

by Pub. L. 103-382, title III, §331(a), Oct. 20, 1994, 108 Stat. 3965.

Section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably means section 10 of act Sept. 23, 1950, ch. 995, as added by Pub. L. 85-620, title I, §101, Aug. 12, 1958, 72 Stat. 553, as amended, which was classified to section 640 of this title prior to repeal by Pub. L. 103-382, title III, §331(a), Oct. 20, 1994, 108 Stat. 3965. The act Sept. 23, 1950, did not contain a section 10 on Jan. 1, 1958.

Sections 204 and 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably mean sections 204 and 310 of act Sept. 23, 1950, ch. 995, which were classified to sections 274 and 300, respectively, of this title prior to the general amendment of that Act by Pub. L. 85-620, Aug. 12, 1958, 72 Stat. 548. The act Sept. 30, 1950, did not contain a section 204 or 310 on Jan. 1, 1958.

### § 7709. State consideration of payments in providing State aid

#### (a) General prohibition

Except as provided in subsection (b) of this section, a State may not—

(1) consider payments under this subchapter in determining for any fiscal year—

(A) the eligibility of a local educational agency for State aid for free public education; or

(B) the amount of such aid; or

(2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.

#### (b) State equalization plans

##### (1) In general

A State may reduce State aid to a local educational agency that receives a payment under section 7702 or 7703(b) of this title (except the amount calculated in excess of 1.0 under section 7703(a)(2)(B) of this title and, with respect to a local educational agency that receives a payment under section 7703(b)(2) of this title, the amount in excess of the amount that the agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 7703(b)(1) of this title and not section 7703(b)(2) of this title) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A) of this section, that the State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in the State.

##### (2) Computation

###### (A) In general

For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expendi-

tures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than 25 percent.

#### (B) Other factors

In making a determination under this subsection, the Secretary shall—

(i) disregard local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State; and

(ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

#### (3) Exception

Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each affected local educational agency the amount by which the State reduced State aid to the local educational agency.

#### (c) Procedures for review of State equalization plans

##### (1) Written notice

###### (A) In general

Any State that wishes to consider payments described in subsection (b)(1) of this section in providing State aid to local educational agencies shall submit to the Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of such State's intention to do so.

###### (B) Contents

Such notice shall be in the form and contain the information the Secretary requires, including evidence that the State has notified each local educational agency in the State of such State's intention to consider such payments in providing State aid.

##### (2) Opportunity to present views

Before making a determination under subsection (b) of this section, the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

##### (3) Qualification procedures

If the Secretary determines that a program of State aid qualifies under subsection (b) of this section, the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 7711(a) of this title, to any local educational agency adversely affected by such certification.

**(4) Nonqualification procedures**

If the Secretary determines that a program of State aid does not qualify under subsection (b) of this section, the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 7711(a) of this title, to the State, and to any local educational agency adversely affected by such determination.

**(d) Treatment of State aid**

**(1) In general**

If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this subchapter for any fiscal year may be taken into consideration by such State in determining the relative—

(A) financial resources available to local educational agencies in that State; and

(B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this subchapter only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.

**(2) Prohibition**

A State may not take into consideration payments under this subchapter before such State's program of State aid has been certified by the Secretary under subsection (c)(3) of this section.

**(e) Remedies for State violations**

**(1) In general**

The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) of this section or for failure to carry out an assurance under subsection (b)(3)(B) of this section, and if an administrative proceeding has not been concluded within such time, bring an action in a United States district court against such State for such violations or failure.

**(2) Immunity**

A State shall not be immune under the 11th amendment to the Constitution of the United States from an action described in paragraph (1).

**(3) Relief**

The court shall grant such relief as the court determines is appropriate.

(Pub. L. 89-10, title VIII, § 8009, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3764; amended Pub. L. 104-195, § 10, Sept. 16, 1996, 110

Stat. 2384; Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1812], Oct. 30, 2000, 114 Stat. 1654, 1654A-386; Pub. L. 107-110, title VIII, § 804, Jan. 8, 2002, 115 Stat. 1956.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-110 inserted “and, with respect to a local educational agency that receives a payment under section 7703(b)(2) of this title, the amount in excess of the amount that the agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 7703(b)(1) of this title and not section 7703(b)(2) of this title” after “section 7703(a)(2)(B) of this title”.

2000—Subsec. (a)(1). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1812(1)], struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994)” after “under this subchapter” in introductory provisions.

Subsec. (b)(1). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1812(2)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “A State may reduce State aid to a local educational agency that receives a payment under section 7702 or 7703(b) of this title (except the amount calculated in excess of 1.0 under subparagraph (B) of section 7703(a)(2) of this title) or under the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding October 20, 1994 (other than an increase in payments described in paragraphs (2)(B), (2)(C), (2)(D), or (3)(B)(ii) of section 3(d) of such Act of September 30, 1950) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A) of this section, that such State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in such State.”

Subsec. (d). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1812(3)], struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994)” after “under this subchapter” wherever appearing.

1996—Subsec. (b)(2)(A). Pub. L. 104-195 substituted “more than 25 percent” for “more than—

- “(i) 25 percent for fiscal year 1995, 1996, or 1997; and
- “(ii) 20 percent for fiscal year 1998 or 1999”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

**§ 7710. Federal administration**

**(a) Payments in whole dollar amounts**

The Secretary shall round any payments under this subchapter to the nearest whole dollar amount.

**(b) Other agencies**

Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this subchapter, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this subchapter.

**(c) Special rules**

**(1) Certain children eligible under subparagraphs (A) and (G)(ii) of section 7703(a)(1)**

(A) The Secretary shall treat as eligible under subparagraph (A) of section 7703(a)(1) of