

§ 37.121

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§ 37.121 Who establishes geographic attendance boundaries under this part?

(a) If there is only one day school, on-reservation boarding school, or peripheral dorm within a reservation's boundaries, the Secretary will establish the reservation boundary as the geographic attendance boundary;

(b) When there is more than one day school, on-reservation boarding school, or peripheral dorm within a reservation boundary, the Tribe may choose to establish boundaries for each;

(c) If a Tribe does not establish boundaries under paragraph (b) of this section, the Secretary will do so.

§ 37.122 Once geographic attendance boundaries are established, how can they be changed?

(a) The Secretary can change the geographic attendance boundaries of a day school, on-reservation boarding school, or peripheral dorm only after:

(1) Notifying the Tribe at least 6 months in advance; and

(2) Giving the Tribe an opportunity to suggest different geographical attendance boundaries.

(b) A tribe may ask the Secretary to change geographical attendance boundaries by writing a letter to the Director of the Office of Indian Education Programs, explaining the tribe's suggested changes. The Secretary must consult with the affected tribes before deciding whether to accept or reject a suggested geographic attendance boundary change.

(1) If the Secretary accepts the Tribe's suggested change, the Secretary must publish the change in the FEDERAL REGISTER.

(2) If the Secretary rejects the Tribe's suggestion, the Secretary will explain in writing to the Tribe why the suggestion either:

(i) Does not meet the needs of Indian students to be served; or

(ii) Does not provide adequate stability to all affected programs.

§ 37.123 How does a Tribe develop proposed geographic attendance boundaries or boundary changes?

(a) The Tribal governing body establishes a process for developing proposed boundaries or boundary changes. This

process may include consultation and coordination with all entities involved in student education.

(b) The Tribal governing body may delegate the development of proposed boundaries to the relevant school boards. The boundaries set by the school boards must be approved by the Tribal governing body.

(c) The Tribal governing body must send the proposed boundaries and a copy of its approval to the Secretary.

§ 37.124 How are boundaries established for a new school or dorm?

Geographic attendance boundaries for a new day school, on-reservation boarding school, or peripheral dorm must be established by either:

(a) The tribe; or

(b) If the tribe chooses not to establish boundaries, the Secretary.

§ 37.125 Can an eligible student living off a reservation attend a school or dorm?

Yes. An eligible student living off a reservation can attend a day school, on-reservation boarding school, or peripheral dorm.

Subpart C—Off-Reservation Boarding Schools

§ 37.130 Who establishes boundaries for Off-Reservation Boarding Schools?

The Secretary or the Secretary's designee, in consultation with the affected Tribes, establishes the boundaries for off-reservation boarding schools (ORBS).

§ 37.131 Who may attend an ORBS?

Any student is eligible to attend an ORBS.

PART 38—EDUCATION PERSONNEL

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AUTHORITY: 25 U.S.C. 2011 and 2015, Secs. 1131 and 1135 of the Act of November 1, 1978, 92 Stat. 2322 and 2327; Secs. 511 and 512, Pub. L. 98-511; Secs. 8 and 9, Pub. L. 99-89; Title V of Pub. L. 100-297; Pub. L. 105-337.

SOURCE: 53 FR 37678, Sept. 27, 1988, unless otherwise noted.

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

(c) *Other.* Where 25 CFR part 38 and a negotiated labor relations agreement conflict, the negotiated agreement will govern.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206-0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0116. The information is being collected to determine an applicants eligibility and selection for

appropriate volunteer assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this part, the term:

Agency means the current organizational unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

Agency school board as defined in section 1139(1), of Pub. L. 95-561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

Agency Superintendent for Education (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

Area Education Programs Administrator (AEPA) means the Bureau official in charge of an Area Education Office that provides services to off-reservation residential schools, peripheral dormitories or on-reservation BIA funded schools that are not served by an Agency Superintendent for Education. The AEPA may also provide education program services to tribes not having an Agency Superintendent for Education at their agency. The AEPA has no line authority over agency education programs that are under the jurisdiction of an Agency Superintendent for Education.

Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Consult, as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95-561, means providing pertinent information to and being available for discussion with the school