



IN REPLY REFER TO:


United States Department of the Interior

BUREAU OF INDIAN EDUCATION
Washington, D.C. 20240

JUN 14 2018

Memorandum

To: John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs

From: Tony L. Dearman 
Director, Bureau of Indian Education

Subject: Expansion of One Grade Level and Waiver of ISEP Regulations (25 C.F.R. Part 39.202-39.208) at the Blackwater Community School

In a letter dated March 28, 2018, the Blackwater Community School (School) requested the Assistant Secretary - Indian Affairs to approve a waiver of the grade expansion moratorium pursuant to the *Consolidated Appropriations Act of 2018*. The School is comprised of Bureau of Indian Education (BIE) funded grades K-3 and the Blackwater Community School also operates a State Charter School for grades 4-5. The School requests a waiver that will allow the School to convert its existing grades 4-5 to BIE funded grades. They are specifically requesting to convert both grades for school year 2018-2019. The School is also asking the BIE to begin funding these grades immediately, and in full, without requiring the School to undergo three years of operation, as is usually required to assess the three-year rolling average funding method used by the BIE.

The School is a Kindergarten to third grade school. In keeping with the language from the *Consolidated Appropriations Act of 2018*, the grade level expansion would add grades 4 and 5 to the School. Adding the fourth and fifth grades will provide a continuum of high quality education for the Gila River Indian Community (Tribe). Currently, children at a young age must leave the school after the third grade to attend the Tribe's charter school or a local public school to attend grades 4 and 5. That arrangement does not meet the needs of the Tribe.

Public Law 115-141, the *Consolidated Appropriations Act, 2018*, authorizes the Secretary of the Interior to waive the grade expansion moratorium to support expansion of up to one additional grade when the Secretary determines such waiver is needed to support accomplishment of the mission of the Bureau of Indian Education (BIE), or more than one grade to expand the elementary grade structure for Bureau-funded schools with a K-2 grade structure on October 1, 1996.

In reviewing the School's request, I find the expansion would support the mission of the BIE because the BIE is obligated to provide quality educational opportunities in accordance with the Tribes' needs. Clearly, by adding these two grade levels at the School, the Tribe's educational needs would be better met by allowing children to remain in the BIE-funded tribal school for an additional two years providing increased continuity and stability.

The School also requested a waiver under 25 C.F.R. § 1.2 of the Indian School Equalization Program (ISEP) regulations which require funding to be based on the average student enrollment for the previous three school years (25 C.F.R. Part 39.202 – 39.208). This approval will support tribal self-determination and culturally appropriate learning, all at an estimated cost of \$642,600 in ISEP funds based on the current previous three year average student count, in addition to Department of Education and facilities operations and maintenance funds in future years. 25 C.F.R. § 1.2 permits the waiver of regulations in Title 25 when permitted by law and in the best interest of the Indians. Waiving part of the regulations to allow use of the Tribe's charter school student count in the three year average is in the best interest of the Tribe.

The Tribal Resolution included with the March 28, 2018 letter states that this expansion is in the best interest of the children attending the School and the Tribe because it will allow the School to operate all its programs and manage its funding pursuant to a single set of applicable laws, regulations, and standards.

Therefore, given Public Law 115-141 and under 25 C.F.R. Part 1.2, I recommend your approval to waive the application of 25 C.F.R. Part 39.202 and 39.230 and expand the School by two grade levels starting in the 2018-2019 school year.

Attachments

Approved:

Not Approved:



Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary – Indian Affairs

JUL 27 2018

Date