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## ABSTRACT

In recent years, the Bureau of Indian Affairs (BIA) has had to re-examine its position regarding the current legal status of youth attending school. Court actions, although still indecisive on this point, precede a new era of school-student relationships which the BIA's Office of Indian Education Programs holds will assure improved conditions for the total school community. The BIA commenced on a course which has led to the development of Student Rights and Responsibilities Regulatory Procedures. A strong foundation was designed to assess existing programs, court decisions, legal opinions, and Indian student and community viewpoints. Steps were taken to arrive at a Student Rights and Responsibilities Proposal with nationwide support. This document reports the BIA's progress in providing areas and local schools with Guidelines and legal support to establish Student Rights and Responsibilities Programs. It consists of background information on BIA student rights and responsibilities, memos to individuals or groups connected with the process, drafts of the proposed section to the Indian Affairs manual and the 25 CFR 35 for the Federal Register, and a pertinent section of Public Law 90-23 (Administrative Procedure Act). (NQ)

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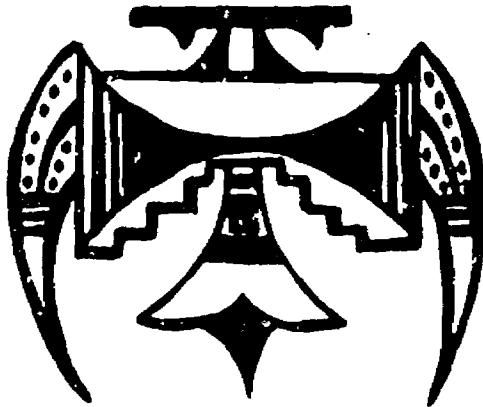


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STUDENT RIGHTS AND RESPONSIBILITIES  
A PROGRESS REPORT



INDIAN EDUCATION RESOURCES CENTER

BUREAU OF INDIAN AFFAIRS  
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APRIL 1974

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## FOREWORD

In recent years, the Bureau of Indian Affairs, like other organizations operating education systems, has had to re-examine its position with regard to the current legal status of youth attending school. Court actions, although still indecisive on this point, herald a new era of school-student relationships and the Bureau's Office of Indian Education Programs holds that this change will assure improved conditions for the total school community.

It was with this positive attitude that the Bureau embarked on a course which has led to the development of Student Rights and Responsibilities Regulatory Procedures. In order to move quickly, but fairly, a strong foundation was designed to assess existing programs, court decisions, legal opinions, and Indian student and community viewpoints. The steps were patiently taken to arrive at a Student Rights and Responsibilities Proposal with nationwide support.

This document or series of papers demonstrates the care with which we have moved to provide the areas and local schools with Guidelines and legal support to establish Student Rights and Responsibilities Programs. It is our hope that the process of developing and implementing these programs will be a rewarding educational experience for all Indian youth in Bureau Schools.

Dr. William J. Benham  
Acting Director  
Office of Indian Education Programs

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The Nation's Education Institution in the very late Sixties and early Seventies started going through an unsettled period regarding the rights and responsibilities of students. This movement started affecting Bureau schools in a real manner during the School Year 1971-72. It culminated in a Commissioner's memo dated February 1, 1972, entitled, "Interim Procedures for Student Expulsion." Apparently, there was unrest about the number and types of expulsions from Bureau schools and the manner in which they were being handled. Also, though it is not clearly known why, the BIA Manual procedures regarding expulsions were not involved in the problem. Essentially, starting with the above-cited memo, there was a great deal of activity within and outside of the Bureau regarding Student Rights and Responsibilities in Bureau schools.

In May 1973, the Program, which is a sensitive one, again emerged when there was a question of how best to develop it. At that time, it was decided that a systematic implementation should be undertaken. The first part of this was to evaluate the program on a Bureauwide scale. The evaluation took place and is available in report form. Following the evaluation, an inhouse committee was established to develop Program Guidelines in Student Rights and Responsibilities that were to serve as a basis for developing a section for the Indian Affairs Manual (IAM). The Committee started meeting in October 1973 and completed their work on February 26, 1974.

It should also be noted that the Commissioner's memo cited above was replaced on December 26, 1973, with a Bulletin that added to the expulsion procedures and made some modifications.

The Student Rights and Responsibilities Committee work was renewed by the Field Solicitor in Albuquerque, New Mexico, and by the Assistant Solicitor for Indian Affairs in Washington, D.C. Both reviews confirmed the Committee work and said that: "... we conclude that the substantive provisions of Sections 906, 62 BIAM, entitled Rights of the Individual comport with due process requirements."

The Assistant Solicitor's opinion did, however, continue and dealt further with the Interim Procedures and the proposed guidelines. The Solicitor drew from the Supreme Court decision under Morton vs Ruiz wherein following the Administrative Procedure Act, as it pertains to substantive rulemaking, was cited. The Administrative Procedure Act requires publishing in the Federal Register those Federal rules that affect the public. Hence, the new guidelines are now in the process of being published in the Federal Register and appropriate parts of them will eventually become a part of the Code of Federal Regulations 25, which concerns Indian Affairs. The Assistant Solicitor also stated that the Interim Procedures, because they had not followed the Administrative Procedures Act, were invalid procedurally and, "... may not affect anyone adversely." This same conclusion applies to the IAM that is extant.

Currently, the Bureau is proceeding with dispatch, to correct the situation and place this most vital aspect of the Education Program on a sound humane and legal base.

To itemize, the Program as planned has the following steps:

1. Evaluation (completed).
2. Development of Guidelines (completed).
3. Field review of Guidelines (completed).
4. Development of Manual Release (being revised).

pertinent parts in the Federal Register according to  
Administrative Procedure Act (now in process).

6. Development of Curriculum Bulletin to support program concept (being developed now).
7. Evaluate the program during the 1974-75 school year.

There are some general observations that are important to a better understanding of the program.

First, the Guidelines developed by the Committee (which was created by Assistant Secretary William Rogers) received a wide national review and critique. The product of the Committee, therefore, is a result of this review. One theme provided by the review process was that the General Office should offer general guidance and that each Field location should have responsibility for developing detailed Guidelines and a corresponding program. Publication in the Federal Register will present little new material to the schools and Indian communities.

Second, the Committee had constant advice from the Field Solicitor in Albuquerque and from the American Indian Law Students. Their advice is incorporated in the Bulletin.

Third, the approach taken early in the program tended to be largely negative. That is, it centered on expulsion procedures as applied to a small minority of the total student body. This seemed to the Committee to be inadequate and the Guidelines thereby reflect general program concern with expulsion of students as a part of it. This more comprehensive approach appeared to the Committee to be more equitable regarding all students.

Fourth, another aspect of the negativism referred to above was directed at BIA educators. A small minority of reviewers expressed the opinion that they thought school administrators for the most part would expell students in whole-sale fashion in violation of the student's constitutional rights. The evaluation could not find verification for this position.

Fifth, there is a basic difference of opinion about the manner in which the Guidelines should be administered. Those who have distrust of Field educators think that the Guidelines should be very detailed and restrictive. This position is based on the belief that the Central Office of Education should have a significant hand in school operations. The other position is based on the premise that the Area Office should have operational responsibility for the program placed squarely on their shoulders. However, it should be noted that there is no difference of opinion regarding basic program concepts. Differences pertain to administration of the program, only.

It is important to know that the approach taken by the SRR Committee borrowed liberally from the broad national review of a draft of the Guidelines. This refers to Step No. Three above.

There is every reason to believe that the Student Rights and Responsibilities program is approaching that time when major responsibility for it will be clearly and definitively shifted to the local level. If no unforeseen problems arise, the summertime should provide an excellent opportunity for schools and the Indian communities to prepare the details of their own student rights and responsibilities program.



The nation's education institution in the very late sixties and early seventies started going through an unsettled period regarding the rights and responsibilities of students. This movement started affecting Bureau schools in a real manner during the school year 1971-72. It culminated in a Commissioner's memo dated February 1, 1972, entitled, "Interim Procedures for Student Expulsion." Apparently, there was unrest about the number and types of expulsions from Bureau schools and the manner in which they were being handled. Also, though it is not clearly known why, the BIA Manual procedures regarding expulsions were not involved in the problem. Essentially, starting with the above cited memo, there was a great deal of activity within and outside of the Bureau regarding Student Rights and Responsibilities in Bureau schools.

In May of 1973 the program, which is a sensitive one, again emerged when there was a question of how best to develop it. At that time it was decided that a systematic implementation should be undertaken. The first part of this was to evaluate the program on a bureauwide scale. The evaluation took place and a copy of the report is attached. Following the evaluation an inhouse committee was established to develop program guidelines in Student Rights and Responsibilities that were to serve as a basis for developing a section for the IAM.

The committee started meeting in October of 1973 and completed their work on February 25, 1974. The attached Bulletin emanates from the Committee Guidelines.

It should also be noted that the Commissioner's memo cited above was replaced on December 26, 1973 with a Bulletin that added to the expulsion procedures and made some modifications.

To itemize, the program as planned has the following steps:

- (1) Evaluation, (completed)
- (2) Development of Guidelines, (completed)
- (3) Field review of Guidelines (completed)
- (4) Development of Manual Release (Being reviewed)
- (5) Development of Curriculum Bulletin to support program concept  
(Being developed now)
- (6) Evaluate the program during the 74-75 school year.

There are some general observations that are important to a better understanding of the program.

First, the guidelines developed by the committee (which was created by Assistant Secretary William Rogers) received a wide national review and critique. The product of the committee, therefore, is a result of this review. One theme provided by the review process was that the Central Office should offer general guidance and that each field location should have responsibility for developing detailed guidelines and a corresponding program.

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Fourth, another aspect of the negativism referred to above was directed at BIA educators. A small minority of reviewers expressed the opinion that they thought school administrators for the most part would expell students in violation of the student's constitutional rights. The evaluation could not find verification for this position.

Fifth, there is a basic difference of opinion about the manner in which the guidelines should be administered. Those who have distrust of field educators think that the guidelines should be very detailed and restrictive. This position is based on the belief that the Central Office of education should have a significant hand in school operations. The other position is based on the premise that the Area Office should have operational responsibility for the program placed squarely on their shoulders. However, it should be noted that there is no difference of opinion regarding basic program concepts. Differences pertain to administration of the program, only.

Last, there is some belief that the interim procedures issued in December pose a very serious problem for the field. Basically, this refers to Section III which pertains to immediate expulsions. There are several problems but two examples will show what is meant. In some instances there are both Federal and public school employees in the same building and the procedures don't fit the local situation. In another instance, student council representation on the panels has been refused by the student council representatives. There are other problems but these two point out the difficulties that the procedures are presenting. In the opinion of the Field Solicitor, it would be very difficult for the Bureau to stay clear legally because it would be too easy to prove that the procedures were not followed. From the educators stand point, the highly structured procedures focus attention on procedures rather than on education related to the Constitution and a citizens rights under it. In summary, the Interim Procedures as they now stand are largely administratively unmanageable and educationally unsound.



# 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:  
Program Review & Evaluation

FEB 13 1974

## Memorandum

To: Acting Director, Office of Indian Education Programs  
Student Rights and Responsibilities Committee Members

From: Chief, Division of Program Review and Evaluation

Subject: Progress Report - Student Rights and Responsibilities (SRR)

The development and implementation of the SRR program is progressing satisfactorily, though delayed in relationship to our initial time considerations. A brief review of the activities is appropriate at this time.

An informal review of the SRR program in May 1973 revealed that it was extremely sensitive, confused, and at a standstill. It was determined at that time that the program should be given top priority due to its sensitivity and should be implemented with all dispatch. Characteristics of the process were to be influenced by Indian involvement and local initiative.

The first thing in the implementation process was the assignment of an evaluation of the Bureau-wide program in SRR. Dr. Henry H. Rosenbluth conducted the evaluation and submitted his report to the Department in August 1973. The evaluation report reflected that there was a wide range of activities in Bureau schools and that the quality and quantity of them ranged from 0 - 100 percent. It also indicated that while there were some outstanding programs in effect in schools, that in general, the Bureau was slightly behind the public schools in program development.

Upon completion of the evaluation, a committee was assigned to develop program guidelines in SRR. The committee was to use the evaluation report as a point of departure. It was also important to reflect in the committee strong local initiative and Indian involvement. The Central Office role was to be one of general guideline development that would have national applicability. Area Offices were to have responsibility for detailed implementation of the program. The committee which was formed was headed by an Area Office Education official, a School Superintendent, and two Central Office Education Specialists, and one Central Office Division Chief who served primarily in a technical capacity. The committee membership was as follows:

Gabe Paxton, Chairman (Anadarko Area Office)  
Jerry Jaeger, Assistant Chairman (Superintendent,  
Intermountain Indian High School)  
RaMona Osborne, Member (Central Office, Education  
Specialist)  
Henry Rosenbluth, Member (Central Office, Education  
Specialist)  
Thomas Hopkins, Member (Central Office, Education  
Division Chief)

The committee developed a draft set of program guidelines in SRR. These guidelines were given a broad, national review in and outside of the Bureau of Indian Affairs. The review process was forwarded to Areas over the signature of a Departmental official. The review process and a technical analysis of the responses have been completed and will be available in report form.

It should be pointed out that throughout the evaluation and the guideline review process, there has been first-hand discussions with representatives of the American Indian Law Students and the National Indian Youth Council. Both have been involved in the evaluation and have had the continued review of the Solicitor's Office of the Department of the Interior.

The SRR Committee met in Albuquerque on February 4-5. They completed the program guidelines development and a SRR Section for the Indian Affairs Field Manual will now be written. The Field Manual release should go out to Area Offices sometime this spring.

Program Guidelines will be issued to the Field over the Commissioner's signature as a part of a Curriculum Bulletin. The Curriculum Bulletin will contain expanded discussions of several program aspects that cannot and should not be covered in the basic guidelines document.

An evaluation design for the project is also under development. It is anticipated that the initial evaluation of the implementation phase will start in November 1974. The focus of the evaluation will be to:

1. Determine the extent of the implementation in the Field;
2. Assess extent on student involvement;
3. Determine the extent and quality of the development of Student Bill of Rights;
4. Provide information for program improvement.

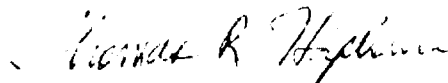
By the beginning of the School Year 1974-75, the following documents will be available which will report the development of the program:

1. Evaluation of SRR, Summer 1973;
2. A report on the review of the SRR, February 19;

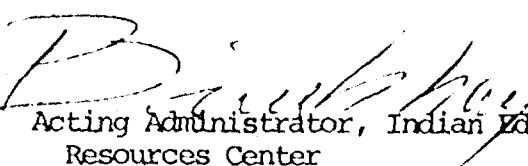
3. Program guidelines and related information in SRR;
4. Indian Affairs Manual Section and SRR.

The above four will comprise the written record of the program. A fifth which will probably be available in the Spring of 1975 will be a second evaluation report.

An important aspect of the total implementation process has been the seriousness with which it has been undertaken. One of the findings of the informal survey was that there was a good bit of grantsmanship and unnecessary acrimonious squabbling associated with the mixture of actions that had been undertaken. Groups were bickering, fighting, and downright angry with one another about who was going to work in Bureau schools on SRR. There was so much infighting and bickering that it was impossible to say what benefits were going to accrue in behalf of Indian students. Thus far, the program has been taken out of the grantsmanship arena and has been placed on a solid footing so that the seriousness of purpose so necessary to success is clearly a part of the effort. There continues to be efforts to staff, resist, and divert the activities and these are primarily, as before, for grantsmanship purposes. People want BIA money and many assume that a good way to get it is to use SRR. If the current BIA effort can be maintained for another three months, the program will be well established and if there are contracts related to it, they can occur at the local level where basic responsibility for implementation is being placed. I will keep you apprised of progress and supplied with the reports as they become available.

  
Thomas R. Hopkins

APPROVED:

  
Acting Administrator, Indian Education  
Resources Center



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

ANADARKO AREA OFFICE

P. O. Box 368

Anadarko, Oklahoma 73005

*To Commissioner the person*

IN REPLY REFER TO:

Education

March 1, 1974

AIRMAIL

Memorandum

To: Commissioner of Indian Affairs

From: Assistant Area Director (Education), Anadarko Area Office  
and Chairman, Student Rights & Responsibilities Committee

Through: Director of Indian Education Programs  
Through: Acting Area Director, Anadarko Area

Subject: Student Rights and Responsibilities

On August 22, 1973, Assistant Secretary of Indian Affairs, William Rogers, assigned a Committee to develop Guidelines for the Student Rights and Responsibilities program of the Bureau of Indian Affairs. A copy of this memorandum is attached.

As Chairman of the Committee, I am pleased to report that the committee completed its work on the morning of Monday, February 25, 1974, and the attached is our report which is entitled, "National Guidelines for Student Rights and Responsibilities for the Bureau of Indian Affairs" and is presented for your approval.

Since the Committee was established by Secretary Rogers, I await your instructions as to whether to disband or continue the group.

S. Gabe Paxton, Jr.  
Assistant Area Director (Education)

Attachment

Transmitted 4/1/74

Acting Area Director



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AD 23 123

## Memorandum

To: Area Director, Navajo Area  
Area Director, Anadarko Area  
Acting Director of Indian Education Programs

From: Assistant Secretary for Indian Affairs

Subject: Student Rights and Responsibilities

The area of Student Rights and Responsibilities is a sensitive and crucial aspect of the Bureau's Education Program. Of all the various activities that go on in a school, it is perhaps the one that can become most controversial and problematic. In order to get the Bureau off on a good start and to clear the air, an evaluation of Student Rights and Responsibilities was conducted during the summer months. I am sure you are aware of this evaluation and contributed to it in one way or another. The purpose of the evaluation was to gather valid information that would serve as a foundation for developing guidelines and for shifting major program responsibility to Areas and Schools.

I have selected a committee to develop program guidelines and draft a Manual Section concerning Student Rights and Responsibilities. The committee is as follows:

Mr. Gabe Paxton, Chairman  
Dr. Jerry Jaeger, Vice-Chairman  
Miss Ramona Osborne, Member & Consultant  
Dr. Henry Rosenbluth, Member & Consultant  
Dr. Thomas Hopkins, Member & Consultant

The committee will meet in Albuquerque at the Indian Education Resources Center Conference Room starting at 1:00 P. M., August 29. The committee is to meet continuously until the program guidelines and the draft of a section for the Manual have been completed. It is anticipated that this can be accomplished by the suggested 9/1 deadline.

Your cooperation and able assistance is appreciated. If you have questions concerning arrangements for the meeting, please call the Evaluation Division, Albuquerque, New Mexico, 505/766-3314.

*W. H. Hopkins*

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

*FEBRUARY 1974*



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

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 authoritatively with all matters related to Student Rights and Responsibilities.

## *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.*

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

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,



~~community 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.

Commissioner

cc:  
Tom Hopkins



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

IN REPLY  
REFER TO:

February 22, 1974

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

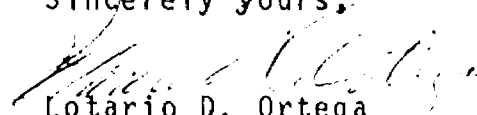
Re: Student Rights and Responsibilities (62 IAM 9 Revision)

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  
Field Solicitor

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



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20242

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.

*La Follette-Sittler*



# 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.

*Muir Thompson*

Attachment



# United States Department of the Interior

MAR 14 1974  
550

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

MAR 11 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.

In light of Rule and the holding that any substantive rule-making 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.

*Duward R. Barnes*

Duward R. Barnes

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**



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**

Section 903. The Legal Role and Responsibilities of School Authorities.  
Bureau school authorities as representatives of the United States Government have been assigned the task of helping to shape the future of their students. They should undertake this responsibility with intelligence, dedication, and with respect for the rights of the Indian youth under their supervision.

- .01 Objectives. School administrators are obligated to do the following:
- A. Provide the student body with the best educational opportunities possible and protect the health and safety of each student.
  - B. Guarantee that Student Rights and Responsibilities agree with local, State and Federal laws.
  - C. See that 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 for the entire student body.



**DRAFT**

Section 904. The School and the Student: A Teaching - Learning Partnership. The process of education requires that both the teacher and the student be actively engaged. The Bureau sees this approach as the means to help encourage student creativity and self-direction; fundamental in its Rights and Responsibilities policies.

.01 The Institution's Relation to the Student.

- A. The right of access to education as prescribed by current BIA Manual criteria.
- B. The school must permit students to participate and affect the total educational program.
- C. The school must not violate the student's right to confidentiality of private or personal information.
- D. The school must permit freedom of association on the campus within the established school regulations.
- E. The school must permit student representation in its governance through recognized student councils.
- F. The school must permit freedom of inquiry and expression.



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 legitimate complaints and concerns, whether from parents or students, will receive just consideration.



**DRAFT**

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.



**DRAFT**

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**



OK gm  
2/3/74  
FEB 26 1974  
cc: [signature]  
United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

FEB 22 1974

Memorandum

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

33

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

-2-

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

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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



## An Act

81 STAT. 54

To amend section 552 of title 5, United States Code, to codify the provisions of Public Law 89-487.

*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:

Public Information.  
80 Stat. 393.

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

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

Publication in Federal Register.

"(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 submissions 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.

Exception.

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

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

Conditions.

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 sub-section, 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.**

80 STAT. 380.  
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 89-187, 80 Stat. 250), is repealed. Repeal.

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

Approved June 5, 1967.

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#### 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.



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 STA 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



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 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.

A handwritten signature in cursive script, reading "Robert Rebert". The signature is written in dark ink and is positioned above the printed name and title.

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

**DRAFT**

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.)



<sup>8</sup>  
§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.

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§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.

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### §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.

#### §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.

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

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§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.

**DRAFT**

§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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<sup>s</sup>  
§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

