

# INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** The homeliving standards described in 25 CFR 36 establish certain minimum requirements for any tribal entity providing homeliving services to Bureau of Indian Education (BIE) students. If a school board or tribal governing body determines the standards provided in 25 CFR 36.70 – 36.104 should not apply, the school board or tribal governing body may submit a written request for a complete or partial waiver.
- 1.2 Scope.** This policy applies to all BIE offices and personnel.
- 1.3 Policy.** School boards or tribal governing bodies that determine that any part of the homeliving standards established in 25 CFR Part 36 should not apply due to their specific circumstances may submit a request to waive all or some of the requirements pursuant to 25 CFR 36.111. Only a school board or tribal governing body may apply for such a waiver. There is no limit to the number of waiver requests a school board or tribal governing body may submit for approval.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 25 CFR 36, Subpart G, Homeliving Programs
  - 2) Public Law 114-95, Every Student Succeeds Act
- 1.5 Responsibilities.**
- A. Director, BIE (DBIE)** is responsible for providing the final written decision on waiver packages within the 60-day timeframe, and for final approval of this policy.
- B. BIE Associate Deputy Director (ADD)** is responsible for the secondary review of the waiver package and ADD recommendations; develops their own recommendations for decisions in a memorandum; and forwarding the waiver package, with EPA and ADD recommendations to the DBIE for final decision.
- C. BIE Education Program Administrator (EPA)** is responsible for the initial review of the waiver package for completeness; providing a recommendations for decisions in a memorandum; and forwarding the memorandum and waiver package to the ADD for further review.
- 1.6 Definition.**
- A. Homeliving Program** is a program that provides room and board in a boarding school or dormitory to residents who are either:

## INDIAN AFFAIRS MANUAL

Part 30  
Chapter 17

Education (Management)  
Waiver Procedures for Homeliving Standards

Page 2

- 1) Enrolled in and are current members of a public school in the community in which they reside; or
- 2) Members of the instructional program in the same boarding school in which they are counted as residents and:
  - a) are officially enrolled in the residential program of a Bureau-operated or Tribally controlled school; and
  - b) are actually receiving a homeliving program provided to all students who are provided room and board in a boarding school or dormitory.

### 1.7 Procedures.

- A. In order to grant a waiver from the homeliving standards contained in 25 CFR Part 36, a requesting school board or tribal governing body must:
  - 1) Issue a formal resolution which seeks a waiver to the standard;
  - 2) Submit a waiver request to the school's assigned EPA within 60 days of the resolution's passage that includes:
    - a) A certified copy of the resolution; and
    - b) A written request for a waiver, which:
      - Identifies the standard(s) in 25 CFR Part 36 for which a waiver is being requested;
      - Explains why the standard is inappropriate for the unique needs of the school's students;
      - Includes an alternative standard to be used by the school;
      - Explains how the alternative standard better addresses the unique needs of the school's students;
      - Describes how the alternative standard will be implemented; and
      - Identifies the proposed school year in which the alternative standard will be implemented.
- B. Upon receipt of a waiver request, EPAs must review the waiver request for completeness.
  - 1) If the waiver request is missing a resolution or does not sufficiently address the requirements provided in 1.7A2(b) of this policy, the EPA must communicate to the school board/tribal governing body of any such deficiency in writing within 14 days, to provide the applicant the opportunity to amend and complete their waiver request, as necessary, without time constraints.

## INDIAN AFFAIRS MANUAL

Part 30  
Chapter 17

Education (Management)  
Waiver Procedures for Homeliving Standards

Page 3

- 2) Once a complete waiver request has been submitted, EPAs must review the request and submit a memorandum, no longer than two (2) pages in length, to accompany the waiver request to their respective ADD within 14 days. The EPA memorandum must:
  - a) Summarize the waiver request; and
  - b) Provide a recommendation, clearly identifying and explaining the basis for their recommendation, to either grant or deny the waiver request.
- C. Upon receiving an EPA memorandum and waiver request, ADDs must review the EPA memorandum and waiver request.
  - 1) If an ADD disagrees with an EPA's recommendation and overrules the EPA's determination, the ADD must clearly identify and explain the basis for their decision in a memorandum.
  - 2) The ADDs must then submit the EPA memorandum, the waiver request, and their own written recommendation, if their recommendation differs from the EPA, to the BIE Director within 14 days.
- D. Upon receiving the waiver request, including the ADD and if applicable, the EPA recommendation(s), the BIE Director must provide the school board/tribal governing body a final written decision, no later than 60 days from receipt of a complete waiver package.
  - 1) If the BIE Director denies the requested waiver, the final written decision must clearly identify and explain the good cause basis for the denial and state that the denial does not prohibit the school board or tribal governing body from reapplying for a waiver.

### 1.8 Approved Waivers.

- A. **Approval Timeframe.** A waiver granted pursuant 25 CFR 36.111 will be valid as long as the circumstances on which the waiver was originally granted remain unchanged and the alternative standard(s) continue to better address student needs.
  - 1) Consistent with the annual reporting and accountability requirements under 25 CFR 36.120, homeliving programs must:
    - a) Include a statement of compliance with the approved alternate standards; and
    - b) Identify any issues and needs related to the implementation of such standards and the impact of the waiver on the program.
  - 2) School boards or tribal governing bodies have an affirmative duty to promptly notify the school's assigned EPA should the factual circumstances on which the initial waiver request was based substantially change, including if the alternative

## INDIAN AFFAIRS MANUAL

Part 30  
Chapter 17

Education (Management)  
Waiver Procedures for Homeliving Standards

Page 4

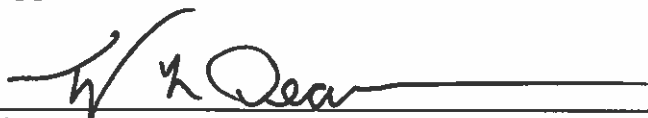
standards fail to better address the unique needs of the school's students. At which time, a requesting school board or tribal governing body may either submit a new waiver request or be subject to the homeliving standards as described in 25 CFR Part 36.

- a) Upon receiving a new waiver request, EPAs, ADDs, and the BIE Director must review and approve or deny the waiver request pursuant to Sections 1.7 of this chapter.

**B. On-site Reviews.** BIE staff must ensure adequate oversight and capacity for facilities operating under an approved waiver by providing regular and timely site visits to such facilities. In addition, BIE staff must provide notification to such facilities at least five (5) business days in advance of such visits unless emergent situations require immediate visitation or facilities request on-site assistance.

**1.9 Revocation.** The BIE Director reserves the right to revoke any waiver issued pursuant to 25 CFR 36.111 for good cause, which includes but is not limited to protecting the health and safety of students; or if the alternative standards fail to better address the unique needs of the school's students.

### Approval



Tony L. Dearman  
Director, Bureau of Indian Education

12-18-17  
Date