

(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 edu-

cational 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 delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

(2) Disagreement

If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) Timing

The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this chapter, and shall continue throughout the implementation and assessment of activities under this section.

(4) Discussion required

The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(d) Public control of funds

(1) In general

The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(2) Provision of services

(A) In general

The provision of services under this section shall be provided—

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

(B) Independence; public agency

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

(C) Commingling of funds prohibited

Funds used to provide services under this section shall not be commingled with non-Federal funds.

(Pub. L. 89-10, title IX, §9501, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1975.)

REFERENCES IN TEXT

Section 2203(1)(B) (as such section was in effect on the day preceding January 8, 2002), referred to in subsec. (b)(3)(B), means section 2203(1)(B) of Pub. L. 89-10, as added by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3621, which was classified to section 6643(1)(B) of this title prior to the general amendment of subchapter II of this chapter by Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1620.

Section 306 of the Department of Education Appropriations Act, 2001, referred to in subsec. (b)(3)(B), is section 1(a)(1) [title III, §306] of Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763, 2763A-41, which is not classified to the Code.

REFERENCES TO PART A OF SUBCHAPTER III CONSIDERED TO BE REFERENCES TO PART B OF SUBCHAPTER III

References to part A of subchapter III of this chapter are considered to be references to part B of subchapter III of this chapter in certain fiscal years. See section 6801(c) of this title.

PRIOR PROVISIONS

A prior section 7881, Pub. L. 89-10, title IX, §9161, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793; amended Pub. L. 105-220, title II, §251(b)(2)(E), Aug. 7, 1998, 112 Stat. 1080, defined terms, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7491 of this title.

§ 7882. Standards for by-pass**(a) In general**

If, by reason of any provision of law, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or other entity is prohibited from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary schools and secondary schools, on an equitable basis, or if the Secretary determines that the agency, consortium, or entity has substantially failed or is unwilling to provide for that participation, as required by section 7881 of this title, the Secretary shall—

(1) waive the requirements of that section for the agency, consortium, or entity; and

(2) arrange for the provision of equitable services to those children, teachers, or other educational personnel through arrangements that shall be subject to the requirements of this section and of sections 7881, 7883, and 7884 of this title.

(b) Determination

In making the determination under subsection (a) of this section, the Secretary shall consider

one or more factors, including the quality, size, scope, and location of the program, and the opportunity of private school children, teachers, and other educational personnel to participate in the program.

(Pub. L. 89-10, title IX, §9502, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1977.)

PRIOR PROVISIONS

A prior section 7882, Pub. L. 89-10, title IX, §9162, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3794, authorized appropriations, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7492 of this title.

§ 7883. Complaint process for participation of private school children**(a) Procedures for complaints**

The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 7881 of this title by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within a reasonable period of time.

(b) Appeals to Secretary

The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within a reasonable period of time. The appeal shall be accompanied by a copy of the State educational agency's resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.

(Pub. L. 89-10, title IX, §9503, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1977.)

§ 7884. By-pass determination process**(a) Review****(1) In general****(A) Written objections**

The Secretary shall not take any final action under section 7882 of this title until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

(B) Prior to reduction

Pending final resolution of any investigation or complaint that could result in a determination under this section, the Secretary may withhold from the allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.