

**(f) General requirement for all paraprofessionals**

Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals' hiring date, have earned a secondary school diploma or its recognized equivalent.

**(g) Duties of paraprofessionals****(1) In general**

Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

**(2) Responsibilities paraprofessionals may be assigned**

A paraprofessional described in paragraph (1) may be assigned—

(A) to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

(B) to assist with classroom management, such as organizing instructional and other materials;

(C) to provide assistance in a computer laboratory;

(D) to conduct parental involvement activities;

(E) to provide support in a library or media center;

(F) to act as a translator; or

(G) to provide instructional services to students in accordance with paragraph (3).

**(3) Additional limitations**

A paraprofessional described in paragraph (1)—

(A) may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with this section; and

(B) may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

**(h) Use of funds**

A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.

**(i) Verification of compliance****(1) In general**

In verifying compliance with this section, each local educational agency, at a minimum, shall require that the principal of each school operating a program under section 6314 or 6315 of this title attest annually in writing as to

whether such school is in compliance with the requirements of this section.

**(2) Availability of information**

Copies of attestations under paragraph (1)—

(A) shall be maintained at each school operating a program under section 6314 or 6315 of this title and at the main office of the local educational agency; and

(B) shall be available to any member of the general public on request.

**(j) Combinations of funds**

Funds provided under this part that are used for professional development purposes may be combined with funds provided under subchapter II of this chapter, other Acts, and other sources.

**(k) Special rule**

Except as provided in subsection (l) of this section, no State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities under this part, except that this paragraph shall not apply with respect to requirements under section 6316(c)(3) of this title.

**(l) Minimum expenditures**

Each local educational agency that receives funds under this part shall use not less than 5 percent, or more than 10 percent, of such funds for each of fiscal years 2002 and 2003, and not less than 5 percent of the funds for each subsequent fiscal year, for professional development activities to ensure that teachers who are not highly qualified become highly qualified not later than the end of the 2005–2006 school year.

(Pub. L. 89–10, title I, §1119, as added Pub. L. 107–110, title I, §101, Jan. 8, 2002, 115 Stat. 1505.)

## PRIOR PROVISIONS

A prior section 6319, Pub. L. 89–10, title I, §1118, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3550, related to parental involvement, prior to the general amendment of this subchapter by Pub. L. 107–110. See section 6318 of this title.

A prior section 1119 of Pub. L. 107–110 was classified to section 6320 of this title, prior to the general amendment of this subchapter by Pub. L. 107–110.

**§ 6320. Participation of children enrolled in private schools****(a) General requirement****(1) In general**

To the extent consistent with the number of eligible children identified under section 6315(b) of this title in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and ac-

tivities developed pursuant to sections 6318 and 6319 of this title.

**(2) Secular, neutral, nonideological**

Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

**(3) Equity**

Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

**(4) Expenditures**

Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.

**(5) Provision of services**

The local educational agency may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

**(b) Consultation**

**(1) In general**

To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part, 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 academically assessed and how the results of that 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, and the proportion of funds that is allocated under subsection (a)(4) of this section for such services;
- (F) the method or sources of data that are used under subsection (c) of this section and section 6313(c)(1) of this title to determine the number of children from low-income families in participating school attendance areas who attend private schools;
- (G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers; and
- (H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local edu-

cational agency has chosen not to use a contractor.

**(2) Timing**

Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

**(3) Discussion**

Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

**(4) Documentation**

Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has taken place to the State educational agency.

**(5) Compliance**

**(A) In general**

A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

**(B) Procedure**

If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

**(c) Allocation for equitable service to private school students**

**(1) Calculation**

A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools by—

- (A) using the same measure of low income used to count public school children;
- (B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;
- (C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to

the number of private school children who reside in that school attendance area; or

(D) using an equated measure of low income correlated with the measure of low income used to count public school children.

**(2) Complaint process**

Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 7883 of this title.<sup>1</sup>

**(d) Public control of funds**

**(1) In general**

The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

**(2) Provision of services**

**(A) Provider**

The provision of services under this section shall be provided—

- (i) by employees of a public agency; or
- (ii) through contract by such public agency with an individual, association, agency, or organization.

**(B) Requirement**

In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

**(e) Standards for a bypass**

If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—

- (1) waive the requirements of this section for such local educational agency;
- (2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 7883 and 7884 of this title; and
- (3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

(Pub. L. 89-10, title I, §1120, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1508.)

REFERENCES IN TEXT

Section 7883, referred to in subsec. (c)(2), was in the original "section 9505", and was translated as reading "section 9503", meaning section 9503 of Pub. L. 89-10, to reflect the probable intent of Congress, because provisions authorizing complaint process are contained in section 9503.

<sup>1</sup> See References in Text note below.

PRIOR PROVISIONS

A prior section 6320, Pub. L. 89-10, title I, §1119, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3555, related to professional development, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1120 of Pub. L. 89-10 was classified to section 6321 of this title, prior to the general amendment of this subchapter by Pub. L. 107-110.

**§ 6321. Fiscal requirements**

**(a) Maintenance of effort**

A local educational agency may receive funds under this part for any fiscal year only if the State educational agency involved finds that the local educational agency has maintained the agency's fiscal effort in accordance with section 7901 of this title.

**(b) Federal funds to supplement, not supplant, non-Federal funds**

**(1) In general**

A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.

**(2) Special rule**

No local educational agency shall be required to provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency's compliance with paragraph (1).

**(c) Comparability of services**

**(1) In general**

**(A) Comparable services**

Except as provided in paragraphs (4) and (5), a local educational agency may receive funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

**(B) Substantially comparable services**

If the local educational agency is serving all of such agency's schools under this part, such agency may receive funds under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

**(C) Basis**

A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

**(2) Written assurance**

**(A) Equivalence**

A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assur-