

Part II: Waivers Requests Not Yet Granted

Non-Automatic Waivers: Statute Description and Rationale and Replacement Plan

1. POLICY FOR MANAGEMENT OF STUDENT POSSESSION AND STAFF ADMINISTRATION OF PRESCRIPTION MEDICAL MARIJUANA: CRS § 22-1-119.3 including (3)(d) through (f); 1 CCR 301-68:7.00 (7.06) and 1 CCR 301-68:8.00

Rationale:

1) The Academy will be located on the Ute Mountain Ute Reservation, which is federal land held in trust for the Tribe and falls under the criminal jurisdiction of the United States. Colorado’s state law decriminalizing marijuana for medical purposes does not apply on the Reservation.

2) Marijuana use and possession is prohibited by federal law and is, therefore, not allowed on the Reservation. As a result, bringing medical marijuana to this school would be unambiguously criminal conduct.

Replacement Plan: The Tribe will not be able to implement protocols that will allow the administration of marijuana or substances containing more than 0.3% THC. Other medications will be administered under rules set forth by the Indian Health Services and the Academy’s Student and Parent Handbook which is included with this waiver request.

The Indian Health Service provides health services to persons on the Reservation and provides services directly to individuals, or contracts with the Tribe for such services through the Indian Self Determination and Education Assistance Act. (Attachment A)

Kwiyagat Community Academy is committed to implementing every element of this statute and its regulations in full, aside from the provisions related to medical marijuana.

Duration of Waivers: For the term of the contract.

Financial Impact: No costs of enforcement by the Tribe or the state. Costs of enforcement will be borne by the Bureau of Indian Affairs in criminal enforcement.

How the Impact of the Waivers Will be Evaluated: Because medical marijuana is not legal on the Reservation, very few Tribal students would have the necessary doctor’s recommendations to be able to invoke the statute in any event; we estimate, as a result, that very few students will be affected by this waiver. The impact will be evaluated by tracking the number of parent requests to bring prescription marijuana to the school, including tracking the ultimate resolution of each such request (*e.g.*, other medications used in lieu of marijuana).

Expected Outcome: Students will not be able to possess or use prescription marijuana; school staff will not be permitted to administer prescription marijuana; parents will not be permitted to bring medical marijuana onto the reservation for student (or any other) use.

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2. CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR PUBLIC SCHOOLS, CHARTER SCHOOLS AND JUNIOR COLLEGES – ENFORCEMENT and APPEALS: C.R.S. § 22-32-124(1)(c)

Rationale:

- 1) Under federal law, the Colorado Division of Fire Prevention and Control has no jurisdiction over Tribal and federal operations on the Ute Mountain Ute Reservation and the Tribe is not subject to enforcement by the Division. (See 25 USCA §231 and 25 CFR §237.172). As a result, local planning authorities have no practice or established capacity for inspecting Tribal properties.
- 2) The Tribe maintains its own building safety codes and inspections, most of which flow from federal requirements.

Replacement Plan:

While the Colorado Division of Fire Prevention and Control has no jurisdiction on the Ute Mountain Ute Reservation and the Tribe is not subject to enforcement by the Division:

- 1) There are established building codes and inspections, following the International Building Code (IBC) (published by the International Code Council, the same model code on which the DFPC code is based), that the Academy will adhere to, and
- 2) There are established entities responsible for the enforcement of applicable building safety codes and inspections on the Ute Mountain Ute Reservation.

The Tribe has an established public works division that conducts building inspections. When Tribal funds are used, the Tribe will utilize licensed construction companies for construction work and trained mechanics and engineers in its Public Works Department for maintenance and inspections. Similarly, the Indian Health Service conducts inspections utilizing, in part, the Tribe’s Fire Department applying federal standards.

When the Tribe utilizes grant funds for the construction and maintenance of The Academy structures, the grants prescribe the codes which will apply in those operations.

The Academy will also operate the fire drills and similar preventative efforts recommended by the Division of Fire Prevention and Control—consistent with § 22-32-109.1, C.R.S., which will continue to apply to the Academy—but subject to its own authority to supervise rather than the Division’s.

Duration of Waivers: For the term of the contract.

Financial Impact: All costs will be borne by the Tribe and the United States.

How the Impact of the Waivers Will be Evaluated: The construction and maintenance of school buildings can be monitored for compliance with requisite standards.

Expected Outcome: Buildings will be constructed and maintained per guidelines established by the Tribe and the United States.

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3. OATHS, AFFIRMATIONS, OR PLEDGES AND PENALTY: C.R.S. §22-61-105

Rationale:

- 1) The Colorado State *Constitution* does not apply on the Ute Mountain Reservation and oaths should not be required to refer to it, however, school personnel will follow the United States *Constitution* as well as the Ute Mountain Ute Tribal *Constitution* and all applicable state laws.
- 2) Because the statute on oaths, affirmations and pledges is waived, the related penalty should also be waived.
- 3) Teachers licensed by the state will have taken an oath to the Colorado *Constitution* under C.R.S. 22-61-103.

Replacement Plan: The Tribe does not typically require employees to take an oath; only elected and appointed officials are required to take oaths. Licensed personnel will take oaths as required by their licenses, but the Academy will not incorporate that requirement into its employment arrangements.

Duration of Waivers: For the term of the contract.

Financial Impact: Costs should be the same.

How the Impact of the Waivers Will be Evaluated: Monitor whether a failure to take an oath to the state *Constitution* has an impact on the Kwiyaqat Community Academy's effectiveness.

Expected Outcome: Fewer loyalty oaths will be sworn.