



# United States Department of the Interior

## BUREAU OF INDIAN EDUCATION

Associate Deputy Director-Bureau Operated Schools

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Albuquerque, New Mexico 87104

Date: February 10, 2021

To: Education Program Administrators – Bureau Operated Schools  
Bureau Operated School Principals  
School Board Members – Bureau Operated Schools

From: Hankie P. Ortiz  
Associate Deputy Director – Bureau Operated Schools

Subject: BIE Funded School 2020-2021 Blanket Waiver

Please see the attached letter regarding the approval of a blanket waiver for Bureau of Indian Education (BIE) funded schools regarding the following regulatory requirements applicable to school year 2020-2021 for all BIE schools: 25 C.F.R. §§ 39.710-.711 (bus transportation), 39.702-.704 (commercial transportation), 39.216-.221 (residential), 39.214 (instructional hours). The COVID-19 national emergency continues to profoundly affect how schools throughout the country deliver instruction to students. Indian Affairs and the BIE are dedicated to upholding its trust responsibility to Indian tribes by continuing to provide mission critical services, such as education delivery, during the COVID-19 emergency.

To support continuity of operations and diminish potential harm to its schools, the Department of the Interior (Department) established a process to waive regulations otherwise applicable to BIE funded schools in response to the pandemic as outlined in a letter to you on June 25, 2020 (June Letter). Specifically, schools seeking a waiver for any regulatory requirements applicable to school year 2020-21 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 waiver request process outlined in the June Letter reflected the Department's hope and expectation, that to the greatest extent possible, BIE students would attend school in-person for the 2020-21 school year and that regulatory waivers would only be sparingly necessary. While in-person instruction remains our goal, the ongoing COVID-19 pandemic has necessitated ongoing school site closures of more than ninety-five percent of BIE school sites into 2020-21 to protect the safety of BIE students and their parents, as well as BIE faculty and staff.

These site closures will result in significant decreases in Indian School Equalization Program (ISEP) and transportation funding levels for nearly all BIE schools pursuant to the BIE funding

mechanisms established in Title 25 part 39 of the Code of Federal Regulations. These mechanisms base funding for the 2021-22 school year on factors including instructional hours, student nights in residence, and school and commercial bus mileage during the current school year, all of which are severely impacted by the site closures. The resulting funding decreases would significantly affect the quality and availability of educational opportunities that BIE schools can offer to our students during the 2021-22 school year and potentially beyond. Therefore, Indian Affairs issued the attached letter providing the approval of a blanket waiver.

For questions regarding waiving regulations outside of those named, please refer to the letter for guidance that Indian Affairs must still review and approve waiving such regulations. For related questions or additional inquiries, please work with your respective BIE point of contact and/or Education Program Administrator.

Thank you for your continued support of BIE's mission, and most importantly, our students.

Attachment

cc: Dr. Tamara Pfeiffer, Chief Academic Officer