with respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school; and

(ii) make a determination as to whether the school is eligible for assistance under this chapter; and

(B) the Secretary makes a determination that the school is eligible for assistance under this chapter.

#### (2) Certain electing schools

##### (A) In general

By not later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) in the case of a school which is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization; and

(ii) whether the school is eligible for assistance under this chapter.

##### (B) Other determinations

In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the tribe or tribal organization is not already operating the school; and

(ii) shall determine that the school is eligible for assistance under this chapter, unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

##### (C) Considerations

In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

(i) equipment;

(ii) bookkeeping and accounting procedures;

(iii) ability to adequately manage a school; or

(iv) adequately trained personnel.

#### (c) Additional requirements for a school which is not a Bureau-funded school

##### (1) In general

A school which is not a Bureau-funded school under title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.] meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an applica-