

(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation;

(4) the applicant will cooperate in carrying out any evaluation of each such program conducted by or for the State educational agency, the Secretary, or other Federal officials;

(5) the applicant will use such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the applicant under each such program;

(6) the applicant will—

(A) submit such reports to the State educational agency (which shall make the reports available to the Governor) and the Secretary as the State educational agency and Secretary may require to enable the State educational agency and the Secretary to perform their duties under each such program; and

(B) maintain such records, provide such information, and afford such access to the records as the State educational agency (after consultation with the Governor) or the Secretary may reasonably require to carry out the State educational agency's or the Secretary's duties; and

(7) before the application was submitted, the applicant afforded a reasonable opportunity for public comment on the application and considered such comment.

**(b) GEPA provision**

Section 442 of the General Education Provisions Act [20 U.S.C. 1232e] shall not apply to programs under this chapter.

(Pub. L. 89-10, title IX, §9306, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1971.)

PRIOR PROVISIONS

A prior section 9306 of Pub. L. 89-10 was classified to section 7936 of this title, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 7851, Pub. L. 89-10, title IX, §9131, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3790, which related to improvement of educational opportunities for adult Indians, was omitted in the general amendment of this subchapter by Pub. L. 107-110. See section 7456 of this title.

PART D—WAIVERS

**§ 7861. Waivers of statutory and regulatory requirements**

**(a) In general**

Except as provided in subsection (c) of this section, the Secretary may waive any statutory or regulatory requirement of this chapter for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

(1) receives funds under a program authorized by this chapter; and

(2) requests a waiver under subsection (b) of this section.

**(b) Request for waiver**

**(1) In general**

A State educational agency, local educational agency, or Indian tribe that desires a

waiver shall submit a waiver request to the Secretary that—

(A) identifies the Federal programs affected by the requested waiver;

(B) describes which Federal statutory or regulatory requirements are to be waived and how the waiving of those requirements will—

(i) increase the quality of instruction for students; and

(ii) improve the academic achievement of students;

(C) describes, for each school year, specific, measurable educational goals, in accordance with section 6311(b) of this title, for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes;

(D) explains how the waiver will assist the State educational agency and each affected local educational agency, Indian tribe, or school in reaching those goals; and

(E) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

**(2) Additional information**

Such requests—

(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) shall be developed and submitted—

(i)(I) by local educational agencies (on behalf of those agencies and schools) to State educational agencies; and

(II) by State educational agencies (on behalf of, and based on the requests of, local educational agencies) to the Secretary; or

(ii) by Indian tribes (on behalf of schools operated by the tribes) to the Secretary.

**(3) General requirements**

**(A) State educational agencies**

In the case of a waiver request submitted by a State educational agency acting on its own behalf, the State educational agency shall—

(i) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

(ii) submit the comments to the Secretary; and

(iii) provide notice and information to the public regarding the waiver request in the manner in which the applying agency customarily provides similar notices and information to the public.

**(B) Local educational agencies**

In the case of a waiver request submitted by a local educational agency that receives funds under this chapter—

(i) the request shall be reviewed by the State educational agency and be accompanied by the comments, if any, of the State educational agency; and

(ii) notice and information regarding the waiver request shall be provided to the public by the agency requesting the waiver in the manner in which that agency customarily provides similar notices and information to the public.

**(c) Restrictions**

The Secretary shall not waive under this section any statutory or regulatory requirements relating to—

- (1) the allocation or distribution of funds to States, local educational agencies, or other recipients of funds under this chapter;
- (2) maintenance of effort;
- (3) comparability of services;
- (4) use of Federal funds to supplement, not supplant, non-Federal funds;
- (5) equitable participation of private school students and teachers;
- (6) parental participation and involvement;
- (7) applicable civil rights requirements;
- (8) the requirement for a charter school under subpart 1 of part B of subchapter V of this chapter;
- (9) the prohibitions regarding—
  - (A) State aid in section 7902 of this title;
  - (B) use of funds for religious worship or instruction in section 7885 of this title; and
  - (C) activities in section 7906 of this title; or
- (10) the selection of a school attendance area or school under subsections (a) and (b) of section 6313 of this title, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of subchapter I of this chapter if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 6313 of this title.

**(d) Duration and extension of waiver**

**(1) In general**

Except as provided in paragraph (2), a waiver approved by the Secretary under this section may be for a period not to exceed 4 years.

**(2) Extension**

The Secretary may extend the period described in paragraph (1) if the Secretary determines that—

- (A) the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver was requested and the waiver has contributed to improved student achievement; and
- (B) the extension is in the public interest.

**(e) Reports**

**(1) Local waiver**

A local educational agency that receives a waiver under this section shall, at the end of the second year for which a waiver is received under this section and each subsequent year, submit a report to the State educational agency that—

(A) describes the uses of the waiver by the agency or by schools;

(B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers were granted; and

(C) evaluates the progress of the agency and of schools in improving the quality of instruction or the academic achievement of students.

**(2) State waiver**

A State educational agency that receives reports required under paragraph (1) shall annually submit a report to the Secretary that is based on those reports and contains such information as the Secretary may require.

**(3) Indian tribe waiver**

An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

(A) describes the uses of the waiver by schools operated by the tribe; and

(B) evaluates the progress of those schools in improving the quality of instruction or the academic achievement of students.

**(4) Report to Congress**

Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report—

(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) describing whether the waivers—

- (i) increased the quality of instruction to students; or
- (ii) improved the academic achievement of students.

**(f) Termination of waivers**

The Secretary shall terminate a waiver under this section if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purposes.

**(g) Publication**

A notice of the Secretary's decision to grant each waiver under subsection (a) of this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

(Pub. L. 89-10, title IX, §9401, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1972.)

PRIOR PROVISIONS

A prior section 7861, Pub. L. 89-10, title IX, §9141, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, related to national activities, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7451 of this title.

Prior sections 7871 to 7874 were omitted in the general amendment of this subchapter by Pub. L. 107-110.

Section 7871, Pub. L. 89-10, title IX, §9151, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, established National Advisory Council on Indian Education. See section 7471 of this title.

Section 7872, Pub. L. 89-10, title IX, §9152, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to peer review of applications. See section 7472 of this title.

Section 7873, Pub. L. 89-10, title IX, §9153, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to preference for Indian applicants for grants. See section 7473 of this title.

Section 7874, Pub. L. 89-10, title IX, §9154, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to minimum grant criteria. See section 7474 of this title.

## PART E—UNIFORM PROVISIONS

### SUBPART 1—PRIVATE SCHOOLS

#### § 7881. Participation by private school children and teachers

##### (a) Private school participation

###### (1) In general

Except as otherwise provided in this chapter, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b) of this section, who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

###### (2) Secular, neutral, and nonideological services or benefits

Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

###### (3) Special rule

Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

###### (4) Expenditures

Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

###### (5) Provision of services

An agency, consortium, or entity described in subsection (a)(1) of this section may provide

those services directly or through contracts with public and private agencies, organizations, and institutions.

##### (b) Applicability

###### (1) In general

This section applies to programs under—

(A) subparts 1 and 3 of part B of subchapter I of this chapter;

(B) part C of subchapter I of this chapter;

(C) part A of subchapter II of this chapter, to the extent provided in paragraph (3);

(D) part B of subchapter II of this chapter;

(E) part D of subchapter II of this chapter;

(F) part A of subchapter III of this chapter;

(G) part A of subchapter IV of this chapter; and

(H) part B of subchapter IV of this chapter.

###### (2) Definition

For the purpose of this section, the term “eligible children” means children eligible for services under a program described in paragraph (1).

###### (3) Application

(A) Except as provided in subparagraph (B), this subpart, including subsection (a)(4) of this section, applies to funds awarded to a local educational agency under part A of subchapter II of this chapter only to the extent that the local educational agency uses funds under that part to provide professional development to teachers and others.

(B) Subject to subparagraph (A), the share of the local educational agency’s subgrant under part A of subchapter II of this chapter that is used for professional development and subject to a determination of equitable expenditures under subsection (a)(4) of this section shall not be less than the aggregate share of that agency’s awards that were used for professional development for fiscal year 2001 under section 2203(1)(B) (as such section was in effect on the day preceding January 8, 2002) and section 306 of the Department of Education Appropriations Act, 2001.

##### (c) Consultation

###### (1) In general

To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this chapter, on issues such as—

(A) how the children’s needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be assessed and how the results of the assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and

(F) how and when the agency, consortium, or entity will make decisions about the de-