

NATIONAL GUIDELINES
FOR
STUDENT RIGHTS AND RESPONSIBILITIES
FOR
THE BUREAU OF INDIAN AFFAIRS

FEBRUARY 1974

I N T R O D U C T I O N

The Constitution of the United States of America is a brief, concise document so carefully designed that after almost 200 years, it still remains the backbone of a Nation of 212 million people residing in 50 States, containing thousands of local governments. What makes this single, national code so versatile despite recurring political changes during this period is its universality in a Democratic Society and its sound principles of human rights. Although it has been challenged frequently, occasionally amended, and open to many interpretations, it permits great flexibility for local governments to operate according to the express wishes of their constituencies. It recognizes the concept of political self-determination where the majority rules, while at the same time protecting the basic rights of the individual. This document is vital to the Nation as the guarantor of personal freedom.

A vast conglomeration of statutes with their basic roots in the Constitution have mushroomed in response to the growing needs of the Nation. This array of legal structures on all levels of government has been created for the daily operation and routine of society and is supportive of the needs of people in all aspects of their relationships. There exists a fundamental set of principles which protects the individual citizen from the excesses and abuses of others or possibly of the government itself despite the filtration of laws down through the successive levels of government from the Constitution.

Throughout its long history in providing education programs for Indian students, the Bureau of Indian Affairs has sought to establish codes of behavior for both staff and students. These codes, incorporated into the Indian Affairs Manual cover a wide range of activities, from admission policies to rules against corporal punishment. Introduced at irregular intervals and

occasionally modified, they have never adequately dealt with the changing values of Society and, in particular, recent court decisions concerning the legal status of American youth.

National Student Rights and Responsibilities Guidelines, modeled on the concept of the Constitution, subscribes to the principle of local self-determination. It is meant to serve as a beacon lighting the way that Bureau school personnel must pursue in their relationship with students. It deals with a variety of issues not specifically considered by the Federal Constitution and upon which the courts have not yet agreed. The BIA, as well as the non-Bureau education systems, serve youth of all ages in a multitude of situations. Unlike the typical public system, however, the Bureau provides residence or boarding programs which operate on a 24-hour basis. Therefore, the Guidelines must also acknowledge special Bureau responsibilities protecting the health, safety, and welfare of its Indian student body.

Committee on Student Rights
and Responsibilities

ADMINISTRATIVE LEVELS OF THE SRR GUIDELINES

National Level: The over-riding concerns at the National or Central Office are the design of a broad framework of Student Rights and Responsibilities and a continual review of legal opinions in this area. National Guidelines should be sufficiently sound in Federal law to permit the supporting levels in the Bureau to construct their programs without fear of constitutional violations in the conduct of school affairs. It should not interfere with matters that comprise the daily, routine operational responsibilities of the local administrators.

Area Level: The basic constitutional laws or relevant Federal court decisions frequently refer cases back to the local judicial system closer to the people. In like manner, Area Offices, and in some instances their Agencies, should furnish the greatest assistance to Indian communities. It is within the context of National Guidelines that the Area should operate not only as a monitor for Student Rights and Responsibilities but also as an assistant to the schools in the preparation of specific SRR codes appropriate to the region and desires of the people served.

Local Level: School staff encounter the many problems which are presented by direct contact with students. Here the specific details on Student Rights and Responsibilities must be planned and ultimately implemented using local personnel and available community resources. School administrators have a legal obligation, both to the Area and Central Offices, for conducting SRR programs with thoroughness and integrity.

The entire community is affected by policies cooperatively developed at this stage. Within the sound framework of National Guidelines, supported by Area and Agency staff, local people, students, and school personnel will be able to deal authoritatively with all matters related to Student Rights and Responsibilities.

*THE LEGAL ROLE AND RESPONSIBILITIES OF THE SCHOOL AUTHORITIES
IN THEIR RELATIONSHIPS WITH STUDENTS*

The local school administrator, his staff, and school board should provide the student body with the best educational opportunities possible and protect the health and safety of each student. Pursuant to these goals, the school administrator must establish SRR policies according to local, State, and Federal laws relevant to the ages and maturity of students under his jurisdiction. In cases where students have reached legal majority, reasonable rules or regulations should be applied on an individual basis without disrupting the school's operation. In the cases of both minors and young adults, local school administrators should act in lieu of parents where necessary in the best interests of the individual as well as for the entire student body.

STUDENT RIGHTS AND RESPONSIBILITIES GUIDELINES

Inherent in the following Guidelines is the concept of local involvement for the development of specific SRR standards and their dissemination to the student population. It is based on law which is applicable Nationwide and conforms to the constitutional rights of Native American students as members of the American Society.

The Bureau of Indian Affairs proposes these major areas to be fundamental in all of its schools:

- I. *The Institution's relation to the student*
 - (a) *the right of access to education as prescribed by current BIA Manual criteria*
 - (b) *the right to be involved in affecting the total educational program*
 - (c) *the right to confidentiality of private or personal information*
- II. *Student Affairs*
 - (a) *the right to freedom of association*
 - (b) *the right to be represented in institutional government through recognized student councils*
 - (c) *the right to freedom of inquiry and expression*
- III. *Rules, Discipline, and Grievance Procedures*
 - (a) *Rules, discipline, and grievance procedures that are developed locally with the involvement of all parties concerned are the statutes which should prevail, provided they do not conflict with the fundamental rights set forth in the Guidelines, the Federal Constitution, or applicable codes of*

respective states and communities in which the schools are located.

- (b) Regulations on student behavior preferably should be formulated by a student-faculty-school board committee and finally approved by the school administration.
- (c) Schools have the inherent authority to discipline students. Growing out of this is the requirement to publicize, in writing, rules and regulations which provide prior notice of what behavior is expected. Rules and regulations must be precise and specific rather than general, and must also be clearly explained. If constitutional rights are involved, rules must address themselves to each particular right and the body of law with regard to the exercise of this right. In order to maintain orderly administration, disciplinary action for minor infractions of a behavior code should bear no relation to course credits, marks, graduation, or similar academic awards, unless related to academic dishonesty.
- (d) Administrative actions with regard to search and seizure in the schools should be reasonable and just so as not to conflict with the basic constitutional rights of individuals.
- (e) Schools should have adequate procedures for the airing of grievances, in order to insure that legitimate complaints and concerns, whether from parents or students, will receive just consideration.
- (f) The United States Supreme Court has affirmed that neither the Fourteenth Amendment nor the Bill of Rights is for adults

alone, and that no agent of the school or of a school board can compel a student to surrender his constitutional rights in exchange for the privilege of attending school.

STUDENT RIGHTS:

1. Every student enjoys those rights secured to him or her by the Constitution and laws of the United States. These include:
 - (a) right to an education
 - (b) right to a reasonable degree of privacy and a safe and secure environment
 - (c) right to make his own decisions when applicable
 - (d) right to freedom of speech
 - (e) right to freedom of religion
 - (f) right to freedom from discrimination
 - (g) right to peaceable assembly
2. Every student is entitled to due process in every instance of disciplinary action which may lead to expulsion from the school. Due process shall include:
 - (a) right to a written notice of charges within a reasonable time prior to a formal hearing
 - (b) right to a fair and impartial hearing
 - (c) right to lay or legal counsel of his or her own choice (private attorney's fees to be borne by the individual)
 - (d) right to cross examine all witnesses
 - (e) right to a record of formal hearings of disciplinary actions
 - (f) right to administrative review and appeal

STUDENT RESPONSIBILITIES:

The declaration of all human rights guaranteed by the Constitution implies corresponding responsibilities. If students as members of the class of "all human beings" deserve the protection of the rights, they must also accept the responsibilities.

- (1) The student, in taking advantage of the right to an education, must regard the opportunity of obtaining that education as one of his duties to the community. It is the student's responsibility to attend all of his classes regularly.

The student who does not attend classes is failing in his duty to the community and may be in violation of local laws and also interfering with the rights of other students.

- (2) The student's right to an education implies a responsibility to follow recognized rules and procedures. Any other method of seeking changes in the educational situation, or redress of grievances, is a violation of the rights of others. "The just requirements of ... public order" require that the student, just as any citizen, must inform himself of the proper methods and channels for complaints, and make use of them.
- (3) Just as the student has the right to be protected from bodily harm inflicted by employees or other persons and from unreasonable search and seizure, so he has the responsibility to refrain from inflicting bodily harm on other students or other persons and to respect the privacy of their property and correspondence.
- (4) A school, especially a residential school, is a community in miniature. It is the responsibility of the student to respond to community needs,

and obey community rules with regard to environmental health, order, and proper use of community property.

- (5) The most basic human characteristics, those of reason and conscience, carry with them the responsibility to act toward all members of the community with respect and consideration.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

MAR 25 1974

Memorandum

To: Area Director, Anadarko Area Office
Attention: Assistant Area Director (Education)

From: Commissioner of Indian Affairs

Subject: Student Rights and Responsibilities

Your memorandum and report concerning Student Rights and Responsibilities has been received. Please be advised that the report is satisfactory and has been turned over to the technical staff of the Office of Indian Education Programs for finalization in manual form. It is my view that the report does meet the requirements of the assignment and makes it possible to develop guidelines and a manual section. With the submission of the report and after having discussed the matter with the Acting Director of Education, it seems appropriate to consider the work of the committee completed and to conclude that it is no longer needed.

I would like to commend you for an exemplary piece of work in a very sensitive and controversial area of concern. You have performed a singularly outstanding job of chairing the Committee and, additionally, please pass on my compliments to the group. I believe your work will go far in being of assistance to each individual student enrolled in Bureau schools.

Maurice Thompson
Commissioner

cc:
Tom Hopkins



IN REPLY
REFER TO:

United States Department of the Interior
OFFICE OF THE SOLICITOR

ALBUQUERQUE FIELD OFFICE
ROOM 7102 FEDERAL BLDG. AND U.S. COURTHOUSE
P.O. BOX 1696
ALBUQUERQUE, NEW MEXICO 87103

February 22, 1974

Dr. William J. Benham
Director
Office of Education Programs
Bureau of Indian Affairs
Washington, D.C. 20240

Re: Student Rights and Responsibilities (62 IAM 9 Revision)

Dear Dr. Benham:

Pursuant to the request of your Albuquerque office, we have reviewed the proposed BIA Bulletin 62 dated March 1, 1974, on the foregoing subject. Mr. Barry K. Berkson of my staff has discussed this Bulletin in detail with Dr. Henry Rosenbluth of your Albuquerque office. We find the proposed Bulletin and Manual Revision to be legally sufficient, both as to form and content.

We agree with the concept of the document which subscribes to the principle of local self-determination, thus allowing school authorities at the local level to develop their own codes of student rights and responsibilities within the framework of the national guidelines.

Sincerely yours,

Lotario D. Ortega
Lotario D. Ortega
Field Solicitor

cc: S. Gabe Paxton, Jr.
Dr. Henry Rosenbluth
A/Sol., Ind. Affs., Wash.
Att'n: James J. Clear
R/Sol., Tulsa

cc's to Butler, Commr, etc

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560
United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

Code 500

IN REPLY REFER TO:

MEMORANDUM

7 March 1974

TO : Dr. W. Benham
FROM : Acting Deputy Commissioner of Indian Affairs
SUBJECT: Student Rights and Responsibilities

I have reviewed the bulletin regarding student rights and responsibilities and I have no particular comment. I am in complete agreement with the approach that specific student rights should be developed locally.

See Rollitt's letter

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

Office of Indian Education Programs

MAR 25 1974

Memorandum:

TO: All Area Directors
Attention: Assistant Area Director (Education)
FROM: Commissioner of Indian Affairs
SUBJECT: Student Rights and Responsibilities and Student Expulsions

The attached opinion of the Solicitor's Office pertains to the new guidelines in Student Rights and Responsibilities that have been developed and have been reviewed in draft form by Areas, schools, and tribal leaders. The new guidelines, which also include procedures for student expulsions, have received legal review from the Solicitor and must now go through the procedure for Federal rule making. This means that they will be published in the Federal Register in the immediate future and will subsequently become a part of the Bureau's procedures and CFR 25.

It should also be noted that reference is made to Manual Bulletin 62-1 issued December 26, 1973, with an expiration date of May 31, 1974. Your close attention to comments pertaining to this Bulletin is necessary and appreciated. If there are questions concerning it please contact your Field Solicitor or Indian Education Resources Center personnel at 505/766-3314.

Moira Thompson

Attachment



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240MAR 14 1974
550

IN REPLY REFER TO:

MAR 14 1974

Memorandum

To : Commissioner of Indian Affairs
 From : Assistant Solicitor, Indian Affairs
 Subject : Student Rights and Responsibilities

The proposed Student Rights and Responsibilities submitted by your memorandum dated March 4, 1974, have been reviewed and we conclude that the substantive provisions of Section 906, 62 BIAM, entitled Rights of the Individual comport with due process requirements. Sections 901-905 constitute general guidance which while not amiss as part of BIAM need not be included as part of regulatory material, which Section 906 contains. [It might be noted, however, that the first amendment to the Constitution provides that Congress shall make no law abridging the right of the people peaceably to assemble, not peaceable assembly as § 906.07 provides.] The same comment pertains to Responsibilities of the Student. [Although, it might be noted as well that with respect to § 907.03 a person should also be free from fear of bodily harm or conversely that a student must refrain from inflicting fear of bodily harm.]

Since the regulatory material in the Student Rights and Responsibilities involves substantive rulemaking, we must under Morton v. Ruiz (Supreme Court, No. 72-1052, decided February 20, 1974, 42 L.W. 4262) follow the Administrative Procedures Act, 5 U.S.C. §§ 552 and 553. Therefore, regulations should be published in the Federal Register requesting comments by interested persons to be made within 30 days, and after receipt of comments and revision, if warranted, republished with an effective date 30 days from the date of republication.

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In light of Ruiz and the holding that any substantive rulemaking not published in accordance with the Administrative Procedure Act may not affect anyone adversely, 5 U.S.C. § 552(a)(1), any outstanding disciplinary procedures - either those contained in 62 IAM, the Interim Procedures issued February 1, 1972, or the Revised Interim Procedures issued in December 1973 - although they may be substantively valid in affording minimal due process are invalid and ineffective since they have not been properly published. However, before the proposed Student Rights and Responsibilities are published and become effective, minimal due process must be afforded students in all disciplinary proceedings. We express no view on what precise procedures must be followed in the interim but those procedures must at least provide for notice to a student that he is charged with an infraction of a particular school rule for which the penalty for violation may result in an interruption of his education, that he may if he elects have a hearing by an impartial person or panel, and that he may be represented at that hearing by anyone of his own choosing.

Duard R. Barnes

PART II	EDUCATION	Chap. 9	Section 901.01
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CHAPTER 9
STUDENT RIGHTS
AND
RESPONSIBILITIES

Section 901. Rights Provided By Law. Student rights may be defined as encompassing all of those specific rights which our courts recognize as being vested in students. The source of these rights may be derived from applicable Federal, State, and/or local laws including regulations of the school.

- .01 Guaranteed Rights Under The Constitution. The United States Supreme Court has affirmed that students are protected by the Bill of Rights and that no agent of the school can compel a student to surrender his constitutional rights in exchange for the privilege of attending school.
- .02 Rights Imply Responsibilities. Students in BIA schools not only have rights afforded by the Federal Constitution but also those which have been developed cooperatively at the local school level. Cooperatively in this respect means the involvement of students and parents as well as school personnel. Rights imply corresponding responsibilities and each individual student must be responsible for the way he or she exercise his or her rights: he or she must accept the consequences of his or her actions as determined by law.

DRAFT

PART II	EDUCATION
Chapter 9	STUDENT RIGHTS AND RESPONSIBILITIES
	<u>Section</u> <u>902.01</u>

Section 902. Administrative Levels of Responsibility. The BIA recognizes the importance of local development of Rules and Regulations which are relevant to the particular needs and concerns of the students and community. The schools, in turn, must abide by the legal system based on the Federal Constitution and transmitted to the people through other levels of government.

- .01 The Central Office Level. The Central Office is concerned with the development of Guidelines for Students Rights and Responsibilities programs that is consistent with the Constitution and relevant court decisions which have been handed down. It will undertake a continual review of the legal changes in this field and keep the Area Offices so informed.
 - A. The Central Office will maintain a current file of Student Rights and Responsibilities programs on each Bureau school.
- .02 The Area Office Level. The Area Office and Agencies should assist local schools in developing their Student Rights and Responsibilities programs and serve as a monitor to assure their full compliance with the law on all levels.
- .03 The Local Level. Specific Student Rights and Responsibilities Codes must be developed at the school level involving school personnel and students. The School Administrator has the legal obligation to see that the program is conducted with thoroughness and integrity.

DRAFT

Chapter 9 STUDENT RIGHTS AND RESPONSIBILITIES Section
905.01

Section 905. Rules, Discipline, and Grievance Procedures. Rules, discipline, and grievance procedures are to be developed locally with the involvement of all parties concerned. (Administration, faculty, students and parents). They must be compatible with the Federal Constitution, or applicable codes of the respective states and communities in which the schools are located.

- .01 Rules. Rules and regulations must be precise and specific rather than general, and must also be clearly explained. It is mandatory that the student body must receive prior notification of the rules and regulations which govern their behavior.
 - A. Administrative regulations with regard to search and seizure in the schools should be reasonable and just, so as not to conflict with the basic rights of individuals.
- .02 Discipline. Disciplinary actions for minor infractions of a behavior code should bear no relation to course credits, marks, graduation, or similar academic awards, unless related to academic dishonesty.
- .03 Grievances. Schools should have adequate procedures for the airing of grievances, in order to insure that legitimate complaints and concerns, whether from parents or students, will receive just consideration.



Chapter 9 STUDENT RIGHTS AND RESPONSIBILITIES Section
906.01

Section 906. Rights Of The Individual. The following list is a clear statement of Bureau policy with regard to the treatment of the student in the entire BIA school system. It should also be considered binding on all non-Bureau schools which are funded under contract with the BIA.

- .01 Right to An Education.
- .02 Right To A Reasonable Degree Of Privacy And A Safe And Secure Environment.
- .03 Right To Make His or Her Own Decisions When Applicable.
- .04 Right To Freedom Of Speech.
- .05 Right To Freedom Of Religion.
- .06 Right To Freedom From Discrimination.
- .07 Right To Peaceable Assembly
- .08 Right To Due Process. Every student is entitled to due process in every instance of disciplinary action which may lead to expulsion from school. Due process shall include:
 - A. Written notice of charges within a reasonable time prior to a formal hearing.
 - B. A fair and impartial hearing.
 - C. Lay or legal counsel of the student's choice. (Private attorney's fees to be borne by the individual).
 - D. Examination of all witnesses.
 - E. Record of formal hearings of disciplinary actions.
 - F. Administrative review and appeal.



Section 907. Responsibilities Of The Student. The declaration of all human rights guaranteed by the Federal Constitution implies corresponding responsibilities. Students must accept these responsibilities so as not to infringe upon the rights of others in the school community.

- .01 Obtain An Education. The student must regard the opportunity of obtaining an education as one of his duties to the community.
 - A. It is the student's responsibility to attend all of his or her classes regularly.
- .02 Follow The School Rules. The student must obey recognized rules and procedures developed by the school community, including those affecting environmental health, order, and proper use of school property.
- .03 Practice Self-Control. The student must refrain from inflicting bodily harm on other students or other persons, and respect the privacy of their property and correspondence.
- .04 Know Grievance Process. The student must inform himself or herself of the proper methods and channels for complaints, and make use of them.

DRAFT



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

Memorandum

FEB 28 1974

To : Commissioner of Indian Affairs
 From : Associate Solicitor--Indian Affairs
 Subject : Supreme Court decision in Morton v. Ruiz

On February 20, the Supreme Court held that the Bureau cannot deny general assistance welfare benefits to "full-blooded, unassimilated Indians living in a community near their native reservation, and who maintain close economic and social ties with that reservation." ^{1/} The Court set aside the Bureau's determination, based on the Indian Affairs Manual (66:3.1.4), that such assistance should be provided only to Indians residing on the reservation. The Court found that Congress had been advised in appropriation hearings over the years that BIA benefits were available to Indians "on or near reservations." After lengthy consideration of the hearings of these committees, the Court determined "that, for many years. . .the BIA itself made continual representations to the appropriations subcommittees that non-urban Indians living 'near' a reservation were eligible for BIA services."

The Court, however, rejected intimations in the decision by the Court of Appeals in this case that BIA services must be provided to all Indians "throughout the United States." (The lower court's holding was premised on a literal interpretation of the Snyder Act, 25 U.S.C. §13.) Accordingly, while the Court affirmed the ruling of the lower court, it did so on narrow grounds.

In addition to holding the substance of the BIA provisions--i.e., the limitation to reservation residents--invalid because contrary to the intent of Congress, the Court was extremely

^{1/} The plaintiffs, the Ruizes, are Papago Indians who had moved in 1940 from the reservation to Ajo, Arizona, some fifteen miles from the reservation to work in the Phelps-Dodge copper mine. They maintained close ties to the reservation, were full-blooded unassimilated Indians and spoke Papago, but little English. In 1968, Mr. Ruiz was unemployed by a strike and applied for the BIA General

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Division

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FEB 28 1974

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critical of the Bureau's procedures in adopting eligibility criteria. The Court held that these criteria ought to be adopted in full conformity with the provisions of the Administrative Procedure Act, 5 U.S.C. §551 et seq., which include formal publication in the Federal Register and Code of Federal Regulations. 2/ Appropriate rule-making procedures ought also to be devised and regularly observed. 3/ The Court described the BIA Manual as "an internal-operations brochure intended to cover policies that 'do not relate to the public.'" The Court perceived a relationship between the need for procedural fairness in dispensing important substantive benefits and the trust obligations of the Bureau.

We are prepared to advise you or your staff in greater detail on the steps which should be taken to comply with the decision. 4/ The decision clearly requires the formulation of rules to clarify the category of "near-reservation" Indians. Substantively, the factors which could be taken into account would seem to include tribal membership, blood-quantum, proximity to the reservation, degree of social and economic ties and other "contacts" with the reservation, and residence on public domain or other trust allotments outside the reservation. Procedurally, it will be imperative that these and other Bureau regulations affecting important substantive rights should be adopted only after formal rulemaking

2/ 5 U.S.C. §552(a)(1) reads:

"Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.

3/ Compare 5 U.S.C. §554.

4/ In this regard, it may be that the District Court on remand will retain jurisdiction to pass upon the validity of the regulations adopted in response to the decision.

procedures and that the ultimate regulations be published in the Federal Register and CFR. Although the program involved in this case was general assistance benefits, the Court's comments regarding procedural regularity have broader application with respect to Bureau programs, and we should jointly review the necessity for compliance with them in other BIA operations. This office will, of course, be pleased to provide you with counsel as substantive regulations are framed and as to the specific procedures required under the Administrative Procedure Act to adopt them.

Reid Chambers

Reid P. Chambers



Public Law 90-23
90th Congress, H. R. 5357
June 5, 1967

An Act

81 STAT. 54

To amend section 552 of title 5, United States Code, to codify the provisions of Public Law 89-457.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552 of title 5, United States Code, is amended to read:

"§ 552. Public information; agency rules, opinions, orders, records, and proceedings

"(a) Each agency shall make available to the public information as follows:

"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

"(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

"(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

"(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

"(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

"(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

"(C) administrative staff manuals and instructions to staff that affect a member of the public:

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual

Public information.
80 Stat. 393.

Publication in Federal Register.

Exception.

Inspection and copying.

Conditions.

81 STAT. 55

Pub. Law 90-23

- 2 -

June 5, 1967

or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

"(i) it has been indexed and either made available or published as provided by this paragraph; or

"(ii) the party has actual and timely notice of the terms thereof.

Exceptions.

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

Nonapplicability.

"(b) This section does not apply to matters that are—

"(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

"(2) related solely to the internal personnel rules and practices of an agency;

"(3) specifically exempted from disclosure by statute;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

"(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

"(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

"(9) geological and geophysical information and data, including maps, concerning wells.

"(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress."

Congressional reservation.

June 5, 1967

- 3 -

Pub. Law 90-23

81 STAT. 56

Sec. 2. The analysis of chapter 5 of title 5, United States Code, is amended by striking out:

"552. Publication of information, rules, opinions, orders, and public records." and inserting in place thereof:

"552. Public information; agency rules, opinions, orders, records, and proceedings."

Sec. 3. The Act of July 1, 1966 (Public Law 89-487, 80 Stat. 250), is repealed.

Sec. 4. This Act shall be effective July 1, 1967, or on the date of enactment, whichever is later.

Approved June 5, 1967.

80 Stat. 380.

Repeal.

Effective date.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 125 (Comm. on the Judiciary).
SENATE REPORT No. 243 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 113 (1967):

Apr. 3: Considered and passed House.
May 19: Considered and passed Senate, amended.
May 25: House agreed to Senate amendments.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF EDUCATION PROGRAMS
Indian Education Resources Center
P.O. BOX 1788
ALBUQUERQUE NEW MEXICO 87103

IN REPLY REFER TO:

February 22, 1974

Memorandum

To : Dr. Robert J. Rebert, Acting Chief,
Curriculum Development

From : Chief, Division of Program Review &
Evaluation

Subject : Student Rights and Responsibilities Curriculum Bulletin

As you are aware, the Committee on Student Rights and Responsibilities (SRR) has about completed its task and the next part of the project pertains to the development of a Curriculum Bulletin on SRR. The purpose of the Curriculum Bulletin is to provide technical information to Areas and schools who will have responsibility for developing details. You will find attached a copy of the proposed Guidelines. When available, I will also supply you with a copy of the proposed Manual Section.

In reviewing the comprehensive nature of the program, I would like to suggest that the following be Sections in the Curriculum Bulletin:

- (1) Examples of Student Bills of Rights: Responsibility for the development of a Bill of Rights for Students has been placed on the schools. Examples of how other schools have handled it, including BIA and public, should be a part of the Bulletin.
- (2) Curriculum Guide: The Guidelines imply that Student Rights and Responsibilities should be a part of the ongoing curriculum. It is in this part of the school program that the constitution should be taught and students involved in participating in the rights and responsibilities program.

A section relative to this will be extremely important to the teaching of the constitutional rights of citizens.

- (3) Expulsion Procedures Examples: The Guidelines require that the general principles of fairness contained in the constitution be followed with regard to students discipline and grievances. Examples of how these have been handled at non-Bureau situations should also be included. The "Interim Procedures" should be an appropriate inclusion.

(4) *References: Several organizations have done excellent work relative to SRR. When possible some of these should be included verbatim. Most, however, will have to be referenced and paraphrased primarily because of copyrights. Among these are the NEA, NIYC, American Indian Law Students and a recent Harvard Education Review which deals with the rights of children.*

(5) *Program Guidelines: The Guidelines developed by the Committee should also be a part of the curriculum.*

(6) *Manual Section: The new Manual Section should also be included in the Curriculum Guide. This should be accompanied by any sort of pertinent review made by the Solicitor's office relative to the new Manual Section.*

(7) *Ms. Osborne's material:*

The above arrangement is not an ordering of the various sections, nor does it limit the scope of the curriculum bulletin. Ms. Ramona Osborne is developing a section for the curriculum bulletin and though it is not discussed above, it will relate well to the total document. Proper placement of what she provides should be determined in relationship to the content. I will discuss this matter with you at your earliest convenience.



Thomas R. Hopkins

Enclosure: (1) Guidelines



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF EDUCATION PROGRAMS
Indian Education Resources Center
P.O. BOX 1788
ALBUQUERQUE NEW MEXICO 87103

February 28, 1974

Memorandum

To : Chief Division of Evaluation &
Program Review

From : Chief, Branch of Curriculum

Subject : A Curriculum Bulletin on Student Rights and Responsibilities

In regard to your memo of February 22, in which you assign the task of organizing a committee for the above task to me, I'd like to respond. I will of course, accept the assignment, but I would like to interpret the memorandum and make some suggestions.

Although I sense the urgency of getting a committee organized to produce the Curriculum Bulletin on SRR, I am pleased you did not put a deadline on this. I will do everything in my power to expedite it, because I believe the content is practically all written. I trust you will advise us as to the appropriate printing facility when the time comes due to the fact that present systems seem to be inefficient.

I suggest the following members of the committee as a result of my study of the background documents you have shared with me.

Dr. Robert Rebert - Chairman, editor

Dr. Henry Rosenbluth


Ms. Ramona Osborne

Ms. Catherine Dumont

Dr. Gabe Paxton (or his delegate)

If you concur with those named, please inform me verbally and I will proceed to contact them through channels, get concurrence from their supervisors and bring them together for the first planning of the bulletin.

I commend all of you have done the yeoman's work in this project and I am honored to serve in the capacity you outlined. We will keep you informed regularly of the progress in this endeavor.


Robert Rebert
Chief, Branch of Language Arts



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

Memorandum

To: Commissioner of Indian Affairs
From: Acting Director, Office of Indian Education Programs
Subject: Proposed 25 CFR 35 (Student Rights and Responsibilities)

The enclosed 25 CFR 35 proposal is submitted in accordance with the March 14 opinion of the Assistant Solicitor, Indian Affairs. This opinion states the following:

Since the regulatory material in the Student Rights and Responsibilities (Guidelines) involves substantive rule-making, we must under Morton v. Ruiz (Supreme Court, No. 72-1052, decided February 20, 1974, 42 L.W. 4262) follow the Administrative Procedures Act, 5 U.S.C. 58 552 and 553. Therefore, regulations should be published in the Federal Register requesting comments by interested persons to be made within 30 days, and after receipt of comments and revision, if warranted, republished with an effective date 30 days from the date of the republication.

Since there has been considerable national interest in the matter of student rights and responsibilities in Bureau of Indian Affairs schools, it is our hope that this proposal will receive early consideration so that individual school programs may be ready for the fall session.

Enclosure

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 35]

STUDENT RIGHTS AND RESPONSIBILITIES

Establishment of New Part



This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to add a new Part 35 to Subchapter E, Chapter I, of Title 25 of the Code of Federal Regulations. This addition is proposed pursuant to the authority contained in Title 5 USC Section 301 (80 Stat. 379, Act of September 6, 1966).

The purpose of this addition is to establish rules and regulations regarding the Rights and Responsibilities of students in Bureau of Indian Affairs schools.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed addition to Field Administrator, Indian Education Resources Center, Bureau of Indian Affairs, P. O. Box 1788, Albuquerque, New Mexico 87103, within 30 days after date of publication of this notice in the Federal Register.

It is proposed to add a new Part 35 to Subchapter E of Chapter I, Title 25 of the Code of Federal Regulations to read as follows:

Part 35 Student Rights and Responsibilities

March 29, 1974

- Sec.
- 35.1 Purpose
 - 35.2 Definitions
 - 35.3 Local development of rules and regulations
 - 35.4 Rights of the individual student
 - 35.5 Responsibilities of the individual student
 - 35.6 Responsibilities of school administrators
 - 35.7 Teaching-learning relationship
 - 35.8 Review of local programs
 - 35.9 Program modification

AUTHORITY: The provisions of this Part 35 issued under 5 U.S.C. 301 (80 Stat. 379, Act of September 6, 1966.)



§35.1 Purpose

The regulations in this Part govern establishing programs of student rights and responsibilities in Bureau of Indian Affairs schools and such schools that are operating under contract with the Bureau of Indian Affairs.

DRAFT

§35.2 Definitions

As used in this Part:

(a) "Student rights" means all of those specific rights which the courts recognize as being vested in students. The source of these rights may be derived from applicable Federal, state and/or local laws and from the rules and regulations of the school.

(b) "Student responsibilities" means all the attitudes and behavior that students should demonstrate within the school community as responsible individuals seeking an education.

DRAFT

§35.3 Local development of rules and regulations

Rules and regulations regarding student rights and responsibilities must be developed at the local school level cooperatively by school personnel, students and parents, where possible. These local rules and regulations must conform to the Federal Constitution, applicable school codes of the respective states and communities in which the schools are located, and the provisions of this Part 35.

Local rules and regulations must be precise and specific rather than general. They must be clearly explained in writing for review by the students before becoming effective.

In addition, the local rules and regulations must comply with these provisions:

(a) Disciplinary actions for minor infractions of a behavior code should bear no relation to course credits, marks, graduation, or similar academic awards, unless related to academic dishonesty.

(b) Regulations concerning search and seizure in the schools should be reasonable and just so as not to conflict with the basic rights of individuals.

(c) Schools should have adequate procedures for the airing of grievances, in order to insure that legitimate complaints and concerns, whether from parents or students, will receive just consideration.

DRAFT

§35.4 Rights of the individual student

The Bureau of Indian Affairs recognizes that the individual student has the following rights:

- (a) Right to an education.
- (b) Right to a reasonable degree of privacy and a safe and secure environment.
- (c) Right to make his or her own decisions when applicable.
- (d) Right to freedom of religion.
- (e) Right to freedom of speech.
- (f) Right to peaceably assemble.
- (g) Right to freedom from discrimination.
- (h) Right to due process. Every student is entitled to due process in every instance of disciplinary action which may lead to expulsion from school. Due process shall include:
 - (1) Written notice of charges within a reasonable time prior to a formal hearing.
 - (2) A fair and impartial hearing.
 - (3) Lay or legal counsel of the student's choice. Private attorney's fees will be borne by the student.
 - (4) Examination of all witnesses.
 - (5) Record of formal hearings of disciplinary actions.
 - (6) Administrative review and appeal.

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§35.4, continued

Non-Bureau of Indian Affairs schools which are funded under contract with the Bureau of Indian Affairs must also recognize these student rights.



§35.5 Responsibilities of the individual student.

The declaration of all human rights guaranteed by the Federal Constitution implies corresponding responsibility. Students must accept these responsibilities so as not to infringe upon the rights of others in the school community. A student's responsibilities include:

- (a) To regard the opportunity of obtaining an education as one of his or her duties to the community.
- (b) To obey recognized rules and regulations developed by the school community, including those affecting environmental health, order, and proper use of school property.
- (c) To refrain from inflicting bodily harm or fear of bodily harm on other students or other persons, and to respect the privacy of their property and correspondence.
- (d) To keep informed of the proper methods and channels for complaints and make use of them.



§35.6 Responsibilities of school administrators.

The responsibilities of the local school administrators in the Bureau of Indian Affairs are to:

- (a) Provide the student body with the best educational opportunities, and protect the health and safety of each student.
- (b) Guarantee that local rules and regulations regarding student rights and responsibilities agree with local, state and Federal laws.
- (c) Insure that local rules and regulations regarding student rights and responsibilities are appropriate to the ages and maturity of the students.
- (d) Act in lieu of parents where necessary in the best interests of the individual as well as the entire student body.

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§35.7 Teaching-learning relationship.

The process of education requires that both the teacher and the student be actively engaged. The Bureau of Indian Affairs sees this approach as the means to encourage student creativity and self-direction and as fundamental to the Bureau's policy on student rights and responsibilities. This policy includes the following:

- (a) Providing each student an education as prescribed by current law.
- (b) Allowing students to participate in and affect the total education program.
- (c) Protecting the student's right to confidentiality of private or personal information.
- (d) Allowing freedom of association on the campus within the established school regulations.
- (e) Permitting student representation in school operations through recognized student councils.
- (f) Permitting freedom of inquiry and expression.

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§35.8 Review of local programs.

The Area Director, through his education staff, will assist local schools under his jurisdiction in developing their student rights and responsibilities programs. He will also review local programs to assure their full compliance with the law and this Part 35.

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§35.9 Program modification.

The Commissioner will undertake a continual review of legal opinions and court decisions concerning student rights and responsibilities and inform the Area Offices. He will also maintain a current file of student rights and responsibilities programs on each Bureau school.

Commissioner of Indian Affairs

Certified to be a true copy
of the original

Certifying Officer

DRAFT

Senator ABOUREZK. The next witness will be in lieu of the Commissioner of Indian Affairs, Mr. Morris Thompson, who is unable to be here today, will be Mr. Raymond Butler who is Acting Director of the BIA Office of Indian Services and the Chief of BIA's Division of Social Services.

I have a letter from Mr. Morris Thompson outlining who will testify in his place and this letter will be offered into the record.

[The letter referred to follows:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., April 8, 1974.

Hon. JAMES ABOUREZK,
Chairman, Subcommittee on Indian Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your April 3 letter inviting me to testify April 9 at your Subcommittee's hearings on Indian Child Welfare. As Mr. Broadhead of your staff has been advised, I regret that I have a prior commitment out of the city which will preclude my personal appearance on April 9.

Mr. Raymond Butler, the Acting Director of our Office of Indian Services and the Chief of our Division of Social Services, will be available to testify on my behalf on April 9. Mr. Butler's experience and background in the Bureau's social services program will enable him to be a most effective witness on the subject of Indian child welfare. He will be accompanied by Mr. William Benham, the Acting Director of our Office of Indian Education Programs.

In line with your invitations to the following Bureau employees, we have authorized them to travel to Washington and be available as resource witness at your hearings. Of course, Mr. Butler rather than these employees, will be my representative at the hearings. The other Bureau employees are Ms. Evelyn Blanchard (Assistant Area Social Worker, Albuquerque Area Office) and Mr. Joe Brennan (Superintendent, Ft. Totten Agency, North Dakota).

Again let me express my regret that I will not be able to attend the April 9 hearings on the important subject of Indian child welfare.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

Senator ABOUREZK. Mr. Butler, do you want to identify who is with you at the table?

STATEMENT OF RAYMOND BUTLER, ACTING DIRECTOR, OFFICE OF INDIAN SERVICES, CHIEF OF DIVISION OF SOCIAL SERVICES, WASHINGTON, D.C.

Mr. BUTLER. I have on my left Dr. William Benham, who is the Acting Director of the Office of Education, and Mr. Bob Bruce, who is in the legislative branch of the Bureau.

Senator ABOUREZK. We'd like to welcome you here today and ask you to proceed with your testimony.

Mr. BUTLER. Thank you, Mr. Chairman.

I might state, inasmuch as Ramona had the privilege of appearing here individually and she's not worried about her job; but inasmuch as I'm representing the Commissioner, it's maybe I who is worried about my job.

Senator ABOUREZK. If you get in trouble, let me know.

Mr. BUTLER. Mr. Chairman, we appreciate the interest of the Senate Subcommittee on Indian Affairs in behalf of some of the most needy of Indian children, those whose parents may not provide for their

care for many reasons, and for whom the Bureau of Indian Affairs arranges for their care in boarding schools, foster homes or specialized institutions. All of the Bureau of Indian Affairs child welfare programs in the broad generic concept of child care, are supplementary programs afforded to those Indian people not eligible for services from other Federal, State or private programs. For example, this Bureau's educational program is supplementary for those children who do not attend public schools or mission schools. This Bureau's social services program is likewise supplementary to the public assistance program of aid to families with dependent children, the supplementary security income program and also is not provided on reservations in States where the Indian citizen is eligible for such service programs on an equal basis with other citizens of the State. Also, this Bureau's law enforcement and judicial services program is supplementary to such programs as may be provided under tribal auspices, Federal law enforcement, the U.S. district courts and to those reservations under Public Law 280 where State jurisdiction prevails. It is this nature of this Bureau's programs of services in the broad field of child welfare that makes it extremely difficult, if not impossible in some instances, for us to obtain a complete and total picture of child welfare services for Indian people. By far, in terms of numbers, the largest child care program of this Bureau is the boarding school program. There were 33,672 Indian students attending boarding schools in 1973. There has been a noticeable decline in recent years in the boarding school attendance of Indian children. For example, in 1969 there were reported 36,263 Indian students attending boarding schools and as indicated there were 33,672 in 1973. This is a decline of 2,591 students in a 4-year period.

In the Bureau's social services program, it is the general assistance financial program which affords the major preventive child welfare services. This is a program which makes available financial assistance to needy Indian families who are not eligible for financial assistance from any other source to maintain their family life. In recent years, particularly since 1969, we have seen a dramatic increase from approximately \$10 million to an estimated \$47 million, in fiscal year 1974, with an associated increase in the number of persons receiving such assistance from 22,000 in 1969 to an estimated 75,000 in fiscal year 1974. Admittedly, the welfare economy is certainly not the best way of life; however, until such time as the reservation economy improves to support financially full Indian family life, we offer no apologies. However, in an attempt to offset what so many refer to as the inappropriate welfare economy, in concert with certain tribal governments, there was initiated in 1968 what is referred to as the tribal work experience program and training program. This is a tribal option program whereby tribes who wish to participate may do so; and on an individual voluntarily basis, employable heads of household who are receiving general assistance may be assigned to a work opportunity. Today, there are approximately 30 tribes who have elected to participate, and it is estimated that approximately 4,250 heads of household will participate in work opportunity programs.

Specifically to the more narrowly defined child welfare programs, we have experienced since 1968 a relatively level number of approximately 3,300 Indian children, on an average monthly basis, receiving foster

home care or specialized institutional care. However, we have noted during this same period of time a steady decline in foster home care. In fiscal year 1969, 1,768 children received foster home care, to an estimated 1,525 this year. Conversely, we have noted an increase in the institutional care average monthly caseload, 750 in 1969 to an estimated 1,050 this year. We have also noted a decline in the mission school program from 668 in 1969, to 498 in 1973. The special needs caseload holds about level at 200.

The institutional care caseload increase is a direct result of various tribes developing on-reservation institutional care facilities such as the St. Michael's School for the Retarded on the Navajo, the Youth Home Facilities of the Indian Development District in Arizona, the Delta Marie Home on the Rosebud, Eastern Cherokee Children's Home, and many other tribal youth home facilities. Heretofore, the Indian child who needed special institutional care could only receive such care in facilities that were located several hundred miles away from the child's home reservation, and as such many Indian parents chose not to place their child in the institutional facility. Today, now that such resources are readily available on reservations, Indian parents are taking advantage of such specialized care for their children.

It is our firm belief that direct tribal involvement and local Indian community involvement is the essential ingredient for improved services for Indian people and their children. Recently in response to the North American Indian Women's Association, we cooperated with them in undertaking a Bureau-wide study for "A National Action for Special Needs of Indian Children Program." The Indian women conducted this survey type of study and have only recently presented us their report. It is with pleasure that we present to the committee a copy of the report.

Governor Lewis preempted my preceding statement of giving the first copy to the committee. We have some others here that we'll make available to you.

Also, illustrative of local community involvement, we are also pleased to advise the committee of the Cherokee Action for Foster Children Committee. This is a local action committee of the Eastern Cherokee Tribe of North Carolina in which they are promoting local community awareness in the recruitment of Indian foster homes and in the local development of the Cherokee Children's Home facility.

They have just recently undertaken the production of a film which illustrates their committee functions and of the Indian foster child program for the Eastern Cherokee people. It is their plan to make this film available to assist other tribal groups in gaining insight and understanding in the methods which they employed.

Again, Mr. Chairman, I wish to thank you for your concern for Indian children, and thank you for the concern of your committee; and Dr. Benham and myself would be pleased to answer any questions you may have.

Senator ABOUREZK. Thank you.

What does—when you say in your statement "tribal involvement," what does that mean to your division or to you?

Mr. BUTLER. The local Indian community level, it means to us an interchange, a communication between the people of that community

and their concerns and their interests on behalf of the children, and playing an advocacy role and working with them to try and carry out the goals that they wish to achieve.

Senator ABOUREZK. It doesn't mean that, for example, Indian control?

Mr. BUTLER. It may very well, sir; yes.

Senator ABOUREZK. Not always?

Mr. BUTLER. Not always, no.

Senator ABOUREZK. Have you been in the hearing room during the last 1½ days of testimony?

Mr. BUTLER. No, sir. I was not here yesterday.

Senator ABOUREZK. I wish you had been. Witness after witness got up and testified that non-Indian social workers have been totally ignorant of exactly what an Indian family is and what it ought to be; that their standards, referring to non-Indian social workers, the standards they develop on whether or not a mother was a good mother, or a parent was a good parent, were based upon their own standards, not on Indian standards, which are quite often different, and that as a result judging the fitness of the parent or the closeness of the family unit on their own standards, that they then took all kinds of illegal, deceptive actions to try to get Indian children away from their mothers.

There's repetitive testimony about that point, and the witnesses who testified said that the only way around this kind of practice was to allow the tribes, themselves, the Indians themselves, to decide who was fit and who wasn't fit, because they're the only ones who understand. I would hope that the Bureau of Indian Affairs could perhaps change its definition of Indian involvement to mean something more than stroking the Indians to allow them to say that you are now the toothless advisory committee and you're involved.

Is there anything wrong, really, with the Indians running their own foster child programs and adoption programs?

Mr. BUTLER. No, sir. I would certainly say there isn't. We are seeing more and more of this take place. I'll give you the example of the Zuni in Arizona where this is administered directly by the Indians themselves. The Cherokee Children's Home is being administered directly by the Indian people themselves, and we are providing the various means and vehicles for them to undertake this.

Senator ABOUREZK. What's wrong with that program being done nationwide on every Indian reservation?

Mr. BUTLER. I would suggest that there's nothing wrong with it, Senator. There is the question of the Indian people themselves desiring to undertake this.

In terms of the broad concept of the social services program of the Bureau today, we have about 40 percent of that program, in total, that is now under tribal administration. It varies with some of the contractual arrangements. Some of the tribes prefer not to take on certain aspects of the program at the present time, and they move into it later.

Senator ABOUREZK. Can you tell me which tribes you have offered this control of child welfare to and which tribes have turned it down and don't want to take control?

Can you tell me that?

Mr. BUTLER. Senator, the list of those that have taken on, in one particular form or another, would be quite extensive. I would be pleased to provide that for the record.

Senator ABOUREZK. I would like that. I wonder if you might put down precisely what the committee is asking for, that is the names of the tribes that you have offered complete control over their foster and adoptive child programs and the names of the tribes that told you they don't want to take control.

Mr. BUTLER. Senator, in terms of using the term "complete control," very few of them have moved in the direction of complete and total control. They have moved in the direction of providing facilities for their children, for the development of Indian foster homes.

Senator ABOUREZK. What I'm particularly concerned about, Mr. Butler, is the fact that many Indians yesterday and today recommended that that's the only way to get around the deception of the Indian family unit that's taking place, to allow the tribes to take control, the implication being that the BIA is not, or should not be allowed to take control, and I'd like to either have that charge refuted by the BIA or I would like to see where the charge is at.

I just want to make it clear what it is that we're looking for.

[Subsequent to the hearing, the following information was received:

Child Welfare Contract Programs

The principal child welfare contract programs are foster family care, group care, and specialized institutional care of Indian children who must, for various reasons, live away from their own home. The main reasons for providing substitute living arrangements are because of problems relating to dependency, neglect, delinquency and physical ^{and mental} handicaps of children for many of whom resources are lacking in their respective home communities. Attendant social service functions to the foster care contract program may include: foster home finding and placement, supervision of the placement on some reservations, provision of guidance and counseling services to families who may have a child or children in placement, liaison services between the child in placement and his family and consultation to the court of jurisdiction for the care and protection of children. For other contract programs, social service functions include the identification of handicapped children in need of special services, the arranging for such services, and liaison and follow up services to the family.

The following Social Services Child Welfare Contract programs are currently in force as identified on an Area basis. The Contractor is designated as T if Tribal government, TB if agency under a Tribal Board, P if under private non-government, and S if State.