



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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Dear School Leaders:

The Department of the Interior, Office of the Assistant Secretary – Indian Affairs (AS-IA), as well as the Bureau of Indian Education (BIE) are dedicated to upholding their trust responsibility to Indian Tribes by continuing to provide mission-critical services such as education delivery during the COVID-19 emergency.

In a letter to you in June 2020¹ (June 2020 Letter), the Department of the Interior (Department) established a process to waive regulations otherwise applicable to BIE-funded schools² in response to the pandemic. Specifically, schools seeking a waiver for any regulatory requirements applicable to school year 2020-21 and beyond were required to submit a waiver application including: (1) a distance learning plan; (2) assurance of compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Individuals with Disabilities Education Act (IDEA); and (3) an assurance to offer mental health support services to all students. Since the issuance of the June 2020 letter, nearly all BIE-funded schools have developed and submitted distance learning plans and the required assurances to BIE.³

Nonetheless, BIE schools continue to feel the effects of the pandemic on education including with respect to student enrollment. The BIE is taking steps to encourage enrollment, but the current decline in enrollment has had a deleterious effect on the amount of funding available to schools pursuant to BIE's regulations, which tie Indian School Equalization Program (ISEP) funding to student count numbers. As such, it is necessary that the Department take action to ensure consistency in funding for BIE schools for school year 2022-2023.

As a matter of law and policy, there remains a strong presumption that the Secretary of the Interior's (Secretary) regulations are appropriate to their purpose and require Departmental compliance, including those applicable to BIE schools. To provide the Secretary with sufficient latitude to respond to extraordinary circumstances, however, 25 C.F.R. §1.2 authorizes the Secretary to waive or make exceptions to certain regulations in Title 25 of the Code of Federal Regulations, including those applicable to BIE schools, in any case where permitted by law so long as such waiver or exception is in the best interests of the Indians. This authority has been delegated to AS-IA via 209 DM 8.

To ensure adequate transportation, residential, and ISEP funding for BIE schools in the 2022-23 school year, I am therefore issuing a blanket waiver of the following regulatory requirements

¹ Letter from Tara Sweeney, Assistant Sec'y – Indian Affairs, to School Leaders (June 25, 2020).

² For purposes of this letter, the terms "BIE schools" and "BIE-funded schools" include BIE operated schools and dormitories, schools and dormitories operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501 et seq.), and schools and dormitories operated pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.).

³ See Letter from Bryan Newland, Assistant Sec'y – Indian Affairs, to School Leader (July 23, 2021).

applicable to school year 2021-2022 for all BIE schools for the purpose of maintaining the current level of funding for each school:

- 25 C.F.R. §§ 39.710-.711 (bus transportation)
- 39.702-.704 (commercial transportation)
- 39.216-.221 (residential)
- 39.204 (average daily membership (ADM) calculation)

By waiving these regulatory requirements, BIE will continue to use each BIE school's transportation, residential, and ADM calculations as determined in the 2019-2020 school year to identify each school's funding for the 2022-2023 school year. Further, to the extent this waiver results in the reduction of any funding that any specific BIE school would have received for the 2022-2023 school year in the absence of this waiver, BIE will use ISEP contingency funds to make up any difference in funding for those schools.

I note that this waiver is applicable only to the above-cited regulatory requirements. To the extent that a BIE school seeks a waiver with respect to any other regulatory requirement, it must submit a request to their respective Education Program Administrator. The AS-IA will consider any such waiver requests outside the scope of this letter on a case-by-case basis as AS-IA does for any other waiver request in the non-pandemic context.

I conclude that this waiver is in the best interests of schools funded by the BIE and our Tribal communities. It is consistent with the Secretary's obligations to provide for a quality education for students at BIE-funded schools and to ensure the safety of the students and staff at BIE schools. Finally, the Department will revisit the necessity, scope, and duration of this waiver as warranted by ongoing progress in the response to the COVID-19 national emergency.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs