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Memorandum

To: Holders of 62 BIAM
From: Director, Office of Indian Education Programs
Subject: Education Contract Personnel

This release revises the pay and performance appraisal sections of Part 62 BIAM 11, Education Contract Personnel, to reflect the changes in the Department's approved Performance Appraisal System (370 DM 430). It also incorporates changes in the Education Pay Scale and in probationary periods.

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Director, Office of Indian Educational Programs

Filing Instructions:

(1) Remove superseded material:

62 BIAM 11.1 through 11.123

(131 sheets)

(2) Insert new material:

62 BIAM 11.1 through 11.90

(104 sheets)

EDUCATION
Education Contract Personnel

11.1	Scope . .	1
11.2	Policy on Education Contract Personnel.	1
11.3	General Definitions.	1
11.4	Recruitment Policy	4
11.5	Authorities for Recruitment	5
11.6	Responsibility for Recruitment	5
	National applicant list . . .	5
	Local level applicant lists .	5
11.7	Specific Vacancy Announcements	5
	Area of Consideration	6
	Minimum Period	6
11.8	Applicant Supply File	6
11.9	Qualifications	6
11.10	Forms	6
	Standard Form 171, Application for Federal Employment	6
	OF-612, Optional Application for Federal Employment	6
	Personal resume	6
	OF-306, Declaration for Federal Employment	6
	Form BIA-4432, Verification of Indian Preference in BIA or IHS Only	6
	College transcripts	6
	State certification	6
11.11	Rating/Interviewing Applicants	7
11.12	Referring Applicants	7
11.13	Selecting Current Employees for New Positions	7
11.14	Establishment of Education Positions	8
	Parenthetical modifiers	8
	Supervisory prefix or suffix	8
11.15	Policy for Establishing Education Positions	9
	Role of the Director .	9
	Education Line Officer Authorities	9
	New Job Categories . .	9

EDUCATION
Education Contract Personnel

11.16 Staffing Patterns	9
11.17 Organization charts	9
11.18 Policy on Appointment of Educators.	10
Employment contracts	10
Absence of local school boards	10
Supervision not delegated to school boards	10
Correspondence	10
11.19 Responsibility of the Appointing Official	10
11.20 Appointment of Educators	10
Local School Employees	10
School Supervisors	11
Education Line Office Employees	11
11.21 Prohibited Reappointments	12
11.22 Types of Contracts	13
Year long contracts	13
School year contracts	13
Short-term Contracts	14
Impossible to consult school board	14
For temporary advancements, workshops, summer employment, and to extend a school year contract	14
Emergency Contracts . .	15
Restricted Contracts	15
Temporary Contracts	15
Provisional Contracts	16
Types of Appointments . .	16
Full time appointments	16
Part-time appointments	17
Intermittent appointments	17
11.23 Status Quo Employees	17
11.24 Conversion of Status Quo Employees to Contract Positions	17
11.25 Probationary Period	18
11.26 Contract Renewal/Non-renewal	19
Notice to school board	19
Certification of board's determinations	19
Determinations are not received . .	19
Implement the Board's determination . .	20

EDUCATION
Education Contract Personnel

Supervisor has appeal	20
Acceptance of offer .	20
Failure to report for duty	20
Contract renewal offer with changes	20
State certification	21
11.27 Contract Non-Renewal Procedures	21
Notice of non-renewal .	21
Substantial standard of evidence	21
Appeal procedures .	21
11.28 Temporary Advancement and Details	22
Temporary Advancement of Contract Employees	22
Details of Contract Employees	23
Temporary Promotion of Status Quo Employees to Contract Positions	23
Details of Status Quo Employees to Contract Positions	23
11.29 Voluntary Service	24
Voluntary Services Agreement	24
Volunteer Qualification . .	25
Forms Required	25
Volunteer Work Assignments	25
Benefits and Protection . .	26
Federal Employees Compensation Act	26
Federal Tort Claim Act	26
Employment of Family Members as Volunteers	27
Travel and other Expenses of Volunteers	27
Annual Report	27
11.30 Citizenship Requirements	28
11.31 Restriction on Employment of Relatives	28
11.32 Members of Family	28
11.33 Age Requirements	28
11.34 Physical Examination Requirements	28
11.35 State Certification & Licensure	29
11.36 Suitability Disqualifications	29
11.37 Indian Preference	30
11.38 Waiver of Indian Preference	31

EDUCATION
Education Contract Personnel

11.39	Special Retirement eligibility for Non-Indians	31
11.40	Equal Employment Opportunity	32
11.41	Veteran's Preference	32
11.42	Involuntary Furlough	32
11.43	Reduction-in-Force	33
	Approval for RIF	34
	Reassignment of Non-Indians during RIF	34
	Conducting the RIF	34
	Procedures	36
	Advance Notice	36
	Appeal Procedures	36
	Out-Placement Procedures	36
	Optional Retirement during RIF	36
11.44	Severance Pay .	38
11.45	Moving Expenses	38
11.46	Restoration to Duty	39
11.47	Policy on Pay Administration	40
	Establishment of Compensation Schedules	40
	Responsibility for Pay Determination	40
11.48	Development of the Pay Schedules	41
	Education Pay Schedule	41
	OIEP Teacher/Homeliving Specialist Pay Schedule	42
	OIEP Counselors Pay Schedule	43
11.49	Determination of Pay Increments	43
	Limitations of Pay	43
	Factors affecting all pay schedules	44
	Education and Training	44
	Accredited schools	44
	Graduate Hours and Degrees	44
	Documentation of Education and Training	44
	Creditable Experience	44
	Prorated Pay	45
	Employee Benefits and Tax Withholdings	46
	Education Pay Schedule Increments	46
	Calculation of proper increment	47
	Prior Experience	47
	Education Incentives	47

EDUCATION

Education Contract Personnel

Contract renewal/longevity increments .	49
Teacher/Homeliving Specialist and Counselor Pay Scale Increments	50
Prior Experience	50
Longevity Increase	50
11.50 Contract Revision or Adjustment	50
Education completed after contract renewal	50
Administrative error	51
Staffing differential	51
Another position at a higher pay level	51
Multiple pay level job announcement	51
11.51 Pay for Short-term Contracts for School Year Educators	51
11.52 Staffing Differentials	51
Requesting Staffing Differentials	52
All requests	52
Differentials for recruitment	53
Differentials for retention .	53
Approval or Disapproval of Differentials	54
Limits on Differentials	54
Additional Differentials	54
11.53 Premium Pay	54
Fair Labor Standards Act	55
Overtime/Compensatory Time	55
11.54 Stipends	54
11.55 Pay Conversion (Status Quo Employees)	56
11.56 Advancement	57
Education Pay Schedule	57
Teacher/Homeliving Specialist and Counselor Pay Schedules	57
11.57 Movement Between Pay Schedules	58
11.58 Change to Higher or Lower Level	58
11.59 Movement Between Levels on the OIEP Teacher/Homeliving Specialist and Counselor Pay Schedules	58
11.60 Credited Benefits for Current or Former Federal Employees	58
Credited benefits for former contract educators	58
Credited Benefits for Current or Former Federal Employees	59

EDUCATION
Education Contract Personnel

11.61	Leave Administration	59
11.62	Types of Leave	59
	Personal Leave	59
	Sick Leave	60
	Doctor's statement	61
	Sick leave abuse	61
	School Vacation Leave .	61
	Vacation Leave	62
	Approved Leave Without Pay	62
	Family and Medical Leave	63
	Court Leave . . .	63
	Military Leave	64
	Administrative Leave	64
	Absence Without Leave	64
	Leave Alternative for Some Status Quo Educators	65
11.63	Applicability of Leave to Type of Appointment . .	65
	School-Year Employees On Education Pay Schedule	65
	Teachers, Homeliving Specialists and Counselors	65
	Year-Long Employees . .	66
	Intermittent Employees	66
	Part-Time Employees .	66
	Short-Term Employees	67
	Temporary Employees .	67
11.64	OIEP Leave Sharing Program	67
	Leave Pool	67
	Leave Donation	67
	Approval Process	67
11.65	Leave Accrued Prior to Contract Appointment	68
11.66	Re-credit of Sick Leave	69
11.67	Performance Appraisal	69
11.68	Performance Appraisal Policy	69
11.69	Authority .	69
11.70	Performance Appraisal Definitions	69
11.71	Performance Plan	70
	Critical Results	70
	Performance indicators	70
	Student achievement . .	70

EDUCATION
Education Contract Personnel

11.72	Progress Reviews	71
11.73	Summary Rating	71
11.74	Summary Rating Records	73
11.75	Linkage of Summary Rating to Other Personnel Actions	73
	Performance Awards	73
	Actions Based on Unacceptable Performance	73
11.76	Employee Discipline and Discharge Policies.	74
11.77	Responsibilities of Officials for Employee Discipline	74
11.78	Level of Authority to Take Disciplinary Action	76
11.79	Determining the Disciplinary Action	76
11.80	Types of Corrective Actions . .	77
	Informal Disciplinary Actions	77
	Oral admonishment . .	77
	Written warning . . .	78
	Formal Corrective Action	78
	Reprimand .	78
	Suspension	78
	Discharge .	78
11.81	Procedures for Disciplinary and Adverse Actions	78
	Written Warning	78
	Reprimand .	79
	Suspension	79
	Discharge .	82
	Discharge for Cause	82
	Discharge for Unacceptable Performance	82
	Discharge Procedure	82
	Notification of School Board	82
	Proposal to Discharge	83
	Content of Proposed Discharge Notice	83
	Employee's Response	84
	Decision Authority	84
	Other Separations	85
	Separation as a Result of a Conditional Appointment	85
	School Board Recommendation for Discharge	85
	Separation for Abandonment of Position	85
	Status of Employee Pending Inquiry or Investigation, or Pending	
	Decision on Proposed Suspension or Discharge	86
	Suspension Because of Hazard (with Pay)	86

EDUCATION
Education Contract Personnel

Detail	86
Crime Provision	86
Appeal Procedures	86
11.82 Employee Grievance Policy	87
11.83 Employees Covered .	87
11.84 Grievance Coverage.	87
Matters covered .	87
Matters excluded	87
11.85 Responsibilities of Officials on Employee Grievances	89
11.86 Definitions for Employee Grievances	90
11.87 Criteria for Grievance Review .	91
11.88 Grievance Rights and Procedures	92
Employee Rights	92
Negotiated grievance procedure	93
Deadline	93
Cancellation or Termination of Grievance Processing	93
11.89 Informal Grievance Procedure (Step 1)	93
11.90 Formal Grievance Procedure (Step 2)	94
Presenting the Grievance	94
Acceptance or Rejection of the Grievance at Step 2	95
Decision at Step 2	95
Grievance Examiner	96
Decision on the Grievance (Step 3)	96

EDUCATION
Education Contract Personnel

11. EDUCATION CONTRACT PERSONNEL

11.1 Scope. This chapter establishes procedures for implementing the Education Contract Personnel system as provided in Public Law 95-561, November 1, 1978, as amended and 25 CFR 38. The provisions of this chapter shall apply to individuals hired or converted to contract education positions in Education Line Offices and the elementary and secondary schools and dormitories operated by the Bureau of Indian Affairs.

11.2 Policy on Education Contract Personnel.

A. It shall be the policy of the Office of Indian Education Programs (OIEP) in carrying out its functions, to facilitate Indian control of Indian Affairs in matters relating to education.

B. The Director of the Office of Indian Education Programs ("Director") shall establish and maintain an efficient Personnel Program for Bureau-operated schools and education line offices. Whenever possible, the Bureau shall recruit and select high quality Indian educators to fill contract education positions. When there are no qualified Indians available, qualified non-Indians may be employed.

11.3 General Definitions.

A. Agency School Board means a body, the members of which are appointed by the School Boards of the schools located within an Education Line Office. The Director shall determine the number of such members in consultation with the affected tribes. In Education Line Offices serving a single school, the School Board of that school shall function as the Agency School Board.

B. Applicant Supply File means a system designed for receiving, maintaining, and rating applications from which appointments may be made when vacancies occur.

C. Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

D. Bureau means the Bureau of Indian Affairs of the Department of the Interior.

E. Competitive Area means the local school or education line office only and applies only during reduction in force.

F. Consulted means providing pertinent information to and being available for discussion with the School Board, giving the School Board the opportunity to reply, and giving due consideration to the school board's response, subject to appeal rights provided in 25 CFR 38.7(a), (b) and (c), and 25 CFR 38.9(e)(3).

EDUCATION
Education Contract Personnel

G. Contract Education Position is an education position as herein defined, to which an individual is appointed or converted by an employment contract as herein defined.

H. Days, unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this manual, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday, except when the Saturday, Sunday or legal holiday is part of the regular tour of duty.

When days is used in reference to the length of a school year or year long contract, days refers to paid days of work, leave or holidays.

I. Detail means the temporary documented assignment of an employee to a position at the same, higher, or lower grade for a period not to exceed the end of the original contract.

J. Director means the Director, Office of Indian Education Programs, in the Bureau.

K. Discharge means the separation of a non-probationary employee during the term of the contract.

L. Education Function means the administration and implementation of the Bureau's education programs and activities (including school operations and administrative services).

M. Education Line Office means the education office of the Bureau, headed by an education line officer, which provides direct services to the governing body(ies) and members of one or more specified Indian tribes and technical and/or supervisory support to Bureau-funded schools.

N. Education Line Officer means the Bureau official in charge of education functions at an Education Line Office and to whom the school supervisor(s) and other educator(s) in the Education Line Offices's jurisdiction report.

O. Education Position means a position in the Bureau established by P.L. 95-561 as amended, the duties and responsibilities of which:

(1) involve instruction, supervision, student services, student care, facilities maintenance and operations and/or administrative activities at a school; or

(2) are performed at the Education Line Office level of the

EDUCATION
Education Contract Personnel

Bureau and involve the implementation of education-related Bureau programs, including facilities operations and maintenance and administrative services to schools.

P. Educator means an individual whose services are required, or who is employed, in an education position as defined in 25 U.S.C. 2012.

Q. Employment Contract (contract) means a signed agreement executed by and between the Bureau and the individual hired or converted under this Part, that specifies the position title, period of employment and compensation attached thereto. Such agreements are subject to all the terms and conditions set forth in this Chapter.

R. Involuntary Change in Position means the release of an employee from his/her position resulting from a change in program or other occurrence beyond the control of the employee.

S. Local School Board means a body chosen in accordance with the laws of the tribe to be served, or in the absence of such laws, the body elected by the parents of the Indian children, to serve a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

T. Managerial Position means a position in which incumbents (1) direct the work of an organization, (2) are held accountable for the success of specific line or staff programs, and (3) monitor the progress of the organization toward goals and periodically evaluate and make appropriate adjustments. Contract managerial positions may include assistant superintendent, principal, chief school administrator, and facility manager.

U. Negotiated Agreement means a formal written agreement between a recognized labor organization and management of the Bureau of Indian Affairs.

V. Non-pay Non-duty Status means the placement of an employee in a temporary non-pay, non-duty status for a specific time period.

W. Pre-employment Suitability Verification means the pre-appointment screening process used to determine eligibility and/or suitability for Federal employment. This process includes, but is not limited to, contacts with present/past employers, personal references, NACI, and other individuals or organizations as necessary.

X. Probationary period means the extension of the examining/ appointment process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed. The duration of the probationary period, as specified in 11.24, will be three years for new employees and one year for employees who transfer or are

EDUCATION
Education Contract Personnel

reassigned to a new location or a new type of position.

Y. School Board means an Agency School Board or a Local School Board.

Z. School Supervisor means the Bureau official in charge of a Bureau school who reports to an Education Line Officer.

AA. School Year means that term of school which usually begins in the late summer or early fall and ends in the late spring or early summer as shown in the approved school calendar; however, other patterns for the school year may exist.

BB. Status Quo Employee means a Bureau employee occupying an education position or comparable position on November 1, 1978, or a Bureau employee occupying a support service position assisting education operations on April 1, 1988, so long as the employee remains in the same position.

CC. Substantial Evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of evidence and is the only standard required within the contract education personnel system.

DD. Supervisory position means a position having the authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgement. Examples of supervisory positions are Department Head, Head Teacher, Dormitory Manager, Supervisory School Cook, and Homeliving Specialist as well as all managerial positions.

EE. Temporary Advancement means a time-limited advancement of a current contract employee with or without competition to a higher level position at a higher rate of pay, not to exceed the end of the contract period, with the right to return to the original position.

FF. Work Schedule means the schedule of days and hours of work for an employee. A full time work schedule consists of a thirty-three to forty-hour work week, normally spread over five work days of eight hours each. A part-time work schedule consists of from sixteen to thirty-two hours per work week on a regularly scheduled basis. An intermittent work schedule has either (a) no regular tour of duty or (b) a regular tour of duty of less than 16 hours per week.

11.4 Recruitment Policy. The Office of Indian Education Programs shall develop and implement a recruitment program to employ education personnel for its education line offices, schools and dormitories.

EDUCATION
Education Contract Personnel

A. Recruitment is generally a local responsibility; i.e., Education Line Office for line office positions or an Education Line Office or School for local schools. The affected School Boards will determine the level at which recruitment will take place. The office responsible for recruiting will determine the appropriate recruiting method and procedure to use in locating applicants and filling vacancies.

B. The Office of Indian Education Programs will establish, maintain and disseminate a national list of education positions for interested professional education applicants.

C. A recruitment and training program will be maintained to attract and promote Indians for education positions.

D. The Director will review the recruitment program annually and update it as necessary.

11.5 Authorities for Recruitment.

A. School supervisors and Education Line Officers have the authority to recruit, examine, refer and select applicants for Education positions.

B. The school supervisor, with the concurrence of the local school board and Education Line Officer, may delegate authority for recruitment, examination and referral to the Education Line Officer.

11.6 Responsibility for Recruitment.

A. Each School and/or Education Line Office will assign a person(s) to coordinate all recruiting activities.

B. The OIEP will develop and distribute a national recruitment brochure describing the Bureau of Indian Affairs, its education programs and its needs.

C. The national applicant list will be maintained by the OIEP.

D. The local level applicant lists will be maintained by the School or Education Line Office.

11.7 Specific Vacancy Announcements. Vacancies shall be advertised and announcements will be open based on area of consideration. Areas of consideration are at the discretion of the responsible supervisor and School Board.

EDUCATION
Education Contract Personnel

<u>Area of Consideration</u>	<u>Minimum Period</u>
Local and/or Education Line Office Wide	Locally determined
Bureau Wide (All Bureau Education and Personnel Offices)	21 days

11.8 Applicant Supply File. Any position may be advertised "Open Continuous" as determined locally based on the need of the Education Line Office. Applications received in response to an open continuous announcement will be placed in an applicant supply file. A certificate from an open continuous announcement may not be issued less than seven days from the opening of the open continuous announcement. A published list of open continuous announcements is an integral part of the applicant supply system. Local employment needs based on employee turnover rates or hard to fill positions govern the types of positions listed. The published list may be issued as often as necessary but as a minimum should be updated at least annually. The title of each position, salary range, and locations, will be included on each listing and the dates applications will be accepted. This list is not a vacancy announcement, but merely lists the positions for which open continuous announcements have been issued.

11.9 Qualifications. Applications will be rated for eligibility using established OIEP education job categories, including appropriate state certification. The recruiting office is also responsible for determining that appointees meet the appropriate requirements on age, citizenship, physical condition and suitability.

11.10 Forms used.

The following forms will be used to apply for contract education positions.

A. Standard Form 171, "Application for Federal Employment," or OF-612, "Optional Application for Federal Employment" or a personal resume will be used by applicants when applying for contract positions within the OIEP. If the OF-612 or personal resume is used, an OF-306, "Declaration for Federal Employment" must accompany the application.

B. Form BIA-4432, "Verification of Indian Preference in BIA or IHS Only," must be attached to the application if Indian preference is claimed. Applicants claiming Indian preference, who do not attach a valid Form BIA-4432 will be treated as non-Indian applicants.

C. Copies of college transcripts may be used to rate the applicant for basic eligibility. However, an applicant cannot be appointed without official transcripts on file.

D. Copy of State certification, if applicable.

EDUCATION
Education Contract Personnel

11.11 Rating/Interviewing Applicants.

A. All applications will be rated qualified or not qualified using established OIEP education position qualification standards and appropriate state certification. The position, job category number, and pay level for which the applicant is eligible will be recorded on the rating form used by the rater. Depending on recruitment method, applicants rated qualified will be placed on a certificate of eligibles or added to the Applicant Supply File. Applications from non-qualified applicants will be returned to the applicant.

B. Applicants must be interviewed by the school supervisor or education line officer prior to selection. If a personal interview cannot be arranged, a telephone interview is acceptable.

C. All selected applicants will be provided an SF-85P, Questionnaire for Public Trust Positions, and the SF-87, Fingerprint Chart, to complete prior to appointment. Failure to complete and submit the required forms by the date specified by the appropriate OIEP official will render an offer of employment or an appointment null and void.

11.12 Referring Applicants.

A. Upon request for a certificate of eligibles, the administrator of the applicant supply file or specific vacancy announcement will prepare the certificate(s) of eligible applicants. The certificate(s) listing fully qualified applicants will be referred, with applications, to the selecting official for review and consultation with the School Board. Separate certificates will be issued for applicant supply file applicants and specific vacancy announcement applicants when both are requested. When the school board or tribal governing body has requested that both Indian applicants and non-Indian applicants be referred, separate certificates will be issued for Indian and non-Indian applicants as well.

B. The Tribal Governing Body or the local School Board, if delegated such authority by the Tribal Governing Body, may waive Indian preference on a case-by-case basis. In order to refer non-Indian applicants, the Tribal Governing Body or the local School Board, if delegated such authority by the Tribal Governing Body, must submit in writing a request for such referrals. This request may be written to apply to all vacant positions or to specific positions only.

11.13 Selecting Current Employees for New Positions

A. When a current employee is selected for a position at the same or lower pay level, and the new position is to start during the current contract, the approval of both the appropriate school boards is required for release. The affected school supervisors will negotiate with their respective school boards to establish a release date. If the releasing school board does not

EDUCATION

Education Contract Personnel

agree to this action, the employee may not accept the new position due to the prohibited reappointment provisions of Pub. L. 95-561 as amended.

B. When a current employee is selected for a higher paying position, this is a valid reason to "break" the current contract and a new contract may be offered. In these situations an employee should not be held for more than 30 days to the current contract. This is an exception to the prohibited reappointment provisions.

11.14 Establishment of Education Positions. The following common education positions are established:

Assistant Dormitory Manager	Psychiatrist
Assistant Principal	Recreation Assistant
Assistant Superintendent for Education	Recreation Specialist
Business Manager/Technician	Recreation Therapist
Chief School Administrator	Registrar
Clerk	School Banker
Clinical Psychologist	School Bus Driver
Clin. Treatment Ctr. Director	School Cook
Counseling Psychologist	School Counselor
Counseling Technician	School Kitchen Helper
Cultural & Traditional Leader	School Janitor
Department Head	School Maintenance Specialist
Diagnostician/Psychometrist	School Maintenance Worker
Dormitory Manager	School Psychologist
Education Aide	School Social Worker
Education Specialist	School Social Worker-Sub. Abuse
Education Technician	Secretary
Facilities Manager/Engineer	Security Guard
Facilities Specialist/Tech.	Speech Pathologist
Homeliving Asst./Night Atten.	Student Services Director/Spec.
Homeliving Specialist	Substance Abuse Coun. Specialist
Housing Manager	Supply Coordinator
Librarian	Teacher
Occupational Therapist	Training Instructor
Physical Therapist	Tutor/Substitute Teacher/ Classroom Monitor
Principal	
Principal Teacher/Head Teacher	

A. Parenthetical modifiers may be added to any of the above titles to clarify areas of responsibility.

B. Several education positions may involve such significant supervisory responsibilities that a supervisory prefix or suffix is required.

EDUCATION
Education Contract Personnel

C. Further description of the above positions will be found in the Job Categories and Qualifications Handbook.

11.15 Policy for establishing education positions.

A. The Director shall establish the kinds of positions required to carry out the Bureau's education functions. No position shall be established or continued for which funds are not available or for which there is not a clearly demonstrable need and intent for it to carry out an education function.

B. Positions established for regular school operations shall be restricted to school year or program duration. Particular care shall be taken to insure that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

C. Education Line Officers are hereby delegated the authority to establish education positions in approved job categories for education line offices and schools under his/her jurisdiction.

D. New job categories may be established only by the Director. To request a new job category, an Education Line Officer must submit to the Director a proposed definition and statement of qualifications in the same format as existing job categories. Justification and rationale must also be submitted to support the establishment of the new category. If approved, the position category and qualifications will be issued for inclusion in the Education Position Categories and Qualification Handbook or will be authorized for a specific position only, at the discretion of the Director.

11.16 Staffing Patterns. Education standards mandated by 25 U.S.C. 2001 and 2002 shall serve as the primary basis for the establishment of staffing patterns. The staffing pattern at the local school is established through the local financial plan. Therefore, local school supervisors will consult with their local boards in establishing the staffing pattern at the school. The school staffing pattern will insure program effectiveness, academic achievement, and student welfare.

11.17 Organization charts. Education Line Officers are responsible for insuring the maintenance of current organizational charts and functional statements. Organizational charts must show the position number, pay level/grade, series or job category, and title for each funded position and will be signed by the school supervisor, school board, and appropriate Education Line Officer. No personnel action will be processed unless the position involved is covered by an organizational chart approved by the appropriate Education Line Officer. Charts must be submitted for review and approval to the appropriate Education Line Office by December 31 annually. Upon approval, a copy will be provided to the servicing personnel office.

EDUCATION
Education Contract Personnel11.18 Policy on Appointment of Educators.

A. The OIEP shall, in consultation with school boards, issue employment contracts each year for employment in education positions at the Education Line Office and school levels.

B. Absence of local school boards. Where a local school board has not been established, or where a school board is not operational or fails to meet, and the local school board is required to be given a notice or required to be consulted by statute or this manual, the official involved shall notify or consult with the agency school board serving the tribe(s) to which the parents of the Indian children attending that school belong, or, in that absence, the tribal governing body(ies) of the tribe(s) involved.

C. Supervision not delegated to school boards. School boards do not have authority to direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education programs.

D. Correspondence. It is the responsibility of the appropriate education line office to respond to general and congressional correspondence regarding vacancies, appointments or selection of applicants for contract positions in the Office of Indian Education Programs.

11.19 Responsibility of the Appointing Official.

The appointing official as identified in 11.20 has the responsibility to insure that the individuals are selected within the context of Federal Law. He/she shall consult with the appropriate school board prior to making an appointment. Prior to notifying the selected applicant, the appointing official must assure that the selection conforms to the appropriate procedures, including reference checks. The appointing official is also responsible for establishing the reporting date for a new employee.

11.20 Appointment of Educators.A. Local School Employees.

(1) School employees shall be appointed only by the school supervisor. Before the individual is employed, the school board shall be consulted concerning the recommendation of the school supervisor. An individual's appointment may be finalized only upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the School board should be received within a reasonable period, but shall not exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment.

(2) The school supervisor may appeal to the Education Line

EDUCATION
Education Contract Personnel

Officer any determination by the school board concerning an appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal.

(3) After reviewing such written appeal and response, the Education Line Officer may, for cause, overturn the action of the local school board. The Education Line Officer must within 10 calendar days transmit the determination of the appeal (in writing) to the board and to the supervisor identifying the reasons for overturning the action. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

B. School Supervisors.

(1) School supervisors may be appointed only by the Education Line Officer. The local school board shall be consulted before the school supervisor is employed. The appointment may be finalized only upon receipt of a formal written determination certified by the local school board under any uniform procedures as it may adopt. Written determination by the local school board shall be received within a reasonable period, but not to exceed 30 calendar days. The board shall use the same procedure to disapprove an appointment. Failure of the board to act within this period shall have the effect of approving the proposed appointment.

(2) Within 20 calendar days of the local school board's determination concerning an individual's appointment, the Education Line Officer may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded the opportunity to respond, in writing, within 10 calendar days, to such an appeal.

(3) The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal to the board and to the Education Line Officer identifying the reasons for overturning the board's determination. Failure by the Director to act within the 20 calendar day period of receipt of the appeal with all relevant documentation shall have the effect of approving the local school board's determination.

C. Education Line Office Employees

(1) Appointments to Education Line Office positions may be made only by the Education Line Officer. The agency school board shall be

EDUCATION

Education Contract Personnel

consulted before the Education Line Office employee is employed, and the appointment may be finalized only upon receipt of a formal, written determination certified by the agency school board. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 calendar days. The board shall use the same written procedure to disapprove an appointment. Failure of the board to act within this period shall have the effect of approving the proposed appointment.

(2) Within 20 calendar days of receipt of the Agency school board's determination concerning an individual's appointment, the Education Line Officer may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the agency school board and the board shall be afforded the opportunity to respond, in writing, within 10 calendar days, to such an appeal.

(3) After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the agency school board. Within 20 calendar days of the board's response, the Director shall transmit the determination of the appeal (in writing) to the board and to the Education Line Officer identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period of receipt of the appeal and associated documentation shall have the effect of approving the board's determination.

11.21 Prohibited Reappointments.

A. A contract employee who voluntarily terminates his/her employment before the end of the contract shall not be appointed to another Bureau education position during the term of the current contract.

B. A contract employee will not be deemed to have voluntarily terminated his/her employment before the expiration of his/her current contract if one of the following conditions exist:

(1) When a contract employee accepts employment at a Bureau school/Education Line Office in another geographic location as long as he/she does not move to the new location prior to the expiration of the current contract.

(2) When a contract employee accepts employment at another school/ Education Line Office education office and secures approval from his/her school board to be released from his/her current contract, the employee may then move to the new location before the end of the current contract. When this happens, the current school supervisor shall contact the new supervisor and establish a mutually agreed upon reporting date.

(3) When a contract employee is selected for a contract position at a higher pay level.

EDUCATION
Education Contract Personnel

11.22 Types of Contracts. Contracts may be year long, school year, short-term, temporary or provisional.

A. Year long contracts will run one year from the date of appointment, except the initial contract will terminate June 30 of the contract year, resulting in all ensuing contracts beginning on July 1 of each succeeding year. Full time year-long employees will work the normal work week for the complete contract year (2087 hours). Particular care will be taken to insure that a year-long position is clearly needed and the situation absolutely demands a 12-month assignment. The Education Line Officer shall approve the establishment of all year long positions.

B. School year contracts will be for the school year or that portion remaining of the current school year. Depending on the beginning and ending dates for the school as established by the approved school calendar, the employee will normally be in pay status for 180 student instructional days, not more than 10 administratively determined work days, not more than nine Federal holidays, and not more than 17 administratively determined non-instructional school vacation days for a total of not more than 215 days.

(1) Where a school calendar is established for other than 215 days, the school supervisor, with the concurrence of the school board, may increase or decrease the employees' school year contract from 205 days minimum to 225 days maximum.

(2) If a school calendar for less than 205 or more than 225 days is requested by the school supervisor and the school board concurs, the Education Line Officer may authorize contracts for more than 225 days or less than 205 days.

(3) An employee who is hired after the beginning of the school term will be in pay status beginning with the employee's first day of work through the final day of the contract.

(4) The school supervisor, with the approval of the School Board, will plan the school calendar including all school vacation days and national holidays. This calendar for the next school year will be approved by May 1 of each year.

(5) Recurring positions of less than 48 consecutive weeks but at least 32 consecutive weeks in length will be filled as school year contracts even though the term of the contract may not coincide with a standard school year. For example, a grounds keeper might be employed from March 1 to October 31.

(6) School year contracts for teachers, counselors and homeliving specialists indicate fewer days of employment than other contract employees because these contracts include no paid school vacation days.

EDUCATION
Education Contract PersonnelC. Short-term Contracts.

Short-term contracts may be issued under two conditions:

(1) Short-term contracts may be made when there are circumstances where immediate action is necessary and it is impossible to consult with the school board. Short-term contracts will be made in accordance with the following procedures:

(a) The length of the short-term contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(b) If the school board meets and does not take action on the individual in question, or the board does not meet, the short-term contract may be extended only for the duration of the school year.

(c) It shall be the responsibility of the school supervisor to insure the appointee meets all qualification requirements and fully inform the local school board of all short-term contracts. Failure to do so may be cited as reason to discharge the school supervisor.

(d) A short-term contract must be terminated if the school board does not concur with the action or when the appointment is no longer needed. This action is not grievable. Short-term contracts may not exceed the school year and may not be renewed or extended into a new school year.

(2) Short term contracts for temporary advancements, for workshops, for summer employment, and to extend a school year contract may be issued only with the prior concurrence of the school board. Short term contracts for summer employment and workshops will be paid at the preceding contract rate for the length of the short-term contract. Short-term contracts for temporary advancement may be made until the end of the regular contract term. Short-term contracts may be used for the following and must have prior consultation with the school board.

(a) Temporary advancement - Employees who are temporarily advanced must be fully qualified and will be paid at a rate commensurate with their qualifications.

(b) Summer employment - When the duties of the summer employment position reflect a continuation of a current employee's normal job responsibilities, a short-term contract may be issued for that employee without advertising for the job. If the summer employment position is a new position, the job must be advertised and filled in accordance with regular procedures.

(c) Workshops - Educators may be issued a short-term contract to attend workshops/institutes in order to obtain specialized

EDUCATION

Education Contract Personnel

training when it is deemed to be beneficial to the government. However, such short-term contracts may not be issued to employees needing the course to attain or retain certification in their current position.

(d) Extension of current contract.

D. Emergency Contracts. The local school board may authorize the school supervisor to make an emergency short-term contract for classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists, emergency short-term contracts may be made in accordance with the following:

(1) If local and agency lists of qualified applicants are exhausted, emergency short-term contracts may be made without regard to qualifications for the position.

(2) The pay level will be based on the qualifications of the individual rather than the qualifications for the position if the qualifications of the individual are lower than the requirements of the position.

(3) Sixty days after the emergency appointment date, the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If there is no qualified individual, the school supervisor, with school board concurrence, may issue another emergency short-term contract for another 60 days. Emergency contracts are limited to the end of the current school term. If a qualified individual on the list accepts the position, the school supervisor must terminate the emergency short-term contract at the time the qualified individual is appointed.

E. Restricted Contracts.

(1) Temporary Contracts.

(a) There may be circumstances where a specific position is needed for a period of one year or less. For example, when an education program has only one year of funding or it is necessary to fill a position behind an employee who is on extended sick leave or leave without pay, a temporary contract may be used. The procedures for application and selection of an individual for a temporary contract are the same as for a year long or a school year contract including meeting all job category qualifications and requires the same school board approval as a year long or school year contract. If required for the completion of the activities specified in the original announcement, a second contract may be issued for one additional year or school year with school board concurrences.

(b) Temporary contracts may be terminated at any time. Such action is not subject to approval of the school board and is not grievable.

EDUCATION
Education Contract Personnel

(2) Provisional Contracts.

(a) A provisional contract may be utilized for an individual who does not qualify fully in a professional position either by state certification requirements or the requirements in Job Categories Handbook. Provisional certification or other limited certificates from the state are not considered full certification. A provisional contract may be issued only after it is determined that no available individual meets all state and/or OIEP requirements. The provisional contract may be of year long or school year duration. Provisional contracts require consultation and approval by the appropriate school board.

(b) A provisional contract may be utilized for a status quo employee converting to contract who does not meet state certification or licensure requirements or the requirements of the Job Categories Handbook. This conversion to contract must be approved by the appropriate school board.

(c) Any employee on a provisional contract is required to make satisfactory progress toward meeting full state certification and/or the Job Categories Handbook requirements. Satisfactory progress will be outlined in an addendum to the basic contract. This addendum is an agreement between the school supervisor, the employee and the school board and signed along with the provisional contract. Normally, a minimum of six semester or nine quarter hours will be required each year until the requirement is met. If a state requires more than the minimum hours, the higher requirement will prevail. The cost of meeting the requirements is the responsibility of the employee.

(d) In the case of meeting education job category experience requirements, a full school year of satisfactory performance in all critical elements will be considered as one year experience.

(e) If the employee fails to meet the requirements of the provisional contract, his/her employment will be terminated. Such termination cannot be grieved or appealed.

(f) When a State grants some type of provisional, temporary or restricted certification, a new or renewal provisional contract will not be issued if the employee fails to meet the State's requirements and the State cancels or denies further certification. If such cancellation or denial occurs during the school year, the contract will not be renewed but will be terminated at the end of the contract term unless the employee obtains certification prior to the end of the school year. Such termination cannot be grieved or appealed.

F. Types of Contract Appointments.

(1) Full time appointments will be made for most positions, which required full-time work performance. Full time appointments are normally 40

EDUCATION
Education Contract Personnel

hours per week. However, any position requiring more than 32 hours per week on a regularly scheduled basis will be considered full time. Pay will be based on actual hours worked, whether the position is paid on an hourly or daily rate. These contracts may be of year long or school year duration.

(2) Part-time appointments will be made for situations requiring less than full-time work performance. The employee will have a pre-scheduled regular tour of duty of not less than 16 hours per week nor more than 32 hours per week. These contracts may be of year long or school year duration.

(3) Intermittent appointments will be made for situations where work occurs either on an irregular basis or is scheduled for less than 16 hours per week. These contracts may be of year-long or school year duration.

11.23 Status Quo Employees in Education Positions. Status quo employees shall be continued in their positions under the terms and conditions of that appointment with no change in their status or position. The terms and conditions of their appointments, status and entitlements are determined by excepted service regulations and procedures.

A. Status quo employees are entitled to receive any changes in compensation attached to the position (i.e., RIF, promotion to the full performance level of their position, cost of living increases, within grade increases and/or quality increases, etc.).

B. An involuntary change in position shall not affect the current status of status quo employees. Assignment as a result of reduction in force is considered to be involuntary and does not constitute a change or conversion to the contract system. Such reassignment during RIF, however, requires appointment by the supervisor and written concurrence by the school board both for the reassignment and for the retention of status quo condition. If the school board disapproves such an appointment, the supervisor may appeal the disapproval in accordance with the procedures set forth in 11.20.

C. Status quo employees who maintain career-seasonal status may take temporary employment with their current organization or with another organization during the period of time that they are placed into a non-pay status, such as during the summer months. This does not constitute dual compensation. Such employment will not endanger the employee's right to return to his/her permanent base position and retain the "status quo" condition. All appointments for summer activities or training sessions are made by a short-term contract. Status quo employees return to status quo condition at the end of the short-term contract when returning to their base position at the start of the next school year.

11.24 Conversion of Status Quo Employees to Contract Positions.

A. Status quo employees may request in writing to the school supervisor or Education Line Officer, as applicable, that their position be

EDUCATION
Education Contract Personnel

converted to contract. The appropriate school board will be consulted for a determination on whether such individual should be permitted to convert to a contract; if the determination is to approve the request, a contract will be issued.

B. For schools such as off-reservation boarding schools, where the school boards do not hold regular monthly meetings, this provision can be met by the school supervisor or Education Line Officer, as appropriate, contacting each board member within 30 days of the request to convert and informing each member of the status quo employee's request to convert their position to a contract educator position. If verbally approved by the required majority of the members, the conversion will be considered approved and a contract can be issued. At the next official school board meeting, this action will be ratified, so entered into the official board minutes, and the contract signed by the board.

11.25 Probationary Period.

A. The probationary period is an extension of the examining or appointment process, during which a careful review is made of an employee's character and ability to satisfactorily perform the duties of the position. It provides the supervisor an opportunity to measure actual job performance on the job against his/her assessment of the employee's potential at the time the employee was selected. It also provides the supervisor with the opportunity to recommend non-renewal of a contract during the probationary period should the employees' performance fall short of expectations and job requirements or for cause. In addition, a probationary employee may be terminated at any time during the term of a contract. Termination is accomplished by providing written notice to the employee two weeks prior to the effective date of the termination. The school board must be notified of the termination, but school board approval is not required.

B. The probationary period begins with the first day of a continuing appointment to a contract and ends after three full consecutive contract appointments with satisfactory performance and/or conduct in the same or comparable position. If the employee is hired before October 1 of the contract term, this contract term will count as the first year of probation. If the employee is hired on or after October 1, this contract term does not count as the first year of probation and the employee will remain on probation for the following three contract terms.

C. Employees who transfer to a comparable position (e.g., language arts teacher at school A to language arts teacher at school B) prior to the completion of the three year probationary period shall serve a new three year probationary period. Employees who transfer to a comparable position after completing a probationary period will serve a one year probationary period in the new position.

D. Employees who resign and are at a later date reappointed to a

EDUCATION
Education Contract Personnel

contract position will serve a new three year probationary period upon reappointment.

E. Employees who are promoted or appointed to a different type of position (e.g., from Head Teacher to Principal, or from language arts teacher to elementary teacher) will serve a new three year probationary period.

F. Short-term or temporary contracts do not require an employee to serve a probationary period. The time an employee serves under a short-term or temporary contract does not count as service time toward completion of a probationary period. For example, an employee is initially appointed to a temporary contract. At the end of the contract term, the employee is selected under normal recruitment procedures for a continuing contract term. The probationary period for this employee begins on the effective date of the appointment to the second contract.

G. Employees appointed to continuing part-time contracts exceeding 22 hours per week receive service credit toward completion of the probationary period for time spent in such a contract regardless of the tour of duty. Therefore, after three consecutive contracts as described in B above in a part-time position, the employee will have served the full probationary period.

H. Termination of a contract during the probationary period for any reason is not grievable or appealable.

I. Status quo employees who convert in their existing position to the contract system are not required to serve a probationary period under this part.

11.26 Contract Renewal/Non-renewal.

A. The school supervisor or Education line Officer shall notify the appropriate school board not less than 90 calendar days before the end of the school year (as determined by the school calendar and not by the end of the contract) which school year and year long education contracts are recommended for renewal and which are not recommended for renewal.

B. If the school board disagrees with the recommendations, the board will submit, within 25 calendar days, a formal, written certification of its determinations to the school supervisor or the Education Line Officer, as appropriate.

C. If board determinations are not received within the 25 calendar days, the school supervisor or the Education Line Officer, as appropriate, will issue to contract employees the required notification of intent to renew (or not to renew) contracts based on his/her original recommendations to the school board, no later than 60 calendar days before the end of the school year. This date is the same whether employees are on school year contracts or

EDUCATION
Education Contract Personnel

on year long contracts.

D. If the school board submits its determinations within the 25 calendar days, the school supervisor or Education Line Officer, as appropriate, shall implement the Board's determinations through issuance of the required notice of renewal or non-renewal no later than 60 calendar days before the end of the school year, or shall appeal the determination of the school board to the Education Line Officer or Director, as appropriate, who will make a determination in accordance with the appeal procedure in E below.

E. When a disagreement exists between the school supervisor or education line officer and the school board, every precaution must be taken to ensure a resolution before the 60 day deadline to notify the employee of renewal or non-renewal. When this cannot be accomplished, the employee shall be notified of the Board's decision at the time the 60 day notice is provided to the other employees that the supervisor has appealed the school board's determination and that the notice is subject to change as a result of the appeal.

In such disagreements, the school supervisor or Education Line Officer may appeal to the appropriate higher authority (Education Line Officer or Director) describing the action proposed, the board's determination and the reason(s) the board's action should be overturned. The appeal must be forwarded within 10 calendar days of receipt of the board's determination. A copy of the appeal must go to the school board. The board, in turn, has 10 calendar days from receipt of the appeal to forward its response (if any) to the Education Line Officer or Director. If the Education Line Officer or Director decides to overturn the board's determination, then he/she must inform the school board and the appealing supervisor in writing, outlining the reason(s) for overturning the board within 14 days of receipt of all information.

F. If the contract is to be renewed, the employee must agree in writing, within 14 calendar days of the date of the notice, to serve the next school year in order to complete the proposed contract renewal. If the employee's signed agreement is not received by the fourteenth day, the employee has voluntarily forfeited his/her right of continuing employment and is deemed to have resigned. This separation is not grievable or appealable.

G. If an individual agrees to serve for the next school year but fails to report for duty at the beginning of the next school year, the contract will be terminated and future appointments will be subject to the restrictions of 62 BIAM 11.21. Such automatic terminations/resignations are not grievable or appealable.

H. A contract renewal offer which changes the contract from full-time to part-time or from year-long to school-year is not an involuntary change in position subject to reduction in force procedures nor is it an adverse action. Alternately, a contract renewal offer (for the same position) which changes

EDUCATION
Education Contract Personnel

the contract from part-time to full-time or from school-year to year-long is not an involuntary change in position and does not require re-competition. Thus, such offers are neither grievable nor appealable.

I. Supervisors are responsible for verifying that employee's state certifications are current. Employees whose certification expires during a non-pay, non-duty period, such as between school year contracts, must provide a copy of the new certification prior to the start of the new school year. Employees are responsible for assuring that they maintain required state certification. Failure to maintain certification is grounds for termination for failure to meet the qualifications of the position.

11.27 Contract Non-Renewal Procedures.

A. A notice of intent to non-renew a contract for a non-probationary employee must be issued at least 60 days before the end of the school year as shown on the school calendar. The notice should include a general statement of the reasons for not renewing the contract but need not give specific reasons. Though the reasons may include items which may be related to cause or performance, a non-renewal is not a discharge. Non-renewal of a contract is not a discharge, regardless of the reason(s) for non-renewal, and will not follow the discharge procedures. Non-renewal is neither grievable nor appealable, other than as described in this section. The procedures described herein apply only to non-probationary employees. Probationary employees have no right of appeal.

When a disagreement exists between the school supervisor or education line officer and the school board, the school supervisor or Education Line Officer may appeal to the appropriate higher authority (Education Line Officer or Director) as described under 11.26E.

B. In these processes no more than a substantial standard of evidence, as defined in 11.3CC, shall be required to sustain the reason(s) for a non-renewal determination. A procedural error shall not be grounds for overturning a non-renewal determination unless the employee shows "harmful error" (error by OIEP in the application of its procedures which, in the absence or cure of the error, might have caused the Education Line Officer or Director to reach a conclusion different than the one reached). The burden is upon the employee to show that, based upon the record as a whole, the error was harmful.

C. Once the non-probationary employee receives the 60 day written notice of non-renewal which states the general reason(s) for the non-renewal, the following appeal procedures will apply:

(1) The employee may request an informal hearing before the school supervisor, education line officer or the school board, whichever recommended non-renewal, within 10 calendar days of receipt of the notice. If

EDUCATION
Education Contract Personnel

(2) If so requested, the informal hearing will be held within 30 calendar days of receipt of the request. At the informal hearing, the employee may only provide evidence and documentation addressing the reason(s) for the non-renewal. Since the hearing is informal, the employee must present his/her own case. He/she may not designate a representative to present the case, though he/she may of course consult a representative. The proceedings of the informal hearing will be summarized and an official written summary of the hearing will be maintained by the responsible school supervisor or education line officer.

(3) The school supervisor or education line officer will send a written determination to the employee within seven calendar days after the informal hearing. If the school board held the hearing, it must notify the school supervisor or education line officer of its decision in writing within five days of the hearing; the school supervisor or education line officer will officially notify the employee of the school board's determination after receipt of the board's decision.

(4) If the employee is not satisfied with this determination, the employee may request an administrative review by the next higher management official within 10 calendar days of receipt of the decision from the informal hearing. In most cases, the next higher management official is the Education Line Officer. However, when the employee is a school supervisor or an Education Line Office employee, the Director is the next management level.

(5) Prior to making a decision, the official responsible for the administrative review must obtain the written summary of the informal hearing from the informal hearing official(s); no hearing is conducted as part of the administrative review. The official will send a written decision to the employee within 20 calendar days of receipt of the request for review, the hearing summary and other supporting documents. Failure to act within this 20 day period will automatically sustain the initial determination made at the informal hearing. If the decision overturns the decision of the informal hearing official(s), a written statement specifically stating the reason(s) for overturning the decision will be sent to the informal hearing official(s) within the same 20 day period. This completes the administrative review process for non-probationary employees.

11.28 Temporary Advancement and Details.

A. Temporary Advancement of Contract Employees. A contract education employee, who meets all the requirements of the appropriate job category, including experience, education and state certification, may be temporarily advanced, with compensation, to a higher level contract position. This requires consultation with the appropriate school board and is implemented by a short-term contract up to the end of the original contract. An employee temporarily advanced retains his/her employment status as specified in the original contract. Upon return to the lower pay level, his/her salary will be at the rate specified in the original contract unless the contract changes

EDUCATION
Education Contract Personnel

during the period of the temporary advancement. In this case, the employee will be paid at the new rate.

B. Details of Contract Employees

(1) Contract education employees may be detailed to other approved job categories for a period that will not exceed the duration of their original contract. Details may be processed by the supervisor only after school board consultation.

(2) Details to undescribed duties may be made for a 120 day period, or the end of the contract term, whichever is shorter, by the school supervisor. The Education Line Officer may approve one 120 day extension of this detail. A statement of duties must be provided to the employee which describes job responsibilities during the detail period.

(3) If an employee is detailed to a higher level position and subsequently temporarily advanced in the higher level position, the total time spent on the detail and temporary advancement shall not exceed the end of the employee's original contract.

(4) Details of more than 30 days will be documented on a SF-52, Request for Personnel Action. Details of less than 30 days will be documented by memorandum.

(5) An employee is not required to meet any of the requirements of the position for a detail.

(6) Details of contract employees to positions not subject to contract may be finalized only with the approval of the Assistant Secretary - Indian Affairs. Employees appointed under Pub. L. 95-561 are appointed under the excepted service. Excepted service employment is not interchangeable with competitive service. Requests, including an SF-52 and information on experience, education and state certification, must be submitted to the Office of Indian Education Programs, Central Office, at least two weeks prior to the proposed effective date.

C. Temporary Promotion of Status Quo Employees to Contract Positions.

By law, all vacant education positions must be filled under the contract educator system. If a status quo employee is temporarily promoted to a contract education position or to a higher graded status quo position, the promoted employee loses his/her status quo condition. His/her previous position becomes subject to contract, and the employee's return to this position by accepting a contract is subject to school board approval.

D. Details of Status Quo Employees to Contract Positions. A status quo employee, however, may be detailed to contract education positions. Details to the same or lower grade may be made in increments of 120 days up to one year; extension beyond one year requires the approval of the Assistant

EDUCATION
Education Contract Personnel

Secretary. Details to a higher grade are limited to 120 days within a 12 month period.

11.29 Voluntary Service.

A. An Education Line Officer or school supervisor may, subject to the approval of the school board concerned, accept voluntary services on behalf of Bureau schools from the private sector. Acceptance of these voluntary services may be delegated to the school supervisor and includes voluntary services of individuals, students, or groups.

B. Volunteers may be accepted without regard to the normal appointment process and may participate in the volunteer program to fill an identified need. They are individuals or members of groups with specific skills and/or interests who will perform a specific function or type of work without compensation (salary or wages). All voluntary services shall be for non-hazardous activities where public services, special projects, or school operations are improved and enhanced. In no case shall any part of these regulations be construed to require contract or status quo employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. Every volunteer must have a designated supervisor who is a paid staff member and who will be directly responsible for the work the volunteer performs. If appropriate, a volunteer may act as a supervisor of other volunteers provided the supervisory volunteer is under the direct supervision of a paid staff member. Volunteers may not supervise Federal employees.

C. Voluntary Services Agreement. When voluntary services are used, a voluntary service agreement must be developed and shall include as a minimum, the responsibilities of the school board, the volunteer(s), the school supervisor or education line officer, and, when appropriate, the educational institution (for student teachers).

(1) The agreement shall also include a statement indicating that the volunteers are not considered Federal employees for any purpose other than Title 5 U.S.C. Chapter 81, dealing with compensation for injuries during the performance of work assignments, federal tort claims provisions published in 28 U.S.C. Chapter 171, Department of the Interior Regulations governing Responsibilities and Conduct, and all Federal travel regulations.

(2) Parental/guardian approval is required for any volunteer under the age of 18 years old.

D. The agreement is to be signed by the school supervisor, school board, volunteer (or a representative, for a group of volunteers), and a representative of the education institution, when appropriate. Each signer will also list a telephone number for use in emergencies.

EDUCATION
Education Contract Personnel

E. Volunteer Qualifications. Volunteers do not need to meet specific job requirements such as those identified in the Job Categories and Qualification Handbook. If the volunteer is a minor, the school must comply with State or local laws and standards regarding the employment of minors, and a parent or guardian must sign the agreement. Volunteers must be physically able to perform the work they volunteer to do. The Education Line Officer or school supervisor may require a physical examination at any time if there is a question regarding the volunteer's ability to perform the assigned duties. Volunteers must also undergo appropriate background checks if they will be supervising children for more than three days.

F. Forms Required. For volunteers assigned duties involving work with children where no Federal employee will be present, an application or resume; an OF-306, Declaration for Federal Employment; an SF-87, Fingerprint Chart; and an SF-85P, Questionnaire for Public Trust Positions, will be required. For all other volunteers, proof of special qualifications is required when necessary; e.g., proof of training prior to operating power equipment. Physical examinations may also be required in some instances.

The school will retain the volunteer job description, agreement form, copy of the application and a copy of the completed forms, with any other pertinent documents, in individual volunteer folders for three full years after the completion of the voluntary services.

G. Volunteer Work Assignments. Volunteers can be utilized in any and all parts of the education system. All levels and types of skills can be utilized and almost any type of work can be performed as long as the work performed by a volunteer does not displace or replace any paid employee.

(1) The following constraints must be considered when assigning work responsibilities to volunteers:

(a) A volunteer must never be required to perform any type of work which he/she is not adequately trained to do, does not feel comfortable doing, or is not willing to do.

(b) Volunteers who are assigned to operate machinery, equipment or vehicles (such as power shop tools, lawn mowers, computers, tractors or buses), must first have demonstrated their proficiency of that equipment or vehicle to the satisfaction of the immediate supervisor. All applicable age restrictions relating to the operation of machinery, equipment and vehicles must be applied. In addition all state licensing requirements must be met before a volunteer is allowed to operate any vehicle. Volunteers may not transport children.

(c) Volunteers may not assist in any law enforcement activities or related activities that may place them in a life-threatening

EDUCATION
Education Contract Personnel

situation.

(d) Supervisors must ensure that all volunteers are aware of and observe all safety requirements. If questions regarding safety arise, supervisors must consult with the appropriate Bureau safety officer before assigning a volunteer a specific duty.

(2) Specific assignments may be developed locally. Volunteer agreements must clearly identify all duties and responsibilities for each volunteer and the volunteer must have signed and receive a copy of the agreement prior to beginning work. Volunteer agreements may be amended as needed.

H. Benefits and Protection. Volunteers receive the benefits and protection of the Federal Employees Compensation Act (5 U.S.C., Chapter 81) and the Federal Tort Claims Act (28 U.S.C. Sections 2671-2680) and are considered to be Federal employees for those purposes only. These two acts provide the following benefits and protection:

(1) Federal Employees Compensation Act.

(a) Volunteers are entitled to first aid and medical care for on-the-job injuries as well as hospital care when necessary. When travel is necessary to receive medical care, transportation may be furnished and/or the travel and incidental expenses associated with it may be reimbursable. When death results from an on-the-job injury, burial and funeral expenses, not to exceed \$800, may be paid. In addition, other compensation benefits may be approved by the Office of Workers Compensation Programs on a case-by-case basis. Obviously, volunteers do not receive compensation for lost wages.

(b) A volunteer who suffers an on-the-job injury and desires to file a claim for compensation should contact his or her immediate supervisor. The supervisor is responsible for helping the volunteer obtain and complete the proper forms and must certify the authenticity of the claim. The supervisor then submits the claim to the servicing personnel office for processing.

(2) Federal Tort Claim Act - This act provides a means to award damages arising from claims against the Bureau of Indian Affairs for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the BIA while acting within the scope of his or her office or employment under circumstances where the BIA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Volunteers are offered the protection of the Act for personal liability as long as they are within the scope of their assigned responsibilities.

EDUCATION
Education Contract Personnel

(3) Because of the coverage that volunteers receive, it is imperative that they operate under written agreements, containing specific information on the type of work they are assigned to do. This is necessary in case questions arise about whether a volunteer was acting within his or her assigned responsibilities.

I. Employment of Family Members as Volunteers. Family members and relatives of Bureau employees may serve as volunteers as long as both the Bureau representative signing the agreement and the immediate supervisor of the volunteer are not related to the volunteer.

J. Travel and other Expenses of Volunteers.

(1) Volunteers may be reimbursed for out-of-pocket expenses incurred as a result of their volunteer activities, such as expenses for supplies, gasoline, local transportation costs, local telephone calls, etc. Reimbursement for such incidental costs are meant to offset the volunteer's personal cost of volunteering and is not meant to function as a salary. The decision to reimburse incidental costs and the amount of the reimbursement is made by the school supervisor or Education Line Officer as appropriate. Payment of incidental costs to volunteers can generally be paid from imprest cash funds. A detailed record of reimbursement costs should be maintained for each volunteer for future reporting purposes.

(2) Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered. The school supervisor or Education Line Officer decides the amount of the reimbursement with the concurrence of the appropriate school board. Payment is made in the same manner as for regular employees.

K. Annual Report. All school supervisors must submit reports on volunteers to the Education Line Officer by July 1 of each year for the preceding school year. Reports should contain sufficient information that will assist the Education Line Officer in determining the dollar value and kind of work contributed to the Bureau of Indian Affairs by volunteers. As a minimum each report must include:

(1) Number of volunteers by name, age and sex.

(2) Number of hours worked by activity for each volunteer.

(3) Amount spent for incidental expenses per volunteer. Amounts in excess of \$100 per volunteer per year must be documented.

EDUCATION

Education Contract Personnel

(4) Identify by volunteer name and work location any claims for workman's compensation benefits and amounts paid.

(5) Identify by volunteer name and work location any Tort Act Claims and amount of benefits paid.

(6) A brief (one or two line) description of major tasks assigned to each volunteer.

11.30 Citizenship Requirements. An applicant must be a citizen of the United States or a citizen of territories owing allegiance to the United States to be eligible for consideration. Citizenship will be verified on the application and the Employment Eligibility Verification, Form I-9.

11.31 Restriction on Employment of Relatives. An official with appointment and/or promotion authority shall not advocate, recommend, appoint, employ, promote, or advance a relative within the Department of the Interior. The term relative includes: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

11.32 Members of Family. Contracts shall be in compliance with the Department of the Interior and the Bureau's regulations regarding members of the family. No more than one member of a family will be employed in the same organizational unit where one would have immediate supervision over the other or their employment would reflect adversely upon the Department, except in emergency situations, such as forest fires, floods, earthquakes, etc. An exception also may be made in the case of a family member at isolated field stations or where there is a shortage of quarters. Exceptions in these situations and in other emergencies (e.g., when recruiting efforts have failed to provide qualified candidates other than a family member) will be made with the approval of the next higher supervisory level. (See Department of Interior "Employee Conduct and Responsibilities.")

11.33 Age Requirements. No maximum age requirement shall be imposed for education positions. The minimum age for appointment is usually 18 years of age, except for high school graduates (minimum age is 16 years). The minimum age for those applicants who have received a High School Equivalency certificate (GED) is also 16 years. This does not include student work/learning experience curricula, which is exempted from minimum age requirements. Certain job categories may have higher minimum age requirements.

11.34 Physical Examination Requirements. Generally, employees, excluding short-term appointees, are required to have a physical examination (at employee's expense) prior to reporting for duty.

EDUCATION
Education Contract Personnel

A. The school supervisor or Education Line Officer may make an exception in an urgent situation where a physical examination cannot be completed prior to reporting for duty. In such cases, a time limit of no longer than 60 days will be allowed during which the examination must be completed. Such exceptions are rare.

B. If an exception has been made and the required medical examination is not completed within the 60 days limit, the contract will be terminated as provided by 11.25A. Such termination is not grievable or appealable.

C. In certain positions, such as cafeteria employees and bus drivers, physical examinations must be completed before reporting to duty due to the safety requirements of the position. This applies to all appointments, including short-term appointments.

D. For positions where the Bureau requires additional medical examinations, such as the requirement for annual physical examinations for school bus drivers, management will bear the cost of those annual physical examinations.

11.35 State Certification and Licensure. All employees whose positions require state certification or licensure shall be required to obtain and maintain appropriate state certification in the state where employed. The employee shall be responsible for ensuring that timely action is taken to renew his/her state certification prior to its expiration. State certification must be maintained for any subsequent contract renewals. Failure to maintain certification or licensure may result in termination for failure to meet the minimum qualifications of the position. If course work is required for continued certification and is to be completed during the summer between contract years, the employee must present both proof of completion of course work and a copy of his/her application for renewal prior to the start of the next contract year.

11.36 Suitability Disqualifications.

A. Employees in education positions are assigned the task of helping to shape the lives and future of Indian students. Therefore, an applicant will be disqualified based on suitability when a serious question is raised in reference to his/her character, reputation and fitness. An applicant may be denied appointment for any of the following reasons:

(1) Removal from previous employment for delinquency or misconduct;

(2) Criminal, infamous, dishonest, immoral or notoriously disgraceful conduct;

EDUCATION
Education Contract Personnel

- (3) Membership in an organization having as its objective the overthrow of the Constitutional Government of the U.S. by force or violence and when membership is with the specific intent of furthering that objective;
- (4) Intentional false statements, deception or fraud in completing official forms for appointment;
- (5) Refusal to furnish testimony as required by 5 CFR Part 5.31;
- (6) Habitual use of drugs (including alcoholic beverages), affecting job performance;
- (7) Any legal or other disqualification which makes the person unfit for the service;
- (8) Separation or termination for cause from any position within one year of application;
- (9) Separation or termination for performance in a comparable position within one year of application.

B. In making suitability determinations, the following factors will be taken into account: the kind of position involved; the nature, seriousness, and recency of the conduct; the circumstances surrounding the conduct; the age of the applicant at the time of the conduct; contributing social or environmental conditions; and the absence or presence of rehabilitation or efforts toward rehabilitation.

C. Elimination of an applicant from employment consideration on suitability grounds requires a determination by the Education Line Officer that the applicant's conduct may interfere with his ability to function in the position or OIEP's ability to discharge its duties and responsibilities. Such determination will document the existence of a rational and direct relationship between the conduct of the applicant and nature of the work involved in the position.

D. Suitability concerns on current probationary employees will be handled as termination during probationary period. Suitability concerns on current non-probationary employees must be handled in accordance with 62 BIAM 11.78 through .85, Employee Discipline and Discharge.

11.37 Indian Preference.

A. The Bureau is required by law to give preference to persons of Indian descent in filling positions, whether through initial appointment or advancement. Preference will be extended to persons of Indian descent who meet any one of the following conditions:

EDUCATION
Education Contract Personnel

- (1) Members of any Federally recognized Indian tribe;
- (2) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (3) All others of one-half or more Indian blood of Federally recognized tribes indigenous to the U.S.; and
- (4) Eskimos and other aboriginal people of Alaska;

B. Applicants shall submit a properly completed Form BIA-4432 "Verification of Indian Preference for employment in the Bureau of Indian Affairs" in order to be considered a preference eligible.

11.38 Waiver of Indian Preference.

A. Tribal governing bodies, or school boards with written delegation of such authority from the tribal government, are authorized to waive the Indian Preference laws with respect to a specific personnel action regarding a specific non-Indian. Such waivers will only be granted on a case-by-case basis.

B. The original approval of the waiver and documentation of the school board's action must be included on the right side of the employee's Official Personnel Folder.

C. A copy of the waiver will be maintained in the certificate file, including supporting documentation, such as the tribal/school board action.

11.39 Special Retirement eligibility for Non-Indians Employed by the Bureau Prior to December 21, 1972. Non-Indians employed by the Bureau of Indian Affairs will be covered by Pub.L. 96-135, "Early Out Retirement for Non-Indian," if:

A. They have 25 years of service at any age or 20 years service and are at least 50 years old or they are separated involuntarily (except by removal for performance or misconduct) during the 2 year period before they meet the age and service requirements, and

B. They are not entitled to Indian preference, and

C. They have been employed continuously since December 21, 1972, by the Bureau of Indian Affairs, a tribal organization, or any combination thereof; and

D. They are separated or retire within 10 years after they meet the age and service requirements.

EDUCATION

Education Contract Personnel

E. Employment in a tribal organization may be considered for purposes of paragraph (3) above only if the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment, he/she was employed by BIA. At the time of such employment, the employee and the tribal organization must have been eligible to elect and did elect to have the employee retain coverage as provided by the Indian Self Determination Act.

F. If the tribe or school board waives Indian Preference on behalf of a non-Indian employee, the non-Indian employee forever loses his/her retirement eligibility under Pub. L. 96-135, if they were entitled to such early-out retirement. If the tribe or school board grants such a waiver, a memorandum for the record will be prepared on BIA stationery, signed by the employee and placed on the permanent side of his/her Official Personnel Folder, along with a copy of the tribal waiver.

11.40 Equal Employment Opportunity. It is the policy of the Bureau to fill vacancies, within the scope of Indian preference, with the best qualified available persons without discrimination because of race, color, religion, sex, national origin, age or physical/mental handicap. This policy shall also apply to selections made for the volunteer services program.

11.41 Veteran's Preference. Veteran's preference does not generally apply to contract positions. In a reduction-in-force situation, however, veteran's preference does apply to contract educators. All employees claiming veterans preference must have on file in their OPF a DD-214 or other proof in order for veteran's preference to apply in the event of a RIF.

11.42 Involuntary Furlough. There may be occasions during which it is necessary to place an employee in a non-disciplinary, non-pay status; this may be due to such events as the forced closure (condemnation) of a building or shortage of funding. Such furloughs will be effected through the same procedures as are used for disciplinary actions but will clearly indicate the non-disciplinary nature of the action.

Career seasonal employees in the Bureau may not be placed on furlough for more than four weeks within the same calendar year without the consent of such employees, unless the following two conditions are met:

A. The school supervisor or Education Line Officer (after any appeal as described below) with the approval of the school board, determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at the school, as determined under the financial plan process. The school supervisor or Education Line Officer may appeal to the Education Line Officer or Director, as appropriate, any refusal by the school board to approve any recommendation of the supervisor.

EDUCATION
Education Contract Personnel

B. With the exception of principals and clerical employees, all career seasonal educators at a school location are placed on furloughs of equal length.

As an authorized exception to these requirements, the school supervisor, with the approval of the school board (or the Education Line Officer upon appeal under paragraph 1) may continue one or more career seasonal educators in pay status if they: (1) are needed to operate summer programs, (2) attend summer training sessions, or (3) participate in special activities, e.g., a curriculum development committee. The opportunity to participate in such activities shall be advertised and competed for.

Example: The Principal and school board make a budget decision to provide a summer program for students needing remedial attention. The number of students represents 20% of the school enrollment. The Principal then advertises for the number of specialty teachers needed, aids, cooks, food service workers, janitors, motor vehicle operators etc. All employees in these job titles are eligible to apply regardless of their appointment status; i.e., status quo career seasonal or school year contract.

11.43 Reduction-in-Force.

A. Contract education employees are covered by the provisions of chapter 35 of Title 5. Existing OPM requirements apply to RIF actions affecting contract education positions. Non-renewal of a contract does not require reduction-in-force (RIF).

B. There may be circumstances when, because of budgetary and/or program conditions, reduction in staff may be necessary. When an involuntary change in position becomes necessary as a result of budget and/or program conditions, reduction-in-force action must be initiated. In addition, when a tribal organization initiates or proposes action to either contract or enter into a grant of school or agency operations which will result in displacement of Bureau Personnel, RIF procedures will be used.

C. A change in work schedule from full-time to part-time or from year long to school year contract during the term of a contract is an involuntary change in position and is subject to RIF. Such a change at contract renewal is not an involuntary change in position and is not subject to RIF.

D. Education management is responsible for determining and identifying staffing needs. School supervisors and Education Line Officers are in a position to know their specific program needs. Advice and technical assistance may be requested from the Personnel Office but only education management will make a program decision.

EDUCATION
Education Contract Personnel

E. Good management dictates very careful review and adherence to staffing patterns established under 62 BIAM 11.17. Effective dates for reduction-in-force action should, as nearly as possible, coincide with the end of the school year. In this way, disruption during the school year can be minimized.

F. Approval for RIF.

(1) The Director is responsible for granting approval to conduct reductions-in-force involving education positions. Requests for reductions-in-force for all education positions will be forwarded by the Education Line Officer directly to the Central Office OIEP for approval; all requests must be approved by the appropriate school board prior to submission. A courtesy copy of the request must be provided to the appropriate Personnel Office to allow them to begin planning.

(2) The approval for RIF will be forwarded by Central Office OIEP to the Education Line Office and servicing Personnel Office for action. Upon receipt of the approval, the servicing personnel office will proceed with the reduction-in-force and prepare the official notification to the employee(s).

G. Reassignment of Non-Indians during RIF.

(1) The Secretary, Under Secretary or Assistant Secretary - Indian Affairs is responsible for making the determination and approving any request to reassign an individual who is not entitled to Indian preference when reassignment is deemed necessary in a reduction-in-force. All requests of this nature will be submitted by the Education Line Officer, through the Director, to the Chief, Division of Personnel Management, for submission to the Assistant Secretary - Indian Affairs, prior to the initiation of any action.

(2) A non-Indian who meets Pub. L. 96-135 eligibility, will not lose his/her retirement eligibility when reassigned by use of reduction-in-force procedures. Reassignment will require consultation with the appropriate school board and application of the provisions of 62 BIAM 11.20 A, B or C as applicable.

H. Conducting the RIF.

(1) Contract employees in education positions under Pub. L. 95-561 and status quo employees shall be separated in accordance with veteran's preference and Indian preference laws.

(2) The competitive area will be restricted to the school or Education Line Office in which the reduction occurs. Schools and Education

EDUCATION
Education Contract Personnel

Line Offices are each separate competitive areas and employees do not compete with each other. They also do not compete with any other BIA office.

(3) Competitive levels only contain positions in that job category. A competitive level contains either status quo or contract employees; status quo and contract employees do not compete against each other.

(4) Employees within each competitive level will be released according to the computation of their total years of Federal Service. In a RIF, employees will receive service credit of 12 years for a "Results Achieved: rating of record for each of the previous three years. Employees will receive no service credit for a "Results Not Achieved." The employees with the least amount of service will be separated first.

(5) Retention registers will be established by job category and pay level except for those employees on the Overseas Teacher/Counselor pay schedule (These employees in pay levels 11 through 17 and 21 through 24 will be combined on the retention register by service computation date and job category, but NOT pay level.) as follows:

Priority III - AD Veterans with 30% or more compensable disability

Indian Preference eligibles
Non-Indians

Priority III - A Other Veterans

Indian Preference eligibles
Non-Indians

Priority III - B Non-Veterans

Indian Preference eligibles
Non-Indians

Release shall be made in the following order:

Priority III - B Non-Veterans

Non-Indian
Indian Preference eligibles

Priority III - A Other Veterans

Non-Indian
Indian Preference eligibles

EDUCATION
Education Contract Personnel

Priority III - AD Veterans with 30% or more compensable disability
Non-Indian
Indian Preference eligibles

I. The following procedures are set forth for these separations:

(1) Advance Notice. Each competing employee is given a written notice at least 60 days prior to the effective date of the RIF action. This requirement may be satisfied by:

(a) A written specific RIF notice issued at least 60 days before the RIF effective date. A specific notice is submitted to the Union 5 days prior to the issuance to the employees. The specific notice must contain as a minimum:

(I) The specific RIF action to be taken;

(ii) The effective date of the RIF action;

(iii) The employee's competitive area, job category subgroup, service computation date, pay level and annual performance rating;

(iv) The place where the employee may inspect the regulations and pertinent records to his/her case;

(v) How his/her position was affected as a result of the reduction-in-force;

(vi) The employee's appeal or grievance rights.

(2) Appeal Procedures. The employee, upon request, will be provided full and impartial review of the reasons for and procedure used in effecting the RIF action. Employees may use the procedures outlined in 62 BIAM 11.82 through 11.90 or the negotiated agreement, as applicable.

(3) Out-Placement Procedures. Out-placement for bargaining unit members will be in accordance with the appropriate negotiated agreement. Assistance to place non-bargaining unit employees will be in accordance with Department of Interior or Bureau policy.

(4) Retirement during RIF. There are three possible opportunities for retirement with immediate annuity under RIF. These options apply only after an employee receives a specific notice of separation.

(a) An employee is eligible for an immediate annuity under optional retirement if:

EDUCATION

Education Contract Personnel

(I) he/she has been employed one year under the retirement system in the 2 year period immediately preceding the separation on which the annuity is based; and

(ii) meets one of the following conditions:

- age 62 and 5 years civilian service
- age 55 and 30 years of creditable service, including 5 years of civilian service
- age 60 and 20 years of creditable service, including 5 years of civilian service

(b) There is a second Discontinued Service retirement which is effective during a RIF. Under this option an employee may retire earlier than under normal optional procedures. Eligibility requirements for this option are that the employee meets either of the following conditions:

(I) age 50 and 20 years of creditable service, including 5 years of civilian service; or

(ii) 25 years of creditable service, including 5 years of civilian service, regardless of age.

(c) A third retirement possibility is under P.L. 96-135. This option is described in 62 BIAM 11.39.

(d) General conditions.

(I) For each year under age 55, the employee's annuity is reduced by 2% per year. An annuity determined in this way is not increased when the annuitant reaches age 55.

(ii) An employee may apply for optional retirement at any time. An employee must have a specific written notice that he/she faces involuntary separation before a resignation may be accepted as involuntary and qualifying for discontinued service retirement.

(iii) All discontinued service retirement applications are made after receipt of RIF notice and are effective by close of business on the last day of the notice. The same holds for a contract educator's discontinued service retirement.

(iv) Eligibility for discontinued service retirement does not extend to an employee who has declined a reasonable offer to another position in his agency which is not lower than 2 grades or pay levels below his/her current grade and is in the employee's same commuting area.

EDUCATION
Education Contract Personnel

11.44 Severance Pay. Severance pay is an amount of money paid to an eligible employee when he/she is separated through no fault of his/her own. Severance pay for contract educators is payable only as a result of reduction in force. Non-renewal of a contract, or abolishment of a position during the probationary period, does not establish eligibility for severance pay. Removal for cause or performance also does not establish eligibility for severance pay.

A. An eligible employee in the Bureau must meet one or more of the following criteria:

- (1) Full-time, part-time or seasonal
- (2) Excepted service for the BIA
- (3) on an indefinite appointment in an excepted service.
- (4) a continuing contract education employees
- (5) has not declined an equivalent position in the competitive area
- (6) is not on Presidential appointment in an excepted service or in a Schedule C position
- (7) is not eligible for an immediate annuity.

B. A probationary employee or an employee appointed under a temporary or short term contract is not be eligible for severance pay when he/she is involuntarily separated from the service, even if the reason for separation is RIF or failure to accept a transfer of function.

C. Employees appointed on contracts for less than a full school term, temporary employees on school year or year long contracts, or employees who have received a rating of "Results Not Achieved" are not eligible for severance pay.

D. A basic severance pay allowance is computed on the basis of one week's basic pay at the rate received immediately before separation for the first 10 years of service and two weeks pay for each year over 10 years of service. An age adjustment allowance is computed on the basis of 10% of the total basic allowance for each year of age over 40 years at the time of separation.

Regardless of the amount of severance pay computed, the total severance pay cannot exceed one year's pay at the rate received immediately before separation. Severance pay is paid every two weeks in the same amounts as before separation until the total is paid except for the final payment. This payment is simply whatever remains. State and federal income taxes (and FICA if the employee was subject to FICA at the time of separation) are the only deductions from severance pay.

11.45 Moving Expenses. Moving expenses will be paid in accordance with applicable rules and regulations for moves from one position to another within

EDUCATION
Education Contract Personnel

the Bureau of Indian Affairs, subject to availability of funds and approval by the appropriate school board. Travel will not be paid to a non-BIA employee who accepts a contract education position. Education Line Officers, in consultation with the respective school boards, may waive regulations regarding repayment of monies paid to an employee for travel and transportation (including that for immediate family, household goods and personal effects) when the employee is separated from the service for reasons beyond the employee's control. The request for a waiver will be initiated by the employee.

11.46 Restoration to Duty. School year and year long contract education employees are entitled to restoration rights for employees who perform military duty or who sustain compensable injury as provided in 5 CFR Part 353.104 and .105, respectively.

A. An employee entitled to restoration must be considered for advancement as if he/she were currently present for duty. The Education Line Officer or school supervisor is responsible for establishing procedures to ensure this consideration.

B. An absent employee must be promoted in his/her position if the position is categorized to a higher level as the result of (1) an increase of duties and responsibilities occurring before the employee's departure, (2) a change in a categorization standard, or (3) a correction of a categorization error. In all other cases, the employee will be accorded consideration for higher level contract positions in accordance with 62 BIAM 11.4-11.13.

C. The appointing office is generally obligated to restore an employee to an identical contract position for a period of time equal to the time remaining on the contract he/she left.

D. The order of restoration shall be as follows except when a position is held by an employee in a higher retention subgroup or when the restoration involves physical disqualification or conflicting restoration rights:

(1) To the position advanced or reassigned to while absent for compensable injury or military duty;

(2) To the position left because of compensable injury or military duty;

(3) To the next best available position for which the employee qualifies.

D. Restoration responsibility lies with the local school or Education Line Office granting restoration rights. If the employee cannot be restored in

EDUCATION
Education Contract Personnel

his or her school or Education Line Office, the responsibility extends Bureau-wide throughout the excepted system. If an employee cannot be restored in his/her school or Education Line Office, a copy of the action granting restoration rights and an application with supervisory appraisal and documentation of efforts taken to restore within the local school or Education Line Office will be forwarded by the Education Line Officer to the Director, for dissemination and coordination with other Education Line Offices.

11.47 Policy on Pay Administration. The rate of pay for a contract educator position shall be comparable to the rates in effect under the General Schedule, Coordinated Federal Wage System or Schedule C or E of the Department of Defense Overseas Educators Comprehensive Schedule for Educators and Specialists, as appropriate, unless such position has been identified, documented, and approved for a special pay differential by the appropriate authorities. Pay of supervisors shall be set at that increment of their pay level which would establish their rate of pay at least one cent per hour higher than their highest paid subordinates or at the top of the pay level; a supervisory staffing differential may apply.

A. Contract education employees are not subject to pay retention provisions of the Civil Service Reform Act.

B. Establishment of Compensation Schedules. The Director, shall establish basic and special compensation schedules as such rates are adjusted by Executive Order or established as warranted, based on changes in the rates established under other federal pay systems. The Education Pay Schedule is comparable to the rates of pay in the General Schedule and Consolidated Federal Wage System. The Teacher/Homeliving Specialist Pay Schedule is comparable to Schedule C of the Department of Defense (DOD) Overseas Educators Pay Schedule for the previous academic year. The Counselor Pay Schedule is comparable to Schedule E of the DOD Overseas Educators Pay Schedule for the previous academic year.

The pay plan designation for education contract positions will be CE for year-long appointments, CY for school-year, and CS for short-term appointments; other appointments (temporary and intermittent) will use the appropriate CE, CY, or CS designation based on length of contract.

C. Responsibility for Pay Determination. The School Supervisor or Education Line Officer, or other supervisor delegated such authority in writing by the school supervisor or Education Line Officer, is responsible for determining the appropriate pay level and pay increment for each contract position for which they are primarily responsible. The pay will conform to the proper application of the appropriate provisions of this Manual.

EDUCATION
Education Contract Personnel11.48 Development of the Pay Schedules.

A. The following pay schedules are approved for use for contract education positions:

(1) Education Pay Schedule

(2) Office of Indian Education Programs (OIEP) Teacher/Homeliving Specialist and Counselor Pay Schedules

B. Education Pay Schedule. The Education Pay Schedule contains nine pay levels. Each pay level contains a base level which is labeled with the digits 01. There are 20 additional pay increments which are numbered 02 through 21 consecutively. The hourly rate for the base pay and for the 21st increment for each level are comparable to the hourly rate for a specific grade and step of the General Schedule or Federal Wage System. The Education Pay Schedule will be adjusted as the referenced rates are adjusted by Executive Order or survey. The pay levels and increments are computed as follows:

(1) Pay Level 01 (equivalent to GS 2-5 and WG 1-3).

(a) The base pay is comparable to the hourly rate for the GS-02, Step 4 of the General Schedule.

(b) The 21st increment is comparable to the hourly rate for the GS-05, Step 10 of the General Schedule.

(c) The hourly rate for increments 2 through 20 is computed by averaging.

(2) Pay Level 02 (equivalent to GS 5-7 and WG 4-7).

(a) The base pay is comparable to the hourly rate for the GS-05, Step 5 of the General Schedule.

(b) The 21st increment is comparable to the hourly rate for the GS-07, Step 10 of the General Schedule.

(c) The hourly rate for increments 2 through 20 is computed by averaging.

(3) Pay Level 03 (equivalent to GS 7-9 and WG 6-11).

(a) The base increment 01 is equivalent to the hourly rate for the GS-07, Step 1 of the General Schedule.

(b) Increment 21 is comparable to the hourly rate for the GS-09, Step 10 of the General Schedule.

EDUCATION
Education Contract Personnel

(c) The hourly rate for increments 2 through 20 is computed by averaging.

(4) Pay Levels 04-09. Pay Levels 04 through 09 are comparable with the hourly rates of the GS-10 through GS-15 of the General Schedule.

(a) Pay Level 04: The base increment 01 and increment 21 are comparable to GS-10 Steps 1 and 10 of the General Schedule respectively.

(b) Pay Level 05: The base increment 01 and increment 21 are comparable to GS-11 Steps 1 and 10 of the General Schedule respectively.

(c) Pay Level 06: The base increment 01 and increment 21 are comparable to GS-12 Steps 1 and 10 of the General Schedule respectively.

(d) Pay Level 07: The base increment 01 and increment 21 are comparable to the GS-13 Steps 1 and 10 of the General Schedule respectively.

(e) Pay Level 08: The base increment 01 and increment 21 are comparable to the GS-14 Steps 1 and 10 of the General Schedule respectively.

(f) Pay Level 09: The base increment 01 and increment 21 are comparable to the GS-15 Steps 1 and 10 of the General Schedule respectively.

(g) Increments 2 - 20 for Levels 04-09 are computed by averaging.

C. Teacher/Homeliving Specialist and Counselor Pay Schedules. OIEP's Teacher/Homeliving Specialist and Counselor Pay Schedules are adopted from Schedules C and E of the Department of Defense (DOD) Overseas Educators Comprehensive Schedule for Educators and Specialists respectively and consist of seven pay levels with 18 increments each. The rates of pay are identical to the preceding year's DOD Schedule C and E, with the rate of pay divided by 199 to determine the daily rate of pay.

(1) These schedules apply only to positions titled teacher, counselor or homeliving specialist. Parenthetical modifiers (e.g., teaching specialty) may be added, as may the word "supervisory" when appropriate and necessary.

(2) The OIEP Teacher/Homeliving Specialist Pay Schedule consists of seven pay levels, 11-17. Placement in each level is determined by the employee's education level. All degrees must be in education or a related field to be counted. Alternately, a bachelor's degree in any field with 24 semester hours in education will be accepted as equivalent to a bachelor's degree in education; none of the hours used to meet this alternate requirement will be counted as additional hours (above the bachelor's degree) even if they are credited by the university as graduate hours. Graduate hours above the bachelor's degree must be in education or the teaching field in order to be

EDUCATION
Education Contract Personnel

credited. The education levels are as follows:

- Level 11 - Bachelors degree in education or related field
- Level 12 - Bachelors degree plus 15 semester hours of related graduate work
- Level 13 - Bachelors degree plus 30 semester hours of related graduate work
- Level 14 - Masters degree in education or related field
- Level 15 - Masters degree plus 15 semester hours of related graduate work
- Level 16 - Masters degree plus 30 semester hours of related graduate work
- Level 17 - Earned doctorate in education or related field

(3) The OIEP Counselors Pay Schedule consists of four pay levels, 21-24. Placement in each level is determined by the employee's education level. Master's degrees must be in counseling or a related field. Alternately, a master's degree in any field including 24 graduate semester hours in guidance and counseling will be accepted as a substitute for a master's degree in counseling; none of the hours used to meet this alternate requirement will be counted as additional hours (above the master's degree) even if they are credited by the university as graduate hours. Graduate hours above the master's degree must be in counseling or a related field (such as substance abuse) in order to be credited. The education levels are as follows:

- Level 21 - Masters degree in counseling or related field
- Level 22 - Masters degree plus 15 semester hours of related graduate work
- Level 23 - Masters degree plus 30 semester hours of related graduate work
- Level 24 - Earned doctorate in counseling or related field

11.49 Determination of Pay Increments.

A. Limitations of Pay. A position may be subject to specific pay limitations within the appropriate pay level. Any such limitations shall be included in the Job Category and Qualifications standard. No other limitations apply.

EDUCATION
Education Contract Personnel

B. Factors affecting all pay schedules.

(1) Education and Training.

(a) To be creditable, education and training must be received from and credited by an institution of higher education accredited by a recognized national or regional accrediting organization (recognized by the U.S. Department of Education) and must be directly related to education, the teaching/counseling field in which employed, or technical area(s) related to the position. The school supervisor or Education Line Officer will make the final determination on creditability. Apprentice, journeyman and master crafts licenses must be issued or recognized by the U. S. Department of Labor or the state where employed.

(b) Graduate Hours and Degrees. Graduate hours and degrees must be directly related to the position to be credited for pay. The term "related graduate work" means directly related to the field of education or the employee's teaching or counseling field, or, for technical, administrative and support staff, to area(s) directly related to the position, and/or included in a graduate degree plan from a university in the related field. All hours to be counted as graduate hours by the Bureau must be credited as graduate hours by the university. The school supervisor or Education Line Officer, as appropriate, will be responsible for determining whether the work is both related and graduate. Graduate hours taken to meet the requirements of a provisional contract appointment are not creditable for pay purposes.

(c) Documentation of Education and Training. To receive credit for education, an individual shall have an official copy of his/her transcript(s) from a nationally or regionally accredited institution(s) on file with the school supervisor and a copy in the Personnel Office by October 1. Student copies are not acceptable. The supervisor shall forward a copy to the Personnel Office to be included in the employee's Official Personnel Folder. Increments cannot be given if supporting transcripts are not on file with the Personnel Office. Quarter hours of college work will be converted to equivalent semester hours by multiplying by two-thirds (2/3).

(2) Creditable Experience. In most cases, only elementary or secondary experience, gained after receiving the minimum required degree and in a position essentially identical to an approved professional job category, may be credited for basic qualification and/or pay purposes for professional positions. General elementary experience (grades K-5) is not creditable for secondary positions (grades 9-12); secondary experience (grades 9-12) is not creditable for elementary positions (K-5). Both elementary and secondary experience are creditable for grades 6, 7 and 8.

Preschool experience, post degree and in a position essentially identical to an approved job category, may be credited only when the employee is hired for a preschool or kindergarten teaching position.

EDUCATION

Education Contract Personnel

Post secondary experience is not creditable for elementary or secondary positions, but is only creditable for adult educator positions.

Minimum qualifying experience is not experience for pay; if the experience is used to qualify for the position, it may not be used for pay increments.

Non-professional experience for non-professional positions must have been in a closely related, equivalent position (as determined by the school supervisor or education line officer) and comparable to the same or higher pay level.

An employee hired after the effective date of this section may receive up to five pay increments of experience, at the rate of one pay increment for each full calendar or school year, as appropriate, for work experience acquired prior to accepting a contract position. Credit for prior experience applies only to the initial full or part time, year long or school year contract.

Intermittent employees may, over several years, accumulate a significant number of hours worked. If these intermittent employees are subsequently hired for a full or part-time position in the same job category, they will receive experience credit for a school year if they have accumulated 1720 hours or for a full year after 2080 hours in pay status. Unless they have accumulated 1720 or 2080 hours, as appropriate, intermittent employees selected for full or part-time positions are treated as new hires in determining pay.

(a) For experience gained in a school setting in school year position, such as classroom and dormitory positions, prior experience will be credited for school year employment of 24 consecutive weeks or more. A full school year appointment of at least 36 consecutive weeks in administrative positions may be credited as a year's service for applicants being rated for year long positions.

(b) For other related experience not in a school setting or not in a school year appointment, prior experience will be credited for calendar year employment on a month by month basis. A minimum of a 6 hour day may be credited as full-time experience if the employer considered it to be full-time.

(3) Prorated Pay. Employees on a school year contract, or status quo employees subject to furlough, may elect to have their basic pay prorated over a 12-month period. Such election must be made within 30 days prior to the beginning of the school term. An employee may further elect to be paid in one lump sum at the end of the school term for the remaining amount of basic compensation otherwise due for the school term, provided notice is given at least four weeks prior to the end of the school term.

EDUCATION
Education Contract Personnel

(a) The election may be changed once during the school year provided notice is given by the first pay period in January.

(b) Employees are required to make an election annually. No employee shall suffer a loss of pay or benefits because of electing to have his/her pay prorated.

(4) Employee Benefits and Tax Withholdings. Contract employees are entitled to fringe benefits and their salaries/wages are subject to tax and other deductions prescribed by Federal, State and local laws.

(a) Continuing employees such as full-time and part-time year long and school year employees, are entitled to retirement, life insurance and health benefits. Retirement, health benefits and life insurance coverage for school year employees continue when they are placed on non-pay status or occupy a short-term contract during the summer months. Employees must elect to be covered for health and life.

(b) Non-continuing employees, such as short-term employees, temporary employees, and intermittent employees are not entitled to retirement, life insurance, or health benefits. However, temporary employees become eligible for enrollment in the health benefits program after one continuous year of employment, excluding any break in service of five days or less. These employees must register to enroll within 31 days after becoming eligible. Temporary employees on school-year or year-long contracts are entitled to leave, while other non-continuing and intermittent employees are not entitled to leave.

(c) All wages are subject to local, State and Federal tax deductions, as applicable; deductions for health and life insurance benefits as authorized; and retirement or FICA deductions, as applicable. Withholdings for life insurance and health benefits will be prorated for school year employees. Deductions will not be made for life and health insurance for school year employees who continue on short-term contracts for workshop or summer employment. Retirement and FICA deductions are not prorated. Service credit for retirement automatically extends over periods in a non-pay status which do not total over six months in any calendar year.

C. Education Pay Schedule Increments. Employees paid under the education pay schedule receive pay increments in addition to the base for their pay level at the time of the initial contract and each subsequent contract based on the following criteria:

- Prior experience
- Contract renewal incentive
- Incentives for education

After the initial appointment, increments are added only at time of contract renewal.

EDUCATION
Education Contract Personnel

(1) Calculation of proper increment. To calculate the proper increment that an employee is to receive, determine the number of increments for which the application and accompanying transcripts qualify. Then, add this number of increments to 01, the base increment.

Example: A clerk qualifies for three increments in the prior experience category and one increment for education, for a total of four increments; the proper increment and level would be 01/05, or Level 1 increment 5.

(2) Prior Experience. As described in 11.49B(2).

(3) Education Incentives. Employees paid on the Education Pay Schedule may qualify for education incentives based on related post-secondary education. To be creditable, education and training must be granted by an institution of post-secondary education accredited by a recognized national or regional accrediting organization (recognized by the U. S. Department of Education) and must be directly related to education or in technical area(s) related to the position. Completion of formal apprentice training, journeyman licenses and master crafts licenses are credited as described below.

For vocational/trades instruction not reported in semester hours, successful completion of a full time certificate program will be converted to semester hour equivalents at the rate of five semester hours credit for each month of full-time instruction (approximately 8 hours per day). Technical or trades courses not leading to a certificate will be credited at a rate of one semester hour of credit for each 40 successfully completed classroom/instructional hours. Credit will not be granted for training not completed successfully and/or certificates not granted or received.

Employees are encouraged to have courses pre-approved for credit by the appropriate school supervisor or Education Line Officer prior to enrollment in order to avoid later disputes over creditability. Such pre-approval must be in writing to assure creditability.

The number of pay increments listed below for each education level is the maximum number of pay increments for which an employee shall be credited for educational purposes. The employee will receive increments for his/her basic education requirement only in Pay Levels 01 and 02 (group (a) below) or when a doctoral degree is required for Pay Levels 04 through 09 (group (d) below).

(a) Employees in positions at Levels 01 and 02, which do not require a bachelor's degree, journeyman's license or equivalent as a minimum requirement for entrance, shall receive pay increments as follows:

High School diploma or GED	1 increment
HS plus 15 semester hours (or equiv)	2 increments

EDUCATION
Education Contract Personnel

HS plus 30 semester hours (or equiv) OR completion of apprenticeship	3 increments
45 semester hours or equivalent	4 increments
A.A. Degree OR 60 semester hours OR journeyman license	5 increments
96 semester hours OR masters license	6 increments
B.S. Degree or 135 semester hours or equivalent	7 increments

(b) Employees in positions at Levels 03 through 05 which do not require a bachelor's degree, journeyman's license or equivalent as a minimum requirement for entrance shall receive pay increments as follows:

15 semester hours or equivalent	1 increment
30 semester hours OR journeyman license	2 increments
45 semester hours or equivalent	3 increments
A.A. Degree or 60 semester hours OR masters license	4 increments
96 semester hours or equivalent	5 increments
B.S. Degree or 135 semester hours or equivalent	6 increments

(c) Employees in positions at Pay Levels 03 through 06 which do require a degree, journeyman's license or equivalent shall receive pay increments for related advanced training or graduate work/ degrees as follows:

B.S. degree or journeyman's license plus 15 semester hours	1 increment
B.S. degree or journeyman's license plus 30 semester hours	2 increments
B.S. degree or journeyman's license plus 45 semester hours OR Masters degree in related field OR Masters license	3 increments
Masters degree or master's license plus 15 semester hours	4 increments

EDUCATION
Education Contract Personnel

Masters degree or master's license plus 30 semester hours OR Completion of approved university six-year program	5 increments
Masters degree or master's license plus 45 semester hours OR Completion of six-year program plus 15 semester hours	6 increments
Earned doctoral degree	7 increments

(d) Employees in Pay Level 04 through 09 positions, which require a Masters Degree or higher, or equivalent licensure or experience, will qualify for pay increments for related post master's graduate courses/degrees as follows:

Masters degree plus 15 semester	1 increment
Masters degree plus 30 semester hours OR Completion of approved six-year programs	2 increments
Masters degree plus 45 semester hours OR Six year program plus 15 semester hours	3 increments
Earned doctoral degree	4 increments

(4) Contract renewal and longevity increments. Employees paid on the Education Pay Scale who receive a performance rating of "Results achieved" receive one additional pay increment for longevity at the time a new contract is issued. In addition, employees with a performance rating of "Results achieved" are credited with an additional contract renewal increment for each of their first four contract renewals. No more than four contract renewal increments are authorized during an employee's contract educator career.

At the time of contract renewal, an employee may receive one, more than one, or no increments for contract renewal, not to exceed the top increment of the pay level. Incentives may be earned for longevity, contract renewal and/or additional education and will be credited at only at the start of a new contract as described herein. To qualify for a contract renewal incentive, the employee must: (a) be in pay status a minimum of 24 consecutive work weeks, not including summer short-term contracts, and (b) must have been rated "Results Achieved" on his/her summary performance evaluation.

Example: An employee in Education Pay Level 03 renewing a contract for the fourth year may receive one increment for renewing, one increment for longevity, and one increment for an additional 15 related graduate hours for a total of three increments above the previous contract.

EDUCATION

Education Contract Personnel

Movement to another position or to some other type of contract at the same, higher or lower level during a contract period is not a contract renewal and incentives are not added. Incentives are added, however, when an employee moves to another position at the end of his/her current contract if he/she is otherwise entitled to a contract renewal increment.

D. Office of Indian Education Programs Teacher/Homeliving Specialist and Counselor Pay Scale Increments. Employees paid under the OIEP teacher/homeliving specialist and counselor pay schedules (teachers, counselors and homeliving specialists) are placed in a pay level based on their education level and receive pay increments for longevity only. To be creditable, degrees and graduate hours/degrees must have been earned at a university accredited by a recognized national or regional accrediting organization and must be related to education or the teaching/counseling field in which employed.

(1) Prior Experience. A teacher, homeliving specialist or counselor paid under this pay schedule will be given credit for up to five pay increments at the rate of one pay increment for each full school year of teaching or counseling experience acquired prior to accepting a teaching or counseling position with OIEP; crediting for prior experience applies only to the original full time contract. To qualify as prior experience, the previous position must have been after earning a bachelor's degree and in a teaching or counseling position at an appropriate instructional level. Professional preschool experience is creditable only for preschool and kindergarten positions. Elementary experience is creditable for grades kindergarten through eight. Secondary experience is creditable for grades seven through twelve. Post secondary experience is not creditable except for adult educator positions, as OIEP has no other post secondary contract positions. Additionally, no more than three years of teaching experience is creditable as prior experience for a counseling position.

(2) Longevity Increase. Longevity increases are effective on the starting date of the contract and are earned at the rate of one increment for each full contract year for the first 14 years (increment 2-15); and one increment for each five contract years to attain increments 16, 17 and 18. To qualify for a longevity increase, an employee must be in pay status a minimum of 32 continuous work weeks, not including any summer short-term contract, and must earn a "Results Achieved" on the summary performance rating.

11.50 Contract Revision or Adjustment. There may be specific instances where the amount of compensation outlined in the renewed contract issued prior to the end of the school year may need adjustment or revision. For example:

A. If the employee has earned additional pay increments or would move to a new pay level based on education completed after contract renewal but prior to the beginning of the school term, the employee's contract will be amended to reflect the new rate of pay. The employee must provide an official transcript to the supervisor and a copy to the Personnel Office by September

EDUCATION
Education Contract Personnel

30 or no increment(s) will be granted until the following contract renewal. Credits completed during the school year or those not received by September 30 by the supervisor and Personnel Office will not be recognized until the following contract renewal/school year.

B. Administrative error.

C. Establishment or change of a staffing differential under 62 BIAM 11.52.

D. Selection from a certificate for another position at a higher pay level.

E. If an employee is selected by means of a multiple pay level job announcement, the employee may not be advanced in his/her position until the next contract renewal after meeting all the requirements for the next higher pay level. This may result in an individual spending more than one contract term at the lower level.

11.51 Pay for Short-term Contracts for School Year Educators.

A. Employees who work on a short-term contract during the summer, the duties of which are similar to their regular position (e.g., a teacher who teaches in the summer session), will have their pay set at the previous school year rate. Contract renewal incentives are not added to this short-term contract.

B. An employee on a short-term contract immediately preceding a school year contract and which is in connection with the new school year contract (e.g., a coach who must return to school two weeks early) shall have pay set at the new school year rate which includes contract renewal incentives.

C. Employees who work on a short-term contract during the summer, the duties of which are not related to their regular contract, will have their pay set at the level of the short-term position, using the provisions of 11.49, during the duration of the short-term contract. If at the same level as their regular position, they will be paid at the preceding contract rate. Contract renewal incentives are not applied.

D. Status quo employees who work on a short-term contract during the summer months will be paid at their current rate of pay if the summer job is in the same or equivalent grade level as their regular position. If the short-term contract position is higher or lower than the status quo employee's regular position, the provisions of 11.49 will apply. Status quo employees will retain their status quo condition when returned to their regular position at the end of the short term contract.

11.52 Staffing Differentials. A staffing differential may be established to help meet essential staffing requirements. This additional differential may be

EDUCATION
Education Contract Personnel

approved where staffing problems are caused by either (1) environmental/working conditions (including higher paid subordinates), or (2) higher non-Federal pay rates for comparable levels of work in the nearest public school, or (3) both of these factors. Staffing differentials authorized under this section are changes in basic pay. All differentials must be approved by the appropriate school board, school supervisor and the Education Line Officer or Director as second level supervisor, except that the Director may approve differentials as first level supervisor when appropriate.

Upon the request of the appropriate school board and the school supervisor and/or Education Line Officer, the Education Line Officer (for school positions other than school supervisor or agency positions directly supervised by the Education Line Officer) or the Director (for school supervisors or Education Line Office employees) shall establish a staffing differential not to exceed 25 per cent of an employee's rate of basic compensation. Should the Education Line Officer or Director fail to act on the request by the end of the 60th day after receipt, the request shall be deemed approved as requested.

A. Requesting Staffing Differentials. Any request for staffing differentials from an appropriate school board and the school supervisor or Education Line Officer shall be submitted to the Education Line Officer or to the Director for approval, as appropriate. Each complete request shall be approved unless (a) the beginning salary of similar position(s) at the public school(s) nearest the requesting Bureau school/Education Line Office does not exceed the Bureau's beginning salary for the same position by 5% or (b) the beginning salary for the position is less than 5% more for the same position and the Bureau school cannot document difficulty in recruiting or retaining the staff for the position(s). All requests for these differentials will include the following information where relevant to the staffing problem, along with any additional justification considered appropriate.

(1) Requirements for all differentials:

(a) Identification of the position(s) by title, specialty, and pay level for which the staffing difficulty exists. Specify whether the staffing problem is one of recruitment or retention based on unusually difficult working or living conditions or the geographic isolation of the work site.

(b) Current compensation in effect for the positions covered by the request. This will include pay and any additional compensation currently authorized, such as a previously authorized staffing differential.

(c) Compensation being paid for comparable positions in the nearest public school(s) that is(are) the primary competitor(s) for well-qualified educators. In this regard, compensation includes all direct and indirect payments, such as base pay, housing provided by public school districts, and other pay or pay-related benefits.

EDUCATION
Education Contract Personnel

(d) The specific staffing differential that is being requested. This is a percentage of the base pay. Not every position at a school needs to be included in the request. In fact, it would be rare for every position at a school to qualify for the staffing differential.

(e) Documentation of school board approval of the differential.

(2) Additional requirements for recruitment differentials:

(a) The number of vacant positions, by title, specialty, and pay level that would be filled immediately if an adequate supply of well-qualified applicants were available. The number of vacant positions reported will be those that are established and funded but unfilled due to staffing difficulties.

(b) Explanation of recruiting actions taken to attract well-qualified applicants and the results of those actions; i.e., number of applications received and the quality of the applicants.

(3) Additional requirements for retention differentials:

(a) Turnover rate by title and/or specialty, and pay level for the positions for which the staffing difficulty exists. Turnover rate data will, as a minimum, include one school year. It is also desirable to be able to compare turnover rates with previous school years in order to identify turnover trends; OR

(b) A description of the geographic and environmental conditions that exist at the post of duty if used as a basis of this request. This will include such factors as climate, isolation, recreation facilities, opportunities for participation in community and social activities, housing availability and quality, and availability and quality of food and other consumer goods and services; AND

(c) A description of any factors which influence the quality of work life and the conditions (physical plant, class size, and related factors) under which the work is performed that may have a bearing on attracting and retaining a quality work force.

(d) For supervisors where the rate of pay of a subordinate employee exceeds the top increment of the supervisor's pay level, a supervisory staffing differential for retention sufficient to raise the supervisor's pay to one cent per hour above the subordinate employee's pay, up to 25%, may be granted. This adjustment is based on the subordinate employee's actual earned hourly rate of pay (or if the subordinate is a teacher, counselor or homeliving specialist, their modified daily rate), including

EDUCATION
Education Contract Personnel

staffing differentials and retained pay, but not premium pay. These requests must also show the affected supervisor's rate of pay, the rate of pay of the highest paid subordinate and the percentage staffing differential required to raise the supervisor's pay one cent per hour above the subordinate's pay.

B. Approval or Disapproval of Differentials. The Education Line Officer or Director shall notify the requesting school supervisor or Education Line Office when a staffing differential is approved/disapproved. If the Education Line Officer or Director fails to respond to a request within 60 days of receipt, the request shall be deemed approved. Upon approval or failure to respond, the school supervisor or Education Line Officer shall notify the affected school(s), personnel office(s) and payroll office of the approval. Payment of differentials shall be retroactive to the date of request or start of the affected contract(s), whichever is later.

C. Differentials for retention must be requested by September 30 in order to be effective for the current contract. Requests submitted after September 30 will be approved for the next contract term. Differentials for recruitment may be requested at any time prior to issuing a certificate for a vacancy.

D. Limits on Differentials. Staffing differentials will not exceed 25 per cent of the rate of basic compensation and may be reduced or abolished by the Director or Education Line Officer upon recommendation of the appropriate school supervisor or Education Line Officer when the need for a differential no longer exists or upon the request of the appropriate school board. The Education Line Officer shall notify the Union(s), the school(s), the appropriate personnel office, and PayPers, Denver, Colorado, as applicable, when a differential is reduced or abolished.

E. Additional Differentials. The Office of Personnel Management, at the request of the Secretary or his/her designated alternate, may establish under the provision of Section 5303 of Title 5, U.S.C., a special salary differential where warranted because of significant staffing problems caused by higher non-Federal pay rates.

11.53 Premium Pay. Contract educators are eligible for premium pay, including overtime, compensatory time, night differentials, Sunday pay, and holiday pay. Premium pay shall be under the provisions of and in accordance with the applicable rules, regulations and guidelines for Chapter 55 of Title 5, U.S.C., and the Fair Labor Standards Act (FLSA).

A. In order to be eligible for holiday pay, the employee must be in pay status on the preceding or following scheduled work day, or both. A holiday the day before the start of the contract or the day after the end of the contract is not paid.

EDUCATION
Education Contract Personnel

B. Contract education employees responding to fire alarms and subsequently actually engaged in firefighting are entitled to hazardous duty pay. Responding to a false alarm or attending training does not result in entitlement to hazardous duty pay since the employee does not actually engage in firefighting.

C. Fair Labor Standards Act (FLSA). All supervisors and all education positions Level 03 and above shall be exempt from FLSA. All employees paid on the OIEP Teacher/Homeliving Specialist or Counselor Pay Schedules are also exempt. All other contract educators are covered by the provisions of the FLSA.

D. Overtime/Compensatory Time. Contract educators who are eligible for premium pay, who are not otherwise compensated and who are required to perform duties after their normal tour of duty may request and be granted compensatory time in lieu of overtime pay. Earning of either overtime or compensatory time must be authorized in advance by the school supervisor or Education Line Officer as appropriate. Compensatory time may be used during the term of the contract at times when the work will be least disrupted, as jointly determined by the supervisor and employee. Compensatory time will not be carried over to the next contract year. This authority is an exception to the six-month restriction stated in 370 DM 550 Section 1.7.

(1). The supervisor must approve the use of compensatory time in advance and may determine when the compensatory time will be scheduled. When an exigency of the service prevents utilization of the compensatory time before the end of the current contract, compensatory time will be paid at overtime rates on the basis of the rate of pay at the time the overtime was performed.

(2). The Education Line Officer and the school supervisor, as appropriate, are authorized to grant compensatory time for overtime work approved in advance and performed by employees engaged in education activities.

(3). Whenever possible, employees shall be permitted to adjust their work schedules (with prior supervisory approval) to meet their requirements for religious observance.

11.54 Stipends. All educators, whether contract or status quo, under any pay schedule, are eligible for stipends for the performance of additional activities outside the regular tour-of-duty.

A. Stipends may be paid to any educator who performs additional activities outside his/her regular tour-of-duty which provide services to students or otherwise support the school's academic or social programs. Stipends may not be paid for these activities or services if they are carried

EDUCATION
Education Contract Personnel

out during the regular work day.

B. A stipend received by an education employee under this section is premium pay.

C. Those who are to receive a stipend may elect to receive the stipend in either of two ways:

(1) in equal installments over the term of the activity; or

(2) in a lump sum paid the pay period following the completion of the activity.

D. Stipends must be established and approved by the school supervisor or Education Line Officer and the appropriate school board in advance of the activity. All those who are to receive a stipend must submit the required election to their supervisor, who must forward the form to PayPers for processing no later than the pay period preceding the start of the activity.

E. Stipend schedules are established by the local school supervisor or Education Line Officer, with consultation of the employees and the school board.

11.55 Pay Conversion (Status Quo Employees). A status quo employee may request, under the authority of 25 CFR Part 38, to convert their present position to a contract position, or they may apply on a job announcement. To convert to contract in his/her present position, an educator must obtain approval from the school supervisor or education line officer, as appropriate, and the appropriate school board in advance. School boards may approve or disapprove a request for conversion for any reason and need not provide any reason for such approval or disapproval. The converting employee will enter the contract system using one of the following methods (whichever is more beneficial to the employee):

A. The employee may receive pay equal to the hourly rate that he/she is presently receiving in the General Schedule or Federal Wage System. If the current rate of pay falls between two hourly rates of the appropriate Pay Schedule, the employee will receive the higher pay increment; or

B. The employee may receive pay in accordance with the pay determination procedures of 62 BIAM 11.49, that is, starting with the appropriate base pay and adding increments for education and experience where appropriate. All experience in a comparable position within the Bureau is creditable. In addition, an employee can receive credit for up to five years of outside experience, if the work is comparable.

C. The limitations of the top pay increment or step of each pay level

EDUCATION
Education Contract Personnel

will not be exceeded, except for those employees with staffing differentials under 11.52.

11.56 Advancement. The advancement of a contract employee from one pay level to a higher pay level shall be accomplished in accordance with one of the following methods, whichever yields the greater benefit to the employee.

A. Education Pay Schedule.

(1) Any education employee may receive pay in accordance with the pay determination procedures of 62 BIAM 11.49, the same as a new hire, crediting all Bureau experience in a comparable position. Other Federal experience is counted as outside experience.

(2) An education pay schedule employee issued a new contract and advanced from one pay level to a higher pay level will receive at a minimum, a pay increase equivalent to four pay increments of the current pay level, or the base pay of the higher pay level, whichever is greater. If a four pay increment increase falls between pay increments of the new pay level, the higher pay increment will be the new basic rate of pay.

Any increments earned for such reasons as contract renewal, additional education, etc., will be added to the employee's present pay level prior to determining the pay increment entitlement at the higher level if advancement takes place after the end of one contract period and before the start of another.

(3) The advancement of a status quo employee from his/her current General Schedule (GS) or Coordinated Federal Wage System (WG, WL or WS) grade to a higher pay level contract position, as a result of selection from a certificate of eligibles, will be accomplished as follows:

The employee will receive, as minimum, a pay increase equal to two pay steps of the current General Schedule (GS) pay schedule, six per cent higher than the current rate of pay under the Coordinated Federal Wage System or the base pay of the new, higher pay of the Education Pay Schedule, whichever is greater. If a two pay step or six per cent increase falls between pay increments of the new pay level, the higher pay increment will be the new basic rate of pay.

(4) An employee hired in a multi-level position (e.g., principal 06/07) will be advanced from the lower to the higher level only at the next contract renewal after all requirements of the job category are met. Mid-contract advancement is not authorized.

B. OIEP Teacher/Homeliving Specialist and Counselor Pay Schedules.

There is no advancement within this pay schedule, although there is movement

EDUCATION
Education Contract Personnel

between pay levels. Refer to 62 BIAM 11.57 through 11.59 to determine movement between pay schedules or movement between pay levels.

11.57 Movement Between Pay Schedules. Generally, contract employees appointed to a new position under a different pay schedule are treated as new hires and "saved pay" provisions do not apply. Where applicable, the provisions of 11.52 may apply.

11.58 Change to Higher or Lower Level. If the responsibilities of an employee's position change and, as a result of proper application of the standards of the Education Position Categories and Qualifications Handbook, the employee's job level is increased or reduced, then the pay shall be adjusted accordingly at the beginning of the next contract period. Pay rates are based on the previous rate of pay as follows:

When an employee is placed in a higher or lower level position for reasons other than personal request or for disciplinary reasons and pay falls between increments in the new pay level, pay will be fixed at the higher increment.

11.59 Movement Between Levels on the OIEP Teacher/Homeliving Specialist and Counselor Pay Schedules.

A. Employees may move from one pay level to another only at contract renewal. An employee who moves from one pay level to another retains all previously earned increments, including the longevity increment for the school year just completed.

Example: A teacher, level 13/10, completes her masters degree in December. She remains level 13/10 until the completion of the current contract. When her contract is renewed for the following school term, she receives one increment for contract renewal and moves to level 14. Her new pay level and increment is level 14 increment 11 for the next school year.

B. Under the same conditions and time frames discussed under 11.51, contracts may be adjusted at the beginning of the contract term for education completed during the summer.

11.60 Credited Benefits for Current or Former Federal Employees.

A. Credited benefits for former contract educators. The determination of the pay increment of a former contract educator applying for a position of the same or equivalent level as the prior position will be treated as contract renewal, and all previously earned increments will be credited to the employee. Former contract employees appointed to a position at a different level will receive the higher of 1) their previous hourly rate or 2) the rate

EDUCATION
Education Contract Personnel

they would receive as a new hire, not to exceed the top increment of the appropriate pay level of the new position. An individual separated as a result of reduction in force after completing 24 weeks in a contract term may receive contract renewal or performance increments if rehired within one year in the same type/level position.

B. Credited Benefits for Current or Former Federal Employees.

GS - The pay increment of a current or former employee whose previous GS position was comparable to an existing education job category and who is appointed to such comparable contract position will be set equivalent to the current salary of the previous GS position. The adjusted salary must fall within the salary range of the appropriate pay level and will not exceed the top increment. These employees may choose to be treated as a new hire if it is to their benefit.

WG, WL and WS - The pay of a current or former Federal employee whose WG, WL or WS position was comparable to an existing education job category and who is appointed to such comparable contract position will be set equivalent to the current salary of the previous position. The adjusted salary must fall within the salary range of the appropriate pay level, and will not exceed the top increment. These employees may choose to be treated as new hires if it is to their benefit.

Other Federal Pay Systems - Due to the wide variations of such programs and the unique characteristics of Bureau education positions, there are no pay comparability credits for positions under other Federal pay systems, including the DOD educator systems. Such experience is counted as outside experience only.

11.61 Leave Administration. Leave will be administered on a uniform and equitable basis within the scope of the law and applicable regulations.

A. Supervisors and managers who are authorized to approve leave requests are responsible for ensuring that leave granted is in accordance with the applicable laws, regulations and negotiated agreements.

B. Each separate office or school will schedule school vacation leave, if applicable, in advance at the beginning of the school year by including this leave in the school calendar. School vacation leave may only be scheduled during periods when school is not in session and the students are not in dormitories. However, such leave may not be scheduled before or after the instructional year.

11.62 Types of Leave.

A. Personal Leave applies only to school-year employees. Full time

EDUCATION
Education Contract Personnel

school year employees receive 40 hours of personal leave. Part-time employees scheduled for more than 20 hours per week, and intermittent employees who work a regular schedule of more than 20 hours per week for at least 16 consecutive weeks, receive 20 hours of personal leave. This leave is credited provided the length of the contract exceeds 24 weeks. No liquidation or carry over of this leave is authorized.

(1) Authority to Approve: The school supervisor and Education Line Officer or someone acting in his/her place is authorized to approve personal leave.

(2) Procedures:

(a) Requests for personal leave will be made through the immediate supervisor by submission of an SF-71.

(b) The school-year employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested by the employee immediately after the emergency is known, if possible, and before leave is taken or as soon as the supervisor reports to work on the first official work day.

B. Sick Leave. Sick leave is approved absence due to injury or illness not related to or incurred on the job and for medical appointments. For full-time employees, sick leave will accrue at the rate of four hours for each of the bi-weekly pay periods that the employee is in pay status. For part-time employees scheduled to work in excess of 20 hours per week, and for intermittent employees who work a regular schedule of more than 20 hours per week for at least 16 consecutive weeks, sick leave is accumulated at the rate of three hours each bi-weekly pay period in pay status. Sick leave is accrued during any school year or year long contract regardless of actual length of contract. There is no limit on the amount of sick leave that may be carried over from one contract year to the next. No pre-credit, advance or liquidation of sick leave is authorized.

(1) Authority to Approve: The school supervisor or Education Line Officer or someone acting in his/her place is authorized to approve sick leave.

(2) Procedures:

(a) Requests for sick leave will be submitted on an SF-71 to the immediate supervisor. Employees incapacitated due to illness or physical impairment will notify the immediate supervisor of the incapacitation in accordance with leave procedures and will provide, upon return to duty, satisfactory evidence of illness or impairment. For three days or less, the

EDUCATION
Education Contract Personnel

employee's statement will suffice unless the restrictions of (c) below are met.

(b) A doctor's statement will be required for sick leave in excess of three consecutive work days. The employee's physician or a federally-selected physician may recommend, or may be asked to recommend, the total amount of sick leave necessary.

(c) When it appears that sick leave abuse may be occurring, the supervisor will provide the employee with counseling on the appropriate use of sick leave. If the supervisor determines that such leave abuse has occurred and that the sick leave abuse has continued after the counseling session, the employee may be placed on sick leave restriction for six months and be required to provide written medical documentation (a doctor's statement) for any sick leave taken. The employee will be notified in writing prior to the counseling session and prior to placement on sick leave restriction. Repeated abuse of sick leave after initial restriction may result in further restrictions and/or disciplinary action.

C. School Vacation Leave. Full-time and part-time school year contract employees paid on the Education Pay Schedule may receive up to 136 hours (17 days) of school vacation leave based on their tours of duty during the school year for use when school is not in session. School vacation leave is recorded on the basis of the employee's regular work schedule (e.g., an employee scheduled to work 32 hours per week cannot be paid for more than 32 hours per week school vacation leave). The schedule for the use of this leave is administratively determined by the approved school or office calendar and may result in some employees receiving fewer school vacation days/hours than other employees at the same or other locations. Most calendars include fewer than 17 days school vacation leave. School vacation leave may not be given before or after the instructional year, but only during the instructional year.

Contract educators paid on the Teacher/Homeliving Specialist or Counselor Pay Schedules do not receive school vacation leave.

(1) Authority to Approve: The school or office calendar which is proposed by the school supervisor and approved by the local School Board will determine the dates of the school vacation leave. No other official action is necessary to approve the leave. Some employees may have special dates administratively determined for their school vacation leave dates if they work other than a regular school year or schedule. The immediate supervisor of these employees will be responsible for determining their leave dates with concurrence of the school supervisor and approval of the appropriate school board.

(2) Procedures: The supervisor of the employee will make the

EDUCATION
Education Contract Personnel

employee aware of these days and when they are scheduled. No other official notice or request for leave is necessary. Approved school calendars must be submitted to the Education Line Officer by May 1 of each year.

D. Vacation Leave applies only to year-long contract educators.

(1) Year-long contract employees paid on the Education Pay Schedule will receive vacation leave, which will be scheduled and used to the greatest extent possible during periods when school is not in session and/or the students are not in the dormitories. A full-time employee will be authorized 160 hours for each of the first five years; and 200 hours for the sixth and future years of employment. Part-time year-long employees scheduled to work in excess of 20 hours per week will be authorized 80 hours for the first five years; and 100 hours for six or more years employment. Employees paid on the Teacher/Homeliving Specialist and Counselor Pay Schedules do not receive vacation leave.

(2) In determining years of service, both contract educator service and previous permanent civilian Federal service is creditable. School year and year long contract service is considered permanent service for this purpose. One year of credit is given for a full time contract of 24 weeks or longer; no credit is given for contracts of less than 24 weeks.

(3) Vacation leave is precredited on the effective date of the year long contract, except that the contract must exceed 24 weeks for the employee to receive vacation leave. If a year-long employee resigns or leaves by other means before completing 24 weeks of his/her contract term, any vacation leave used shall be deducted from the final salary check or funds remaining in his/her retirement account.

(4) Year long employees may carry into succeeding years up to 200 hours of vacation leave. Leave in excess of 200 hours at the end of the contract year will be forfeited. Leave unused at the time of separation will also be forfeited.

(a) Authority to Approve: Vacation leave shall be scheduled and approved or disapproved in advance by the school supervisor or Education Line Officer or designed alternate.

(b) Procedures: Requests for vacation leave will be submitted to the immediate supervisor in advance for approval or disapproval.

E. Approved Leave Without Pay (LWOP). An approved absence without pay is any temporary absence from duty in a non-pay status officially approved and granted upon the employee's request. The minimum charge for LWOP will be one hour.

EDUCATION
Education Contract Personnel

(1) Authority to Approve: The immediate supervisor is authorized to approve up to one week leave without pay. The school supervisor or Education Line Officer, as appropriate, is authorized to approve leave without pay in excess of one week. Approval of LWOP is discretionary with the appropriate supervisor, based on the needs of the program.

(2) Procedure: The employee requests leave from his/her immediate supervisor, making the supervisor aware of the purpose for the leave. All leave must be approved in advance; if not approved prior to the absence, absence without leave (AWOL) may be charged. An SF-52 must be initiated if LWOP will exceed 30 days in any contract term.

F. Family and Medical Leave. Family and medical leave is authorized up to twelve work weeks for year long employees and up to nine work weeks for school year employees in any one contract year. Part time permanent employees may take the same twelve or nine work weeks, with the leave authorized for the same number of hours per week as the employee is regularly scheduled. Leave may be taken for one or more of the following reasons: the birth of a child of the employee and the care of such child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent of the employee, if such person has a serious health condition; or a serious health condition of the employee that makes him/her unable to perform the essential functions of his/her position.

This leave is not in addition to personal, vacation, annual (as described in 11.62K), and sick leave, but may include any combination of personal, vacation, annual (as described in 11.62K), sick and approved leave without pay. The amount of leave approved will be the minimum necessary to deal with the condition.

(1) Authority to Approve: The school supervisor or Education Line Officer or someone acting in his/her place is authorized to approve family and medical leave.

(2) Procedures: Requests for family and medical leave will be submitted to the immediate supervisor in advance for approval, specifying what type of leave will be used. Each school/agency will determine its own procedures for approval. These procedures may include a requirement for medical confirmation of need.

G. Court Leave. Court leave is the authorized absence without charge to other leave or loss of compensation granted to an employee for jury duty or as a non-official witness for the United States, District of Columbia, Tribe or other government Agencies.

(1) Authority to Approve: The school supervisor or education line officer will have the authority to approve court leave.

EDUCATION
Education Contract Personnel

(2) Procedure: The employee will provide the supervisor with adequate proof of the requested court appearance or jury duty and request the approval of the absence.

H. Military Leave. Military leave is the authorized absence without charge to other leave or loss of compensation granted to the employee otherwise eligible for leave benefits who is a reservist of the Armed Forces or member of the National Guard for active duty or for training. Military leave may be granted for not more than 15 calendar days in any calendar year, except under specific provisions stated in Public Law 90-588, dated October 17, 1968, which allows an additional grant not to exceed 22 workdays in any calendar year. Employees are requested to schedule their military leave at times other than when school is in session.

(1) Authority to Approve: The school supervisor and Education Line Officer or someone acting in his/her place is authorized to approve military leave.

(2) Procedure: The employee will request the military leave and provide his/her supervisor with a copy of the official military orders.

I. Administrative Leave. An employee may be excused, in pay status, from the performance of regular duties to carry out other officially recognized tasks. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave may be granted in cases where a school/office is closed during emergency situations. Such situations may include severe weather conditions in which a governmental authority (state or county) has determined that travel in the affected area is not permitted. Administrative leave for emergency reasons shall not be approved for more than three consecutive days per contract year. Such leave shall not reduce the minimum number of instructional days required by regulation, and when administrative leave has been approved, the instructional days may not be made up by lengthening the instructional day. Normally such days are made up by instructing on days scheduled as school vacation days or by adding extra days to the end of the school year for "snow days." No additional pay is earned by employees paid a daily rate (teachers, homeliving specialists and counselors) for these additional days, nor is overtime or compensatory time earned.

(1) Authority to Approve: The school supervisor or the Education Line Officer will have the authority to approve the leave.

(2) Procedure: Each approving official will determine when the leave will be approved. However, closure of a school requires notification and approval by the Education Line Officer. All approved administrative leave must be reported to the Education Line Officer.

J. Absence Without Leave (AWOL). Absence without leave from the work

EDUCATION
Education Contract Personnel

site, for which advance authorization was not received, will be considered as time in an unauthorized, non-pay status and is not an approved type of leave. The minimum charge for AWOL will be one hour.

(1) Authority to Approve: The immediate supervisor will be responsible for seeing that each employee is charged absence without leave when the employee is absent from work without proper authorization.

(2) Procedure: The supervisor will make the employee aware that the employee has been absent without proper approved leave and that the AWOL was recorded. In addition, the supervisor may take action in accordance with 62 BIAM 11.78 through .84.

K. Leave Alternative for Status Quo Educators Converted to Contract under OIEP Teacher/Counselor Pay Schedule Prior to June 21, 1993. Status quo educators who elected to convert to a contract under P.L. 100-297 could, during the five years prior to June 21, 1993, elect to retain their status quo leave system and are precredited with 8 hours of annual leave per full pay period in pay status. Annual leave accrued under this alternative is not recorded or otherwise shown on the time sheets or leave and earnings statements, but is maintained locally by the supervisor. A record of annual leave earned and used will be maintained at the school and will not be recorded on the time sheet. All days shown as school vacation leave on the school calendar must be recorded as annual leave days on this record. Any annual leave earned during a contract year must be used during that contract year or it will be forfeited.

Employees converting after June 21, 1993, do not have this option and may not elect to retain their status quo leave system.

11.63 Applicability of Leave to Type of Appointment.

A. School-Year Employees On Education Pay Schedule. The following leave can be charged to school year employees:

- (1) Personal Leave
- (2) Sick Leave
- (3) School Vacation Leave
- (4) Approved Leave Without Pay
- (5) Family and Medical Leave
- (6) Court Leave
- (7) Military Leave
- (8) Administrative Leave
- (9) Absence Without Leave (AWOL)

B. Teachers, Homeliving Specialists and Counselors. The following leave may be charged to teachers, homeliving specialists and counselors paid on their pay schedules:

EDUCATION
Education Contract Personnel

- (1) Personal Leave
- (2) Sick Leave
- (3) Approved Leave Without Pay
- (4) Family and Medical Leave
- (5) Court Leave
- (6) Military Leave
- (7) Administrative Leave
- (8) Absence Without Leave (AWOL)

For those who converted under P.L. 100-297 as described in 11.68K:

- (1) Annual leave (no personal leave)
- (2) Sick Leave
- (3) Approved Leave Without Pay
- (4) Family and Medical Leave
- (5) Court Leave
- (6) Military Leave
- (7) Administrative Leave
- (8) Absence Without Leave (AWOL)

C. Year-Long Employees: The following leave can be charged to year-long employees:

- (1) Vacation Leave
- (2) Sick Leave
- (3) Approved Leave Without Pay
- (4) Family and Medical Leave
- (5) Court Leave
- (6) Military Leave
- (7) Administrative Leave
- (8) Absence Without Leave (AWOL)

D. Intermittent Employees. Leave system does not apply.

E. Part-Time Employees.

(1) The following leave can be charged to part-time employees (less than 21 hours work scheduled weekly):

- (a) Court Leave
- (b) Absence Without Leave (AWOL)
- (c) Approved Leave Without Pay (LWOP)
- (d) Family and Medical Leave

(2) The following leave can be charged to part-time employees with more than 20 hours work scheduled weekly:

EDUCATION
Education Contract Personnel

Same leave as school year or year long employees, based on type of contract

F. Short-Term Employees. The following leave can be charged to short-term employees:

- (1) Court Leave
- (2) Absence Without Leave (AWOL)
- (3) Approved Leave Without Pay (LWOP)
- (4) For school year employees on a short-term contract during the previous school year, accrued Sick Leave.

G. Temporary Employees. Same leave as school-year or year-long, as appropriate.

11.64 OIEP Leave Sharing Program. Contract education employees are eligible to participate in the leave sharing program. Participation is totally voluntary. The program may be established at an individual school or may be established at an Education Line Office to serve more than one school as well as eligible Education Line Office staff.

A. Leave Pool. The sponsoring school or Education Line Office will provide $\frac{1}{2}$ hour of leave per year per contract education employee in the leave sharing program at the site(s) served by the leave pool. The leave will be provided on the basis of the total contract employees on board on September 30 of each year. Any leave remaining in the pool as of June 30 of each year may be carried over into the pool the following contract term, with a maximum of 1 hour per eligible employee eligible to be carried over from one leave year to the next.

B. Leave Donation. Contract employees may donate personal, vacation or annual leave (credited under 11.66K) at any time within the contract year. Up to 120 hours may be donated by any one employee in any one contract year. Leave may be donated to the leave pool or to a specific authorized contract employee covered by the pool. Separating employees are encouraged to donate any leave which will be forfeited, subject to the 120 hour limitation.

C. Approval Process.

(1) A committee, which may be site specific or Education Line Office wide as the school(s) prefer, will consist of a minimum of one Education Line Office or school supervisory representative and two employee representatives. Each committee will determine employee eligibility and the allocation of the hours in the leave pool to eligible employees. One member will be responsible for all liaison with the servicing personnel office.

(2) Hours from the leave pool may be authorized as follows, with priorities determined by the individual committees:

EDUCATION

Education Contract Personnel

(a) Leave for Short-term Illness or Injury (less than three weeks incapacitation). Up to 20 hours of shared leave per individual may be authorized for short-term illness or injury during any contract term.

(b) Leave for Long-Term Illness or Injury (three weeks or more incapacitation). Up to 40 hours of shared leave per individual may be authorized for every three weeks incapacitation due to long term illness or injury during any contract term, to a maximum of 80 hours per contract term.

(c) Leave for Family and Medical Purposes. Up to 40 hours per individual may be authorized for family and medical purposes per contract year after the individual has used all available sick, vacation, annual and personal leave.

(3) Individual requests for shared leave will be submitted to the committee in advance for approval or disapproval. The committee will review the request and issue its determination within ten days. If approved, the committee will either authorize use of the leave pool or request leave donations from the employees eligible to donate to the program. Unused approved leave will be returned to the leave pool.

11.65 Leave Accrued Prior to Contract Appointment. The annual and sick leave accrued by a federal employee who transfers from their current leave system to this system without a break in service will be transferred and saved to his/her credit. The 240 hour limitation on annual leave does not apply to leave transferred under this provision. Such leave is available for use or may be saved until separation. However, planned and requested use of annual leave must be scheduled and used during non-instructional time. "Saved" annual leave will be paid at the final rate of pay upon separation and cannot be paid prior to separation; the employee is responsible for requesting this payment.

11.66 Re-credit of Sick Leave. Sick leave which remains to the employee's credit at the time of separation or end of contract year will be available for re-credit if the employee returns to a contract Education position or any Federal civilian position. Sick leave will not be paid upon separation.

11.67 Performance Appraisal. Performance appraisal requirements apply to all contract education employees in the Office of Indian Education Programs who are appointed, detailed or temporarily advanced for 90 consecutive days or more to one position.

11.68 Performance Appraisal Policy. Performance management is a process by which individual and organizational goals are communicated to employees; individual and team accountability for accomplishing organizational goals is identified; individual and organizational performance is evaluated and

EDUCATION
Education Contract Personnel

improved; and the results of performance management are used as a basis for appropriate personnel actions. Every Contract Education employee holding a year-long or school year contract shall be appraised at least annually based against predetermined performance elements and standards consistent with those duties. In annual planning sessions, the employee may assist the supervisor in identifying critical results and performance indicators. At a minimum, progress reviews will be held once every three months during the employee's first contract term of 24 weeks or more, and annually thereafter during each subsequent contract term.

11.69 Authority. The guidelines for a Departmental performance appraisal system outlined in 370 DM 430 are adapted for use in this manual for the Contract Education System under the authorities of 25 U.S.C. 2011.

11.70 Performance Appraisal Definitions.

A. Critical Result means a work assignment or responsibility that is critical to the accomplishment of organizational goals and objectives and critical to overall success in the position. It is of such significance that failure to accomplish this result may be cause for reassignment, reduction in pay level or removal; such actions may be taken without regard to performance on other assignments or responsibilities of the job.

B. Opportunity to Demonstrate Acceptable Performance means a 30 to 90 day calendar day period for the employee to demonstrate that he/she can accomplish the critical results of the performance plan after being notified of deficiencies.

C. Performance Indicator means a statement of performance expectations or requirements for the critical results of the position.

Performance indicators include quality, teamwork and customer satisfaction indicators.

D. Performance Plan means the employee's critical results and performance indicators as determined by the rating official.

E. Performance Rating means the formal and documented evaluation of an employee's performance of duty during a contract term.

F. Rating Official. The person who evaluates the performance of an employee and who assigns the summary rating, usually, the rated employee's immediate supervisor.

G. Rating Period. The established period of time for which an employee's performance will be reviewed and evaluated. For year long employees, the rating period is July 1 of a given year through June 30 of the

EDUCATION
Education Contract Personnel

following year. For school year employees, the rating period is from the start of the contract term to the end of the contract term.

H. Reasonable Time means the amount of time commensurate with the duties and responsibilities of the employee's position which provides an opportunity to demonstrate acceptable performance (30 calendar day minimum).

I. Reviewing Official. The person who reviews and approves or disapproves a summary rating of "Results not Achieved", normally, the rating official's supervisor. Another person(s) may be designated to perform the review function when warranted by the large number of rating officials supervised by any one reviewing official, so long as the reviewing official is located at a higher organizational level than the rating official.

J. Summary Rating means the overall and official performance rating ("Results Achieved" or "Results Not Achieved") assigned to describe the employee's overall performance at the end of the rating period or when an employee changes position after at least 90 days.

11.71 Performance Plan

A. Critical Results. At the beginning of the rating period, or at the time the employee and supervisor meet to discuss the summary rating for the prior rating period, the rating official will identify one to five critical results that the employee is expected to achieve during the rating period. These critical results may be either individual or team results. The rating official will document the critical results in Part 1 of the Employee Performance Plan and Results form within 60 days after the beginning of the rating period, and thereafter when the employee has a significant change in critical results.

B. Performance indicators. The rating official will indicate in Part 1 of the form the quality, teamwork and customer service performance indicators that apply to each critical result.

C. The employee and rating official will sign and date the performance plan in Part IV of the form. The employee's signature indicates that the performance plan has been discussed with the employee. It does not certify that the employee concurs with the plan. If the employee refuses to sign the performance plan, the rating official will note in Part IV of the form that the plan has been discussed with the employee.

D. The rating official will provide a copy of the form and performance indicators to the employee.

E. Professional educators who are involved in providing classroom instruction to students (normally teachers, teacher's supervisors and

EDUCATION
Education Contract Personnel

principals) must have a critical element requiring a satisfactory measure of student achievement.

11.72 Progress Reviews

A. Rating officials may obtain feedback concerning the employee's performance from the employee, internal and external customers, coworkers, team members, suppliers, and/or any other individuals who have knowledge of the employee's performance, as appropriate.

B. Rating officials must conduct at least three progress reviews during an employee's first contract term of 24 weeks or more, and at least one progress review each subsequent contract term.

C. At each progress review, the rating official and employee will discuss the employee's progress toward achieving critical results, any necessary revisions in critical results and any performance improvement or developmental needs.

D. At the conclusion of each progress review, the rating official and employee will initial and date Part II of the form. For employees who are achieving their critical results, progress review discussions may be summarized in Part B. For employees who are not achieving their critical results, the rating official will document the specific problem area(s), describe how performance must be improved in order to achieve results and state the period of time allowed to demonstrate this improvement.

11.73 Summary Rating

A. At the end of the rating period, the rating official will consider the employee's performance during the rating period, including any feedback received, and assign a rating in each critical result area. In the event that the employee does not have an opportunity to perform a critical result, no rating should be assigned and the words "Not Rated" should be written on the form.

B. An employee must have achieved all critical results in order to be assigned a summary rating of "Results Achieved." An employee who does not achieve one or more critical results will receive a summary rating of "Results Not Achieved."

C. For employees assigned a summary rating of "results Achieved," the rating official may include narrative comments in Part III of the form. For employees assigned a summary rating of "Results Not Achieved," the rating official must provide a written explanation describing the specific areas in which the employee has failed to achieve critical results.

EDUCATION
Education Contract Personnel

D. The summary rating will be discussed and signed by both the employee and the rating official. If the employee refuses to sign the rating, the rating official will note on the form that the rating has been discussed with the employee. The employee will be provided a copy of the rating at this time.

E. An employee who is dissatisfied with the rating may request reconsideration of the rating by the reviewing official. The employee's request for reconsideration must be in writing, must state the basis for the request and must be submitted to the supervisor and the reviewing official within 10 calendar days following the employee's discussion of the rating with the rating official.

F. After signature by the employee and the rating official, any summary rating of "Results Not Achieved", with the documentation for this rating and any request for reconsideration by the employee, will be forwarded to the reviewing official. The reviewing official will review the rating, with any documentation and/or request for reconsideration, and sign the form, making the final determination of the summary rating.

G. This determination of summary rating is final, except that employees in exclusive bargaining units may have reconsideration rights through negotiated grievance procedures.

H. Every supervisor who, for whatever reason, is leaving his/her position will conduct an interim performance appraisal prior to leaving for each employee supervised at least 90 days. In such cases, the completed form and supporting documentation will, after discussion with and acknowledgment by the employee in Section II of the form, be maintained in the performance file.

I. When an employee receives more than one written appraisal in different position (90 day details reassignments) at the same or similar grade level during an appraisal period, the results of all such appraisal will be combined by the rating official of record on the last day of the rating period in determining the final performance rating for the period.

J. If an employee remains in the same position during an appraisal period but has not been supervised at least 90 days by any one supervisor; is reassigned or promoted during last quarter of the rating period, may be extended up to but not exceeding the 90 days minimum time period for a formal appraisal.

K. The summary rating to be assigned an employee whenever a situation arises which might otherwise prevent the timely appraisal of the employee (such as the late appointment of the employee or frequent change in supervisor) is "Results Achieved." The sole and intended purpose of the presumptive rating is to assure that all employees have a rating in their OPF.

EDUCATION
Education Contract Personnel11.74 Summary Rating Records

The rating official will provide a copy of the summary rating to the employee and to the servicing Personnel Office after signature by the reviewing official. Summary ratings of record will be maintained in accordance with 5 CFR 293 for a period of four years.

11.75 Linkage of Summary Rating to Other Personnel ActionsA. Performance Awards

(1) An employee with a rating of record of "Results Achieved" who is at the top increment of the pay level may receive a performance award of up to 1½ per cent, a non-monetary award and/or a time off award.

(2) An employee with a rating of record of "Results Achieved" whose performance has been of exceptionally high quality and worthy of special recognition may receive a monetary award of up to 5%, or a non-monetary and/or time off award.

(3) To recommend a cash award up to 1½ per cent of base pay, the rating official needs only to complete a Cash Award Summary Sheet signed by the school principal or education line officer. For cash awards for more than 1½ per cent, only the Cash Award Summary Sheet is required, but the form must be signed by the education line officer.

B. Actions Based on Unacceptable Performance.

(1) If at any time during the rating period an employee's performance is determined to be unacceptable ("Results Not Achieved") in one or more critical results, the employee will be given a performance improvement plan and an opportunity of at least 30 days to demonstrate acceptable ("Results Achieved") performance.

(2) Failure of the employee to correct performance deficiencies within the specified period of time may be used as a basis for contract non-renewal or removal. In cases of removal of a non-probationary employee, management must notify the school board within 10 days and seek its concurrence, subject to management's appeal if the board does not concur. Contract non-renewals are subject to the normal procedures for non-renewal.

(3) If a summary rating is "Results Not Achieved," the employee may be given no more than one contract term to raise the summary rating to "Results Achieved." A second consecutive rating of "Results Not Achieved" shall result in non-renewal of the contract.

EDUCATION
Education Contract Personnel

11.76 Employee Discipline and Discharge Policies.

A. All OIEP staff will direct their efforts toward attaining and maintaining a constructive working environment in which all parties recognize and accept their responsibilities. When such standards are not met, it is essential that prompt and just corrective action be taken. OIEP's policy is to conform with standards of conduct and efficiency which will promote the best interest of the service.

B. Discipline and discharge will be administered fairly and equitably without regard to race, color, national origin, religion, sex, marital status, age, physical handicap, political belief, affiliation or activities. Disciplinary actions will be taken promptly as practicable and will be in compliance with these procedures. Where a disciplinary action or adverse action is warranted, the discipline will be in proportion to the character of the offense or series of offenses. (see Appendix F)

C. The private nature of disciplinary and discharge actions will be respected. The provision of the Privacy Act will be met to protect the rights of the employee.

D. Employees covered under the provisions of this section are excluded from coverage under 5 U.S.C. 7511 and 4303.

11.77 Responsibilities of Officials for Employee Discipline.

A. The Director shall be responsible for assuring fairness and equity in the structure and application of OIEP disciplinary policies and procedures and assuring that reconsideration of discharge actions referred to the office for reconsideration are reviewed and decided objectively.

B. The Education Line Officer and the Director, as appropriate, will be responsible for:

(1) Administering discipline/discharge in a fair, impartial and uniform manner and assuring that actions are in accordance with applicable regulations.

(2) Assuring that the regulations and other conditions of employment to be observed are made known to all employees within their jurisdiction.

(3) Carefully considering recommendations for discharge for cause actions and for making final decisions on proposed discharges.

(4) Reviewing disciplinary actions for conformance with established procedures and assisting supervisory and operating officials in

EDUCATION
Education Contract Personnel

determining the appropriate disciplinary action to be taken.

(5) Participating in grievance or appeal proceedings as necessary.

(6) Ensuring that proposals and decisions on suspensions and removal receive technical review by the servicing personnel office prior to issuance.

C. The school supervisor, and all supervisors responsible for initiating or deciding disciplinary actions are responsible for:

(1) Administering discipline/discharge in a fair, impartial, uniform manner and assuring that actions are in accordance with applicable regulations;

(2) Assuring that the regulations and other conditions of employment to be observed are made known to all employees within his/her jurisdiction;

(3) Carefully considering recommendations for discharge for cause of actions and for making final decisions on proposed discharges;

(4) Reviewing disciplinary actions for conformance with established procedures and assisting supervisory and operating officials in determining the appropriate disciplinary action to be taken;

(5) Participating in grievance or appeal proceedings as necessary.

(6) Ensuring that proposals and decisions of suspensions and removals receive technical review by the servicing personnel office prior to issuance.

D. All supervisors are responsible for:

(1) Keeping employees informed on employee responsibilities and regulations regarding conduct and discipline;

(2) Gathering, analyzing and carefully considering all facts and circumstances before taking or recommending disciplinary or discharge actions and assuring that efforts are made to minimize the impact of non-disciplinary discharges. They also follow established procedures in the preparation of disciplinary procedures;

(3) Correcting employees constructively, individually, and in private;

(4) Participating in grievance or appeal proceedings as necessary.

EDUCATION
Education Contract Personnel

E. Employees are responsible for:

(1) Performing their assigned duties conscientiously, competently, and professionally;

(2) Respecting the administrative authority of those directing their work and observing the spirit as well as the letter of the regulations governing their conduct. The OIEP will not interfere in the private lives of its employees except to the extent that the conduct may impact on job performance or reflect unfavorably on the Office of Indian Education Programs.

11.78 Level of Authority to Take Disciplinary Action.

A. Authority to effect oral admonishments and issue written warning notices and reprimands and to issue written proposals for suspension or removal is delegated to immediate supervisors.

B. Authority to make final decisions at the school level regarding suspension or discharge action will rest with the second level supervisor or the school supervisor, whichever is higher.

C. Authority to make final decisions concerning school supervisors or at the Education Line Office level regarding suspension or discharge actions will rest with the Education Line Officer, even when the Education Line Officer is the proposing official.

11.79 Determining the Disciplinary Action.

A. (1) The purpose of discipline is to correct the offending employee's behavior and maintain discipline and morale among other employees. Actions shall be taken when it is evident that other appropriate supervisory techniques have failed to correct a given problem.

(2) A disciplinary action is a reprimand or a suspension of 14 days or less. An adverse action is a removal, suspension of more than 14 days, reduction in pay level (not at the employee's request) or furlough of 30 days or less. Disciplinary or adverse action against any employee shall be taken only to promote the efficiency of the service and will be consistent with applicable laws and regulations.

B. The schedule of offenses (see Appendix F) is not intended to cover every possible type of offense and is not to be interpreted as precluding discipline/discharge if the charge is not specifically mentioned. Many of the items listed on this schedule combine several offenses in one statement connected by the word "OR". This makes the statement nonspecific. Only items which describe the employee's actual conduct are to be considered.

EDUCATION
Education Contract Personnel

C. Corrective actions range from reprimand to discharge, depending on the gravity of the offense, the past record of the individual, and the position of the employee; the penalty will be determined by the appropriate supervisory official. Corrective action means a letter of warning, letter of reprimand, suspension or discharge.

D. The specifics of a charge will be described in as much detail as possible after conducting an in depth investigation to obtain and document the facts. Each charge will cover the who, what, when, where and how of each offense with as much specificity as possible. A connection will be made between the charge and the resulting effect on the education program. A charge will be supported by the appropriate documented evidence, e.g., an employee should not be charged with excessive unauthorized absence unless the leave in question was disapproved and the employee was cited with "absence without official leave".

E. In making the determination on a reasonable penalty, you should consider any known factors which may be mitigating or aggravating to the specific situation. Mitigating factors tend to support the employee's case, and aggravating factors tend to justify the action or justify the imposition of a higher level penalty. These factors must be demonstrated by substantial evidence. In multiple charge cases where it is believed each charge warrants the penalty imposed, the proposal and decision letters should so state, so that charges dropped or not sustained do not cause immediate mitigation.

11.80 Types of Corrective Actions. Penalties cover a wide range from reprimand to discharge. Generally, there should be a progression in the assessment of penalties; however, an offense may be so grave as to warrant immediate formal action, including discharge. This range of penalties allows the selection of the penalty that best fits the offense.

A. Informal Disciplinary Actions.

(1) An oral admonishment is a conference between a supervisor and an employee. It is the least formal and least severe type of disciplinary action, having no procedural requirements, no prescribed format, and a high degree of flexibility. As a result of these characteristics, it should be applicable to many disciplinary situations and should produce the desired change in employee behavior, particularly when the employee has no previous history of violations. This is often the first step after a deficiency is noticed. The immediate supervisor will privately inform the employee that he/she is being orally admonished; bring the undesired conduct and/or performance to the employee's attention; explain to the employee what is expected of him/her; give him/her the opportunity to improve; and mention of the possible actions that will result if the unsatisfactory conduct and/or performance continues. The supervisor should keep a summary of the discussion on file for up to one year.

EDUCATION
Education Contract Personnel

(2) A written warning is a notice given to an employee whose actions warrant a more severe disciplinary action than merely an oral admonishment. The warning will be in the form of a letter explaining specifically and in detail what took place by date, time and nature of offense. It will advise the employee that a copy and any written response or explanation that he/she may make will be retained up to one year by the supervisor.

B. Formal Corrective Action.

(1) Reprimand. A letter of reprimand is a written disciplinary action given to employees for misconduct, which is temporarily recorded in the employee's Official Personnel Folder (OPF) for a period not to exceed two years.

(2) Suspension. A suspension places the employee involuntarily in a non-pay, non-duty status for a specific number of calendar days. A suspension will not be used unless the situation indicates that a lesser penalty is not adequate.

(3) Discharge. Discharge is an involuntary separation taken for very serious misconduct or for continued or repeated acts of misconduct of a less severe nature or for unacceptable performance. There are two types of discharge.

- (a) Discharge for cause;
- (b) Discharge for unacceptable performance.

11.81 Procedures for Disciplinary and Adverse Actions. The procedural steps set forth in this part are designed for timely, fair, and equitable processing of employees involved in a formal disciplinary or adverse action.

A. Written Warning. A written warning or notice is a statement given to an employee for an act of misconduct or performance deficiency when an oral admonishment has not caused improvement or would not be expected to do so. The warning notifies the employee of a standard which, if not adhered to, may result in stronger discipline being imposed.

(1) Procedures. The warning will be in the form of an official letter or memorandum describing the reasons for the warning. It will advise the employee that a copy of the letter of warning and any written explanation that he/she may make will be retained by the supervisor.

(2) Withdrawal of Warning. After one year, or when the employee leaves in less than one year, a warning will be removed from the files and destroyed if no further action has been taken on the case. If the employee's conduct so warrants, the warning may be withdrawn for destruction prior to one

EDUCATION
Education Contract Personnel

year. When the warning was issued by the employee's current supervisor, that supervisor may withdraw it. If the employee's current supervisor did not issue the warning, he/she may wish to consult with the previous supervisor who did issue it when withdrawing the warning.

(a) In determining whether a warning should be withdrawn early, consideration should be given to the fact that a removed or withdrawn warning memorandum may not be used to support future charges.

(b) When a warning has been withdrawn early and destroyed, the supervisory official will so inform the employee in writing.

(c) Since the warning will automatically be removed from the files after one year, a grievance may not be based on a supervisor's decision not to remove it earlier than the expiration date.

B. Reprimand. A reprimand is a written statement of censure given to an employee for misconduct, of such concern that a semi-permanent record of the incident should be established. This concern may also be due to repetitive minor incidents of misconduct.

(1) Procedures. A reprimand will be an official letter or memorandum describing the reasons for the action which is filed in the Official Personnel Folder (OPF) for a period of two years. It will advise the employee that a copy of the reprimand and any written explanation that he/she may furnish will be placed in his/her official personnel folder. The reprimand will also contain a statement of the withdrawal provisions.

(2) Withdrawal of Reprimand. After two years, or upon the employee's leaving the Federal service, whichever comes first, a reprimand for misconduct will be removed from the OPF and destroyed. If the employee's conduct so warrants, the reprimand may be withdrawn for destruction prior to the specified time period. When the reprimand was issued by the employee's current supervisor, that supervisor may withdraw it. If the employee's current supervisor did not issue the reprimand, he/she may wish to consult with the previous supervisor prior to withdrawing the letter.

(3) An employee may grieve a reprimand under a negotiated grievance procedure or the grievance procedure contained herein, whichever is applicable. Since the reprimand may be grieved under appropriate grievance procedures initially and will automatically be removed from the personnel folder at some given time not to exceed the specified time period, a grievance may not be based on a supervisor's decision not to remove the reprimand earlier than its expiration date.

C. Suspension. A suspension is an enforced temporary non-pay status and absence from duty. Such action is taken for serious misconduct or for

EDUCATION
Education Contract Personnel

emergency reasons. It may also be taken for continued or repeated acts of misconduct which appear to be a blatant disregard of requirements or which occur after prior efforts of counseling, warning and/or reprimand have failed. It is the responsibility of the proposing official to establish the case file at this point before taking this action.

(1) Procedure.

(a) The supervisor or official delegated authority to propose suspension will notify the employee by letter that suspension is being proposed and give no less than 21 days notice (or as applicable under a negotiated grievance procedure for covered employees) from employee's receipt of notice to the effective date of the decision. Where possible, the notice should be delivered personally to the employee. Written proof of receipt will be obtained.

(b) The notice will state the reason for the proposed suspension specifically and in detail and identify the length of the proposed suspension. The advance notice will tell the employee:

(i) that he/she has the right to respond orally and/or in writing and to submit affidavits in support of his/her response;

(ii) that he/she has the right to review the material relied upon to support the reasons for proposing the suspension; and

(iii) where the employee may review the material relied on to support the reasons given in the proposed notice;

(iv) how much time he/she has for submission of the response, to whom the oral and/or written response is to be submitted and by whom the response will be considered;

(v) if the employee is in active duty status, the notice will also tell the employee how much official time will be allowed to review the material relied on to support the reasons in the notice and will identify the person with whom to make arrangements for the use of official time. Official time to review the material will not exceed eight hours;

(vi) the notice will make it clear that it concerns only a proposed action. This will be made clear by a statement that it is a notice of proposed suspension and the employee's response will be considered before a decision is reached.

(vii) the employee has the right to be represented by anyone of his/her choosing, provided their choice does not constitute a conflict of interest or position or would not create unreasonable costs to the

EDUCATION
Education Contract Personnel

Government or unless priority work assignment precludes his/her release from official duties. The employee and representative, if any, are entitled to a reasonable amount of official time to present and the employee may consult with his/her immediate supervisor to arrange for the necessary duty time. If the employee is to be represented, the name, address and telephone number of the representative will be provided to the immediate supervisor. If the representative is a Federal employee, the representative will use official time only for the presentation.

(2) Employee's Response. The employee will be allowed a reasonable amount of official time, NTE eight hours, in which to prepare a response. The employee will have the right to respond orally, or in writing. The management official who will make the final decision on the proposed suspension will hear the employees's oral response and will receive and review the employee's written response. If the employee responds, the supervisor or management official will consider the response before reaching a decision on the proposed suspension.

(3) Decision Authority. A final decision on a proposed suspension will be made by a higher level official than the person who proposed the action, except that the Education Line Officer is the deciding official for all actions he/she proposes.

(4) Content of Decision Letter. The deciding official authorized to suspend the employee will give the employee a written decision before the suspension is effected and immediately after consideration of the written response and/or oral reply is received.

(a) The decision will state which of the reasons in the proposed notice have been found to be sustained.

(b) A less severe action (or no action) may be taken than was proposed in the proposal notice.

(c) The decision must include a statement to the effect that the employee responded and that the response was considered, or that no response was given, as the case may be. If the employee responds in writing and/or orally, the decision will mention both responses and will reflect an analysis of the replies as related to each of the charges. The absence of an employee's answer will not be construed as an admission of guilt.

(d) The decision will inform the employee specifically of the appeal rights to the suspension, the time limits governing the appeal, and where information may be obtained on how to pursue such an appeal.

(e) Where possible, the decision will be delivered to the employee and a written acknowledgment of its receipt will be obtained.

EDUCATION
Education Contract Personnel

(f) The effective date shall be no sooner than 30 days after the employee's receipt of the proposal.

D. Discharge.

(1) Discharge for Cause. Discharge for cause is an involuntary separation taken for very serious misconduct or for continued or repeated acts of misconduct of a less severe nature. Separation during probationary period is not discharge under this section.

(2) Discharge for Unacceptable Performance. Discharge for inadequate performance is an involuntary separation taken for failure to accomplish critical results as described in 62 BIAM 11.77.

(3) Discharge Procedure. The procedures set forth are to be utilized for both Discharge for Cause and for Unacceptable Performance. This procedure does not apply to separation during probationary period or to contract non-renewal.

(a) Notification of School Board. The appropriate School Board will be notified.

(i) The appropriate School Board will be notified immediately but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge. This notification must inform the board of the due date by which they must take action, which will be no later than the due date for the employee's response but at least 10 days from notification.

(ii) The appropriate School Board, under such uniform procedures as it may adopt, will issue a formal written certification to the school supervisor or the Education Line Officer, either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge. If the School Board disapproves the discharge, the deciding official must abide by the Board's decision, subject to the appeal rights described below.

(iii) The school supervisor initiating a discharge action may appeal the Board's determination within 10 calendar days of receipt to the Education Line Officer. The Education Line Officer initiating a discharge may appeal the Board's determination within 10 calendar days of receipt to the Director. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the School Board's determination by a notice in writing to the Board. Failure to act within such 20 calendar days will have the effect of approving the Board's determination. The decision of the Education Line Officer or Director, as appropriate, is

EDUCATION
Education Contract Personnel

final and is not subject to further appeal.

(b) Proposal to Discharge. The supervisor or official delegated authority to propose discharge will notify the employee by letter that discharge is being proposed. The employee will be given not less than 30 calendar days advance written notice of the proposed action. Where possible, the notice will be delivered personally to the employee and a written acknowledgment of its receipt will be obtained. This shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(c) Content of Proposed Discharge Notice. The proposed discharge notice will state the specific reasons for the proposed discharge. The advance notice will tell the employee:

(i) that he/she has the right to respond orally or in writing, or both, and to submit affidavits and other documentation in support of his/her response;

(ii) that he/she has the right to review the material in the case file relied upon to support the reasons for initiating the discharge; and where the employee may review the case file relied upon to support the reasons given in the proposed discharge;

(iii) how much time he/she has to submit the response; who will receive and consider the oral and/or written response with phone number and address; and who will be the deciding official;

(iv) if in an active duty status, how much official time will be allowed to review the material relied on to support the reasons in the notice and the person with whom to make arrangements for the use of official time. Official time to review the materials will not exceed eight hours.

(v) clearly state that it concerns only a proposed action and not a matter already decided. This will be made clear by the statement that it is a notice of proposed discharge and the employee's response will be considered before a decision is reached.

(vi) that he/she has the right to be represented by anyone of his/her choosing, provided his/her choice does not constitute a conflict of interest or position or would not give rise to unreasonable cost to the Government or unless priority work precludes his/her release from official duties. The employee and representative, if any, will be entitled to a reasonable amount of official time to present a response. The employee may consult with his/her immediate supervisor to arrange for the necessary duty

EDUCATION
Education Contract Personnel

time. If any employee is to be represented, the name, address, and telephone number of the representative will be provided to the immediate supervisor. The representative will only use official time for the presentation of the response. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(4) Employee's Response. The employee will be allowed a reasonable amount of official time, NTE eight hours, in which to prepare a response. The employee has the right to respond orally or in writing, or both. Normally, the management official who will make the final decision on the proposed discharge (deciding official) will hear the employee's oral response and will receive and review the employee's written response. In some cases, usually where distances are excessive, the deciding official may designate another management official not involved in the proposed discharge to hear the oral response. If the employee responds, the deciding official will consider the response before reaching a decision on the proposed discharge. A transcript or summary of an oral response will be documented and made a part of the discharge record and made available to the employee. The required transcript or summary of the oral response will be reviewed and considered by the deciding official before reaching a decision on the action.

(5) Decision Authority. A final decision on a proposed suspension will be made by a higher level official than the person who proposed the action, except that the Education Line Officer is deciding official for all actions he/she proposes.

(6) Content of Decision Letter. The deciding official authorized to discharge the employee will give the employee a written decision before the discharge is effected and after consideration of the written and/or oral response, if any. This official will be the next supervisory level higher than the official who proposed the discharge, except that the Education Line Officer may be both proposing and deciding official for discharge of employees under his/her immediate supervision.

(a) The decision will state which of the specific reasons in the proposed notice have been found to be sustained and which have been found not sustained.

(b) The effective date of the decision will be identified.

(c) The decision will include a statement to the effect that the employee responded and that the response was considered, or that no response was received, as the case may be. If the employee responds orally and in writing, the decision will mention both responses and will reflect an analysis of the replies as related to each of the charges. The absence of an employee response will not be construed as an admission of guilt.

EDUCATION
Education Contract Personnel

(d) The decision will tell the employee specifically of the appeal rights to the discharge, the time limits governing the appeal and where information may be obtained on how to pursue such appeal. It will include the name and phone number of the individual to contact regarding these procedures.

(e) In addition, the employee will be given notice of his/her pay status until the effective date of the decision and of his/her right to representation.

(f) A decision to take the action cannot be effected until at least 21 calendar days have elapsed from the date the employee received the proposed notice.

(g) The proof of acknowledgment will be obtained.

E. Other Separations.

(1) Separation as a Result of a Conditional Appointment. An individual who has applied at both the national and local levels will be appointed from a local list of applicants. The appointment will be conditional for 90 days. If the individual has eligibility at both levels, a determination will be made by the Director whether or not a more qualified individual is to be appointed to the position. Removal during the period will not be subject to appeal or grievance procedures. Upon notification of the availability of a more qualified applicant, the supervisor will issue the employee a letter indicating that because of this finding, he/she will be removed no later than the day preceding the entrance on duty of the other applicant.

(2) School Board Recommendation for Discharge. School Boards may recommend to school supervisors or Education Line Officer, as appropriate, the removal of a contract educator. These recommendations may follow any form internally established by the School Board or Tribal governing body. The official receiving a Board recommendation for removal shall acknowledge the recommendation in writing within 10 calendar days and proceed with a fact finding investigation. Within 60 calendar days, the official shall notify the School Board of his/her findings and final action taken. Any disciplinary action or removal proposed as the result of this recommendation and investigation shall be taken in accordance with the appropriate procedures.

(3) Separation for Abandonment of Position. When an employee abandons his/her position, he/she may be separated. The supervisor should attempt to determine an employee's intention when the employee fails to report for duty or to return from leave or from furlough. After a reasonable time (10 consecutive work days), if his/her intention cannot be determined, the separation should be made effective the last day of active duty or of approved leave, whichever is later. Notice of the Separation should be mailed to the employee's last known address by certified mail, return receipt requested.

EDUCATION
Education Contract Personnel

Failure to report to duty at the start of a new contract without contacting the school supervisor or immediate supervisor is considered abandonment of position and handled in accordance with these procedures.

F. Status of Employee Pending Inquiry or Investigation, or Pending Decision on Proposed Suspension or Discharge. Employees will be retained in a pay and duty status in their positions and at their current pay level pending inquiry or investigation or pending decision on a proposed action, except as described below.

(1) Suspension Because of Hazard. There may be a need to suspend an employee without pay indefinitely during the notice period of a removal or suspension action when the circumstances are such that retention of the employee at the duty station may be injurious to the employee, fellow workers, or the general public; may result in damage to Government property; or may be detrimental to the interest of the Government. Suspension with pay is used only to ensure that the employee is not in or creating a hazardous situation while a suspension without pay is being processed. Alternately, the supervisor may place the employee on administrative leave during this period if this is deemed beneficial for the program. Suspension with pay or administrative leave for these purposes should not exceed 14 days.

(a) Management may suspend an employee with pay because of hazard for such time as is necessary to effect a suspension without pay. This action will not require a written notice for removing the employee from duty status for up to 14 days.

(b) Because of the hazardous situation, Management may require the employee to answer the proposed action and furnish affidavits and other documentary evidence in support of the answers within such time as under the circumstances would be reasonable, but not less than seven days.

(2) Detail. The employee may be detailed to other duties or another location when the appropriate supervisory official decides that the employee's continued performance of the duties and responsibilities of the position may result in damage to Government property; may be detrimental to the interests of the Government; or may be injurious to the employee, fellow workers, students or the general public.

(3) Crime Provision. An employee need not be given the full 30 day advance written notice if there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment may be imposed. Under such circumstances, the employee may be given a lesser number of days advance notice if the circumstances are reasonable and can be justified. All other requirements for taking adverse action will be met.

G. Appeal Procedures. Education contract employees are excepted

EDUCATION
Education Contract Personnel

appointments, and as such, do not have appeal rights to the Merit Systems Protection Board. Employees will be provided full and impartial review under the grievance procedures outlined in 62 BIAM 11.84 through 11.92, or the appropriate negotiated grievance procedure, but not both. The individual has a right to appeal the final decision and have the merits of the case reviewed by the next higher OIEP supervisor not previously involved in the case.

11.82 Employee Grievance Policy.

A. Employees shall be treated fairly and equitably in all matters pertaining to their employment. Those who feel that they have not been so treated will have a right to present their grievance to appropriate management officials for prompt consideration and equitable decision.

B. Employees will designate representatives in writing to the deciding official.

C. Employees and their representative, if any, will be unimpeded and free from restraint, coercion, discrimination or reprisal in making or filing a grievance.

D. Impartial and prompt consideration will be given to all grievances. Every effort will be made to resolve employee grievances informally at the lowest possible supervisory levels and as early as possible after being made known to the immediate supervisor.

11.83 Employees Covered. The grievance procedure is available to all employees except those covered under negotiated agreements and status quo employees covered under 370 DM 771.3.

11.84 Grievance Coverage.

A. Matters covered. Except as provided in paragraph B, below, the OIEP grievance procedure covers any matter of concern or dissatisfaction to an employee if the matter is subject to the control of OIEP management, for which the employee seeks personal relief, or any matter where the employee alleges that coercion, reprisal or retaliation has been practiced against him or her.

B. Matters excluded. The OIEP grievance procedure does not cover the following:

(1) A decision which is appealable to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management or other appropriate authority outside the Department;

(2) The content of published agency regulations and policy;

EDUCATION
Education Contract Personnel

- (3) Non-selection for advancement from a group of properly ranked and certified candidates;
- (4) An action which terminates a temporary advancement within a maximum period of one school term and returns the employee to the position from which the employee was temporarily advanced;
- (5) Decisions regarding award recommendations for performance contributions, acceptance of employee suggestions or invention, or granting of cash or honorary recognition;
- (6) The content of critical results and performance indicators of an employee's position;
- (7) An informal warning or notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph 11.86B of this section;
- (8) A pay determination on a pay increase (or the lack of a pay increase) under any pay system;
- (9) Separation during any probationary period;
- (10) A performance evaluation, except as provided for in cases involving discharge;
- (11) The reasons for non-renewal of any contract;
- (12) Removal of a conditional contract employee;
- (13) An audit or investigation being made of any employee by the Office of Inspector General; the Attorney General; Department of Justice; or the Special Counsel, MSPB; or at the direction of the Director.
- (14) Relief specified that is not personal to grievant or is not subject to the control of management;
- (15) Any grievance presented by bargaining unit employees covered by a negotiated grievance procedure or status quo employees covered under other procedures.
- (16) Failure of employee to maintain required state certification resulting in termination or non-renewal of contract;
- (17) Failure of an employee to meet the requirements of a provisional contract resulting in termination or non-renewal of a contract;

EDUCATION
Education Contract Personnel

(18) A warning letter not removed from the supervisor's file prior to one year of the origination date.

(19) A reprimand letter not removed from the OPF prior to expiration date.

11.85 Responsibilities of Officials on Employee Grievances.

A. The Director will be responsible for:

(1) Developing and administering a grievance procedure which complies with the principles of fairness and equity;

(2) Assuring employees an opportunity to express their views regarding the procedure;

(3) Reviewing and making the final decision on grievances submitted to that level as outlined in this directive;

(4) Maintaining the grievance files for grievance submitted to this level.

B. The Education Line Officer will be responsible for:

(1) Administering the grievance procedure in a fair, impartial and uniform manner;

(2) Reviewing informal grievances properly submitted to the Education Line Officer and responding in writing to the grievant, including the reason for the decision.

(3) Investigating and documenting matters concerning the grievance if necessary.

(4) Determining acceptability of a formal grievance.

(5) Maintaining grievance files for which he is the deciding official.

(6) Making decisions in the grievance procedure as outlined herein or forwarding a grievance to the Director, when he/she disagrees with the recommendations of the Grievance Examiner.

C. The school supervisor who reports organizationally to the Education Line Officer will be responsible for:

(1) Reviewing the grievance received for acceptance or rejection;

EDUCATION
Education Contract Personnel

resolving informal grievances if possible and responding in writing to the grievant including the reason for the decision.

(2) Determining acceptability of a formal grievance and advising the employee of his/her right to appeal the rejection to the Education Line Officer if the grievance is rejected for any of the reasons authorized.

(3) Making the decision on the grievance to take the action requested by the employee, offer an alternate solution or deny the grievance.

(4) Maintaining all grievance files at the school level.

D. Supervisors will be responsible for:

(1) Obtaining and distributing copies of this procedure to all covered employees;

(2) Accepting, investigating and attempting to resolve informal grievances objectively and equitably within established time limits;

(3) Establishing and forwarding the grievance to the school supervisor for proper maintenance.

(4) Advising the employee of his/her right to appeal to the next higher supervisory level.

E. Grievance examiners are responsible for making an impartial and objective inquiry as to the merits of a grievance and for providing a report of findings and recommendations to the parties and the deciding official.

F. Employees who file grievances will be responsible for:

(1) complying with appropriate time limits established herein,

(2) furnishing sufficient detail and documentation to clearly identify the matter being grieved,

(3) specifying the personal relief being requested and

(4) designating their representations in writing, if any.

11.86 Definitions for Employee Grievances.

A. Bargaining Unit Employee means an employee included in an exclusive bargaining unit as determined by appropriate authority.

B. Deciding Official means an official designated to (1) receive and

EDUCATION
Education Contract Personnel

attempt to adjust formal grievances; (2) refer formal grievances to an examiner where necessary; and (3) decide formal grievances on the basis of examiners' reports. In all cases, the deciding official must be at the next higher supervisory level, except that Education Line Officers may be both proposing and deciding officials for employees under their immediate supervision.

C. Employee means a current or former contract Education employee of the Office of Indian Education Programs for whom a specific issue can still be appropriately resolved. Former employees must file a timely grievance concerning this matter for review under these procedures prior to separation in order to receive consideration.

D. Grievance means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of management.

E. Grievance File means a separate file, subject to the Privacy Act, which contains all documents related to the grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

F. Personal Relief means a specific remedy directly benefiting the grievant(s). It may not include a request for disciplinary action for another employee.

11.87 Criteria for Grievance Review. The following criteria will govern the review of grievances:

A. Prompt and fair consideration of each grievance.

B. Grievance examination will be carried out by a person(s) who has not been involved in the matter being grieved and who would not be considered to occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved.

C. Assurance to the grievant of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting a grievance;

(2) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that management may disallow the choice of an individual as a representative which would result in a

EDUCATION
Education Contract Personnel

conflict of interest or position, which would conflict with the priority needs of the agency, or which would give rise to unreasonable costs to the Government;

(3) A reasonable amount of official time to prepare the grievance if the employee is in a duty status; and

(4) The right to communicate with the servicing personnel office and/or counselors of the bureau.

D. Assurance to the employee's representative of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal; and

(2) A reasonable amount of official time to present the grievance if the representative is an employee of the OIEP and is otherwise in a duty status.

E. When a grievance is filed informally, a grievance file will be established and made available at the request of the grievant to the grievant and/or his/her representative for review and comment. A copy of this file will be given to the grievance examiner, if applicable.

F. After an employee places a grievance in writing, the employee is entitled to a written decision which includes a report of findings and reasons for the timely determination, made by the deciding official.

11.88 Grievance Rights and Procedures.

A. Employee Rights. An employee, or a group of employees acting as individuals, will be entitled to present a grievance under this procedure and management will accept the grievance if it is properly presented. Grievances presented by a group must be identical in all respects, or they will be considered individually.

(1) In presenting the grievance, the employees will have the right to be represented at their own expense and advised by a person of their choice providing there is no conflict of interest or position.

(2) If the employee is in active status, a reasonable amount of official time, not to exceed eight hours, will be granted to present the grievance. If a representative is chosen who is also covered by this directive, who would otherwise be in a duty status, the representative will also be granted a reasonable amount of official time, not to exceed eight hours. The Education Line Officer may disallow an employee's representative, whose activities as representative would cause a conflict of interest or an

EDUCATION
Education Contract Personnel

employee whose release from his/her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his/her release from official duties.

(3) The employee, in preparing and presenting a grievance, will be entitled to communicate with and seek advice from management officials who have been designated by the supervisor as having responsibility for providing such assistance. These sources provide procedural advice and factual information on subject matters for which they are responsible, but do not address the merits of a grievance.

B. When a unit of exclusive recognition exists, the negotiated grievance procedure will be the only procedure available to a covered employee for resolving grievances within its coverage.

C. The deadline for initial filing of a grievance may be extended by the management official receiving the grievance, upon written request by the employee stating the reasons.

D. Cancellation or Termination of Grievance Processing.

(1) A supervisor will cancel or terminate an informal grievance only when requested by the employee or if an informal agreement is reached.

(2) The appropriate management official will cancel or terminate a formal grievance:

(a) At the employee's request;

(b) When the employee's employment terminates, unless the relief sought by the employee involves a pay issue;

(c) Upon the employee's death unless the grievance involves a question of pay;

(d) If the employee does not furnish the required information and does not proceed with the advancement of the grievance within specified time limits; or

(e) When the specific relief requested by the employee is granted.

11.89 Informal Grievance Procedure (Step 1).

A. Presenting the Grievance.

(1) An employee may present a informal grievance, subject to

EDUCATION
Education Contract Personnel

section 11.86B.

(2) The employee must present an informal grievance within 10 days of the date of the specific act or occurrence or the date he/she became aware of it; a grievance must concern a particular act.

(3) The employee will present the informal grievance in writing for consideration. Informal grievances will be submitted to the employee's immediate supervisor (if the informal grievance involves the immediate or first line supervisor, it may be submitted to the next higher level of supervision).

(4) Informal grievances will not be initially submitted to the official who would make the final decision under this directive. The employee and his/her immediate supervisor are encouraged to settle informally prior to the employee filing a formal written grievance. The informal procedure will be completed before a formal grievance can be accepted by the next higher level supervisor.

(5) An employee will ensure that the supervisor is aware that a grievance has been presented, as opposed to a general complaint or an informal request for information or counseling.

(6) A grievance will not be rejected in the informal stage for any reason.

B. Consideration. The supervisor who receives the informal grievance will attempt to resolve it by discussing it with the employee and investigating the charges. The supervisor will notify the employee of the action taken within seven calendar days and tell the employee that if the solution is not satisfactory the employee may present a formal grievance within seven calendar days. The supervisor's response will be in writing and will include the reason(s) for the decision.

11.90 Formal Grievance Procedure (Step 2).

A. Presenting the Grievance. If the employee is not satisfied with the result of the informal procedure, he/she may present a formal grievance within seven calendar days of the date of receiving the supervisor's response concerning the informally presented grievance.

(1) If the grievance concerns an action effected through an advanced written notice, with a right to reply and final written decision, the grievance will be presented formally, without first following informal procedures. Such formal grievances will be submitted no later than 10 calendar days after the effective date of the action.

EDUCATION
Education Contract Personnel

(2) The formal grievance will be submitted (in writing through the immediate supervisor) on Form 5-6234, OIEP Grievance Form as shown in Illustration 37, to the school supervisor or, for school supervisors and Education Line Office employees, to the Education Line Officer.

(3) The grievance will include the name of the employee and representative, if any; the employee's position title and the organizational entity to which assigned; sufficient detail to identify and clarify the basis for the grievance (times, dates, names, place, and other pertinent data); a copy of the notice of decision on the informal grievance, or a statement to the effect that no notice was furnished in the allotted time; and a specific statement of the personal relief requested by the employee; employee's signature and date.

B. Acceptance or Rejection of the Grievance at Step 2.

(1) If the informal procedure has not been followed, the supervisor will return the grievance to the employee with advice that the grievance must first follow the informal procedure.

(2) If the grievance is not properly presented, the grievance will be returned to the employee for correction; the employee must then resubmit the grievance within three calendar days to continue the grievance procedure.

(3) If untimely, the supervisor will reject it and inform the employee in writing of a right to appeal the rejection to the next higher supervisor.

(4) If the matter is inappropriate for consideration under these guidelines, the supervisor will reject it and inform the employee in writing of the reasons for rejection and of the right to appeal the rejection to the next higher level of supervision.

(5) If the grievance is considered properly submitted, the supervisor will inform the employee in writing of its acceptance as a formal grievance.

(6) A grievance file must be established for each grievance accepted under the formal procedure. The file will be maintained and disclosed consistent with the Privacy Act and the Freedom of Information Act. The grievance file established is available to the employee and representative and must not contain any document that is not pertinent to the grievance.

C. Decision at Step 2.

(1) The supervisor receiving the grievance will attempt to resolve the formally presented grievance and will notify the employee in writing of

EDUCATION
Education Contract Personnel

the decision, the reasons for the decision and the action to be taken, if any, within 20 calendar days of the receipt of the grievance. The employee then has seven calendar days from the date notified of the decision at Step 2 to forward the grievance to the Education Line Officer or Director, as appropriate.

(2) If the grievance does not involve a loss of pay to that employee, the Education Line Officer or Director, as appropriate, will review the entire file and notify the grievant in writing of his/her concurrence or non-concurrence with the supervisor's decision within seven calendar days. The decision of the Education Line Officer or Director is final and not subject to further review. If the Education Line Officer is the Supervisor receiving the formal grievance, the review will be made by the Director, who will render a final decision which will not be subject to further review.

(3) If the grievance involves a loss of pay to the grievant, the Education Line Officer or Director may request/assign a grievance examiner within seven days of receipt of the employee's grievance to hear testimony and/or review the files in the grievance.

D. Grievance Examiner. When the grievance examiner begins the inquiry on an employee grievance, a copy of the grievance file will be given to the examiner. The grievance file will be the official record of the grievance proceedings and will contain all documents related to the grievance. The grievance examiner will be asked to conduct an inquiry into the grievance, complete the grievance file, and submit a report of findings and recommendations to the deciding official within 30 calendar days of assignment of the grievance.

E. Decision on the Grievance (Step 3).

(1) The Education Line Officer or Director, as appropriate, will determine the acceptance or non-acceptance of the examiner's recommendations and will notify the employee or employee representative of the final decision within 14 calendar days of the receipt of the report. This decision is not subject to further administrative review.

(2) When the Education Line Officer or Director is directly involved either as a proposing or deciding official, the final decision for acceptance or non-acceptance of the examiners recommendation will be the responsibility of the Director. The Director will notify the employee or the representative of the final decision within 14 calendar days of the receipt of the report. This decision is not subject to further administrative review.

