

RCW 28A.715.010 Authority to enter into compacts—Process—Rules—Retirement systems. (1) The superintendent of public instruction is authorized to enter into state-tribal education compacts.

(2) No later than six months after July 28, 2013, the superintendent of public instruction shall establish an application and approval process, procedures, and timelines for the negotiation, approval or disapproval, and execution of state-tribal education compacts.

(3) The process may be initiated by submission, to the superintendent of public instruction, of a resolution by:

(a) The governing body of a tribe in the state of Washington; or

(b) The governing body of any of the schools in Washington that are currently funded by the federal bureau of Indian affairs, whether directly or through a contract or compact with an Indian tribe or a tribal consortium.

(4) The resolution must be accompanied by an application that indicates the grade or grades from kindergarten through twelve that will be offered and that demonstrates that the school will be operated in compliance with all applicable laws, the rules adopted thereunder, and the terms and conditions set forth in the application.

(5) Within ninety days of receipt of a resolution and application under this section, the superintendent must convene a government-to-government meeting for the purpose of considering the resolution and application and initiating negotiations.

(6) State-tribal education compacts must include provisions regarding:

(a) Compliance;

(b) Notices of violation;

(c) Dispute resolution, which may include nonjudicial processes such as mediation;

(d) Recordkeeping and auditing;

(e) The delineation of the respective roles and responsibilities;

(f) The term or length of the contract, and whether or not it is renewable; and

(g) Provisions for compact termination.

(7) If a tribal school chooses to participate in the teachers' retirement system, the school employees' retirement system, or both, the state-tribal education compact must also include the following:

(a) Acknowledgment by the tribal school that it affirmatively chooses to participate in the teachers' retirement system, the school employees' retirement system, or both;

(b) Evidence that the person or persons who sign the compact on behalf of a tribe, dependent Indian community, or subdivision thereof have authority under tribal or community law to bind the tribe or dependent Indian community to all provisions in the compact, including any waiver of sovereign immunity;

(c) If the tribal school chooses to participate in the teachers' retirement system:

(i) Agreement by the tribal school that it meets the definition of an employer as defined in chapter 41.32 RCW;

(ii) Agreement by the tribal school to adhere to all reporting, contribution, and auditing requirements as defined in chapter 41.32 RCW, and all rules adopted under authority of RCW 41.50.050(5);

(iii) Agreement between the superintendent of public instruction and the tribal school that for the duration of the compact the school

will be a public school for the purposes of retirement plan membership as defined in chapter 41.32 RCW; and

(iv) Agreement by the tribal school that, at the request of the superintendent of public instruction, the tribal school will make available to the superintendent any records the tribal school has provided to the department of retirement systems as required under the reporting, contribution, and auditing requirements defined in chapter 41.32 RCW, and rules implementing that chapter;

(d) If the tribal school chooses to participate in the school employees' retirement system:

(i) Agreement by the tribal school that it meets the definition of an employer as defined in chapter 41.35 RCW;

(ii) Agreement by the tribal school to adhere to all reporting, contribution, and auditing requirements as defined in chapter 41.35 RCW, and all rules adopted under authority of RCW 41.50.050(5); and

(iii) Agreement by the tribal school that, at the request of the superintendent of public instruction, the tribal school will make available to the superintendent any records the tribal school has provided to the department of retirement systems as required under the reporting, contribution, and auditing requirements defined in chapter 41.35 RCW, and rules implementing that chapter;

(e) Agreement by the tribe or, if applicable, the dependent Indian community, to a limited waiver of sovereign immunity and consent to the jurisdiction of the Washington state courts for the purpose of enforcing the reporting, contribution, and auditing requirements defined in chapters 41.32 and 41.35 RCW and all rules adopted under authority of RCW 41.50.050(5);

(f) Agreement by the tribal school to dissolution procedures memorialized in the state-tribal education compact so that all parties are aware of their expectations and duties if the compact terminates or the tribal school chooses to no longer participate in the state retirement systems at a future date;

(g) Acknowledgment by the tribal school that it has been advised that choosing to no longer participate in the retirement systems may result in federal tax implications for the governing body and its employees that are outside the control of the state of Washington, the department of retirement systems, and the superintendent of public instruction, and that the tribal school is encouraged to seek counsel before agreeing to any dissolution procedures in the compact; and

(h) Acknowledgment by both parties that the pension plan participation portions of the state-tribal education compact are null and void if the federal internal revenue service issues guidance stating that any portion of those sections are in conflict with the plan qualification requirements for governmental plans in section 401(a) of the internal revenue code, and the conflict cannot be resolved through administrative action, statutory change, or amendment to the state-tribal education compact.

(8) For tribal schools that opt out of pension plan participation, such schools' employees shall have no right to earn additional service credit in the plan.

(9) The superintendent of public instruction shall adopt such rules as are necessary to implement this chapter.

(10) "Tribal school" for the purposes of this section means any school qualified to participate in a state-tribal education compact under this section. [2018 c 257 § 1; 2013 c 242 § 2.]

Contingency—Conflict with federal law—2018 c 257: "The department of retirement systems shall make reasonable efforts to seek guidance, if available, from the federal internal revenue service to ensure this act does not jeopardize qualification of the state retirement plans under section 401(a) of the internal revenue code. If the federal internal revenue service issues guidance stating that this act is in conflict with the plan qualification requirements for governmental plans in section 401(a) of the internal revenue code, and the conflict cannot be resolved through administrative action or statutory change, then this act is null and void." [2018 c 257 § 4.]