

## § 38.4

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board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

*Director* means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

*Discharge* means the separation of an employee during the term of the contract.

*Education function* means the administration and implementation of the Bureau's education programs and activities (including school operations).

*Education position*, means a position in the Bureau the duties and responsibilities of which:

(a) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(1) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(2) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(3) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(4) Support services at or associated with the site of the school; or

(b) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent for Education is excluded.

*Educator*, as defined in section 1131(n)(2) of Pub. L. 95-561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3.

*Employment contract* means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title,

period of employment, and compensation attached thereto.

*Involuntary change in position* means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

*Local school board*, as used in this part and defined in section 1139(7) of Pub. L. 95-561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

*Probationary period* means the extension of the appointed process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed.

*School board* means an Agency school board or a local school board.

*School supervisor* means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

*School term* is that term which begins usually in the last summer or fall and ends in the Spring. It may be interrupted by one or more vacations.

### § 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall be taken to insure

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that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

### § 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), Area Education Programs Administrator (AEPA), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the AEPA. Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local official in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicate an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate

an interest in a specific location or indicate an interest in working in any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director shall review annually the Bureau's "Recruitment of Indian Educators Program" and update as necessary. The Director will define individual training plans for trainees and subsequent promotional opportunities for advancement based upon satisfactory job performance in this program.

### § 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in part 62 of the Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule or Federal Wage System for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule or Federal Wage System rates that would otherwise be applicable if the position were classified under chapter 51 or subchapter IV of chapter 53 of title 5 of the United States Code (U.S.C.). The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Schedule of compensation rates for teachers and counselors.* The basic compensation for teachers and counselors, including dormitory counselors and homeliving counselors, shall be determined in accordance with rates set by the Defense Department Overseas Teachers Pay and Personnel Practices Act. The schedule used shall be the current published schedule for the school year beginning on or after July 1 of each year.

(d) *Adjusting employee basic compensation rates.* (1) Except for employees occupying positions of teachers and counselors, including dormitory counselors