Dear School Leader:

Thank you for your steadfast dedication to your students, staff, and communities during the past school year as you overcame unprecedented obstacles to serve your communities. As the Federal Government works with Indian tribes to build back better as a result of the COVID-19 Pandemic, we are responding to improve services for you locally with urgency to support the educational foundation for our next generation of Native students.

Through this, it is my priority to provide you the necessary flexibility to focus on the needs of your communities and the families you serve. As you know all too well, the COVID-19 Pandemic profoundly affected how Bureau of Indian Education (BIE) schools delivered instruction to students during school year (SY) 2020-2021. In response, former Assistant Secretary-Indian Affairs (AS-IA) Tara Sweeney established a process through which the U.S. Department of the Interior (Department) would waive certain regulatory requirements found in Title 25 (Title 25), Subchapter E of the Code of Federal Regulations (Subchapter E).

As a matter of law and policy, there remains a strong presumption that the Department’s regulations are appropriate to their purpose and require Departmental compliance, including those applicable to BIE schools.1 To provide the Secretary of the Interior (Secretary) with sufficient latitude to respond to extraordinary circumstances, 25 C.F.R. §1.2 provides that the Secretary has the authority to waive or make exceptions to certain regulations in Title 25. This includes regulations 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 support continuity of operations and diminish potential adverse effects of the COVID-19 Pandemic on your schools and students, the Department established a process for schools to request the Department to waive certain Subchapter E regulations otherwise applicable to BIE schools. This process was as outlined in a letter to you on June 25, 2020 (June 2020 Letter).2

Schools seeking a waiver for any Subchapter E regulatory requirements applicable to SY 2020-2021 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. The Department provided all BIE schools with a waiver request application template on September 9, 2020, which also required BIE schools seeking a waiver to assure:

- All funds will otherwise be used in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to the blanket waiver(s).

1 For purposes of this letter, the terms "BIE schools" and "schools funded by BIE" 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.).

2 Letter from Tara Sweeney, Assistant Sec’y Indian Affairs to BIE School Leaders (June 25, 2020) (on file with AS-IA).
• The school will work to mitigate any negative effects, if any, that may occur because of the requested waiver(s).
• The school board was consulted, and the school board approved the waiver request.
• As applicable, Tribal governing bodies (through resolution), parents, and other stakeholders were notified of the waiver request.
• The school will comply with the requirements of IDEA and Section 504 as described in the alternate/distance learning plan.
• The school will provide interactive teacher led instruction as described in the alternate/distance learning plan.\(^3\)

Subsequently, on February 8, 2021, in response to extreme hardships imposed on schools and Tribal communities due to the COVID-19 Pandemic, Darryl LaCounte, exercising the delegated authority of the AS-IA, issued a blanket waiver (February 2021 blanket waiver) of the following regulatory requirements for all BIE schools to ensure adequate Indian School Equalization Program (ISEP) and transportation funding for BIE schools during the SY 2021-2022:

• 25 C.F.R. §§ 39.710-.711 (bus transportation)
• 25 C.F.R. §§ 39.702-.704 (commercial transportation)
• 25 C.F.R. §§ 39.216-.221 (residential)
• 25 C.F.R. §§ 39.214 (instructional hours)

The circumstances from the ongoing COVID-19 Pandemic, and the potential consequences for BIE-funded schools and the students served at such schools in light of the ongoing school site closures, have required the Department to reconsider the efficacy of the waiver request process established in the June 2020 Letter. Despite the issuance of the February 2021 blanket waiver, BIE received more than 160 applications for waivers of regulations not covered by the February 2021 blanket waiver. In addition to the desire to diminish the administrative burden, many of the applications included requests for waivers of provisions outside of the scope of the Secretary’s Section 1.2 waiver authority. In issuing this waiver, the initial intent in the June 2020 Letter is still achieved, which was to provide schools with necessary regulatory flexibilities while ensuring that each school had a distance learning plan in place and assurances of compliance with Section 504 and IDEA. To date, all but one BIE school has submitted a comprehensive distance learning plan and assurances of compliance with Section 504 and IDEA. As such, in addition to the regulations in the February 8, 2021, blanket waiver, I am issuing a blanket waiver of the following regulatory requirements applicable to SY 2020-2021 for all BIE schools to better support your needs as a school leader:

**Instructional Program**

• Required field trip (25 C.F.R. § 36.20(b)(4))
• Intraschool programs (25 C.F.R. § 36.20(c))
• Kindergarten instructional program (25 C.F.R. § 36.21)
• Elementary instructional program (25 C.F.R. § 36.22)
• Junior high/middle school instructional program (25 C.F.R. § 36.23)
• Secondary instructional program (25 C.F.R. §36.24)

\(^3\) Letter from Tamarah Pfieffer, BIE Chief Acad. Officer to BIE School Leaders (Sept. 9, 2020) (on file with the BIE Chief Acad. Officer).
Student Activities

- Requirement to provide and maintain a well-balanced student activities program based on assessment of both student and program needs. (25 C.F.R. § 36.43)

Graduation Requirements

- Graduation requirements for a high school diploma/minimum number of units required (25 C.F.R. §§ 36.32(a) and (b))

Promotion

- Instructional days required for promotion (25 C.F.R. § 36.31(c))

Accreditation

- Requirement for formal, formative evaluation at least once every seven years. (25 C.F.R. § 36.50)

This blanket waiver is made pursuant to my delegated authority under 25 C.F.R. §1.2 for which I find is permitted by law. Additionally, through my work with BIE Director Dearman, I am reassured this waiver is in the best interests of schools funded by the BIE and our Tribal communities and is consistent with the Secretary’s obligations to provide for a quality education for students at BIE schools and to ensure the safety of the students and staff at BIE schools.

If the application you submitted pursuant to the June 2020 Letter sought to waive regulatory requirements beyond those covered by the February 8, 2021, blanket waiver, and the regulations waived herein, you must still submit an additional application outlining your request. However, no requests for a waiver of any requirement pursuant to 25 C.F.R. part 30 will be waived through the 25 C.F.R. §1.2 waiver authority. Any such waiver requests must instead be made in accordance with the process established in 25 C.F.R. part 30, subpart B.

Thank you again for your work over the past year and a half to support your community. It is my hope that this flexibility will provide you the necessary means to focus your efforts on preparation for the upcoming SY 2021-2022. If you have questions regarding this letter or other matters, please contact your respective BIE Education Program Administrator or visit the BIE website at www.bie.edu for additional contact information.

Sincerely,

Bryan Newland
Principal Deputy Assistant Secretary – Indian Affairs