

## REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

## PRIOR PROVISIONS

A prior section 446 of Pub. L. 90-247 was classified to section 1233e of this title prior to repeal by Pub. L. 103-382.

## AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, §212(b)(3)(C), made technical amendment to reference to section 1232g(b)(1)(D) of this title to reflect renumbering of corresponding section of original act.

1976—Pub. L. 94-482 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482, set out as a note under section 1001 of this title.

## EFFECTIVE DATE

Pub. L. 93-380, title V, §515(b), Aug. 21, 1974, 88 Stat. 574, provided that: "The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974]."

### § 1232j. Prohibition on federally sponsored testing

#### (a) General prohibition

Notwithstanding any other provision of Federal law and except as provided in subsection (b) of this section, no funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

#### (b) Exceptions

Subsection (a) of this section shall not apply to the Third International Mathematics and Science Study or other international comparative assessments developed under the authority of section 9543(a)(6) of this title and administered to only a representative sample of pupils in the United States and in foreign nations.

(Pub. L. 90-247, title IV, §447, as added Pub. L. 105-277, div. A, §101(f) [title III, §305(a)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-374; amended Pub. L. 107-110, title X, §1062(4), Jan. 8, 2002, 115 Stat. 2088; Pub. L. 107-279, title IV, §404(c), Nov. 5, 2002, 116 Stat. 1985.)

## PRIOR PROVISIONS

A prior section 447 of Pub. L. 90-247 was classified to section 1233f of this title prior to repeal by Pub. L. 103-382.

Prior sections 1233 to 1233h comprising a former subchapter IV of this chapter were repealed by Pub. L. 103-382, title II, §212(a)(2), Oct. 20, 1994, 108 Stat. 3913.

Section 1233, Pub. L. 90-247, title IV, §441, formerly §431, as added Pub. L. 91-230, title IV, §401(a)(10), Apr.

13, 1970, 84 Stat. 170; renumbered §441, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, defined terms for purposes of former subchapter IV of this chapter.

Section 1233a, Pub. L. 90-247, title IV, §442, formerly §432, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §442, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), (b)(2), title V, §507, Oct. 17, 1979, 93 Stat. 677, 678, 692, authorized Secretary to establish necessary advisory councils.

Section 1233b, Pub. L. 90-247, title IV, §443, formerly §433, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §443, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §516(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 94-482, title IV, §411, title V, §501(a)(10), Oct. 12, 1976, 90 Stat. 2234, 2235; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to statutory advisory councils.

Section 1233c, Pub. L. 90-247, title IV, §444, formerly §434, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §444, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to compensation and travel expenses of members of advisory councils.

Section 1233d, Pub. L. 90-247, title IV, §445, formerly §435, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §445, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §517(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to professional, technical, and clerical staff of advisory councils.

Section 1233e, Pub. L. 90-247, title IV, §446, formerly §436, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered §446, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to advisory council meetings.

Section 1233f, Pub. L. 90-247, title IV, §447, formerly §437, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered §447, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §517(b), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to auditing and review of advisory council activities.

Section 1233g, Pub. L. 90-247, title IV, §448, formerly §438, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered §448, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended S. Res. 4, Feb. 4, 1977; Pub. L. 95-43, §1(d), June 15, 1977, 91 Stat. 219; S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103-437, §7(a)(1), Nov. 2, 1994, 108 Stat. 4587, related to reports by Secretary.

Section 1233h, Pub. L. 90-247, title IV, §449, as added Pub. L. 93-380, title V, §518(a), Aug. 21, 1974, 88 Stat. 575, related to application of other laws to advisory councils under former subchapter IV of this chapter.

## AMENDMENTS

2002—Subsec. (b). Pub. L. 107-279 substituted "section 9543(a)(6) of this title" for "section 9003(a)(6) of this title".

Pub. L. 107-110 made technical amendment to reference in original act which appears in text as reference to section 9003(a)(6) of this title.

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

## SUBCHAPTER IV—ENFORCEMENT

## PRIOR PROVISIONS

A prior subchapter IV, consisting of sections 1233 to 1233h, was repealed by Pub. L. 103-382, title II, §212(a)(2), Oct. 20, 1994, 108 Stat. 3913. See note set out under section 1232j of this title.

## AMENDMENTS

1994—Pub. L. 103-382, title II, §212(b)(2), Oct. 20, 1994, 108 Stat. 3913, redesignated subchapter V of this chapter as this subchapter.

## § 1234. Office of Administrative Law Judges

**(a) Establishment; duties**

The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the “Office”) which shall conduct—

- (1) recovery of funds hearings pursuant to section 1234a of this title,
- (2) withholding hearings pursuant to section 1234d of this title,
- (3) cease and desist hearings pursuant to section 1234e of this title, and
- (4) other proceedings designated by the Secretary.

**(b) Appointment**

The administrative law judges (hereinafter “judges”) of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

**(c) Employment requirements; chief judge**

The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates’ experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

**(d) Assignment of judges**

For the purposes of conducting hearings described in subsection (a) of this section, the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party’s attorney as to make it improper for the judge to be assigned to the case.

**(e) Review and evidentiary functions**

The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 1234a of this title.

**(f) Conduct of proceedings; costs and fees of parties**

(1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, sections 554, 556, and 557.

(2) The provisions of title 5, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

**(g) Discovery; scope, time, etc.; issue and enforcement of subpoenas**

(1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

- (A) produce relevant documents;
- (B) answer written interrogatories that inquire into relevant matters; and
- (C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1) of this section, the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

**(h) Mediation of disputes**

The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 1234b of this title. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

**(i) Professional personnel; employment, assignment, or transfer**

The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.

(Pub. L. 90-247, title IV, §451, as added Pub. L. 95-561, title XII, §1232, Nov. 1, 1978, 92 Stat. 2346; amended Pub. L. 100-297, title III, §3501(a), Apr. 28, 1988, 102 Stat. 349.)

## REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (h), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## AMENDMENTS

1988—Pub. L. 100-297 amended section generally, substituting provisions relating to Office of Administrative Law Judges for provisions relating to Education Appeal Board.

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-297, title III, §3501(b), Apr. 28, 1988, 102 Stat. 357, provided that: