

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.

(2) Petition for review

(A) Petition

If the affected agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), the agency, consortium, or entity may, within 60 days after notice of that action, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action.

(B) Transmission

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

(C) Filing

The Secretary, upon receipt of the copy of the petition, shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(3) Findings of fact

(A) In general

The findings of fact by the Secretary, if supported by substantial evidence, shall be

conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may then make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings.

(B) New or modified findings

Any new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Jurisdiction

(A) In general

Upon the filing of a petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part.

(B) Judgment

The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Determination

Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with that agency, consortium, or entity and representatives of the affected private school children, teachers, or other educational personnel, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the applicable requirements of section 7881 of this title or any other provision of this chapter.

(c) Payment from State allotment

When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of those services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this chapter.

(d) Prior determination

Any by-pass determination by the Secretary under this chapter as in effect on the day preceding January 8, 2002, shall remain in effect to the extent the Secretary determines that that determination is consistent with the purpose of this section.

(Pub. L. 89-10, title IX, §9504, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1978.)

§ 7885. Prohibition against funds for religious worship or instruction

Nothing contained in this chapter shall be construed to authorize the making of any payment under this chapter for religious worship or instruction.

(Pub. L. 89-10, title IX, §9505, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1979.)

§ 7886. Private, religious, and home schools

(a) Applicability to nonrecipient private schools

Nothing in this chapter shall be construed to affect any private school that does not receive

funds or services under this chapter, nor shall any student who attends a private school that does not receive funds or services under this chapter be required to participate in any assessment referenced in this chapter.

(b) Applicability to home schools

Nothing in this chapter shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this chapter.

(c) Rule of construction on prohibition of Federal control over nonpublic schools

Nothing in this chapter shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this chapter.

(d) Rule of construction on State and local educational agency mandates

Nothing in this chapter shall be construed to require any State educational agency or local educational agency that receives funds under this chapter to mandate, direct, or control the curriculum of a private or home school, regardless or¹ whether or not a home school is treated as a private school under state² law, nor shall any funds under this chapter be used for this purpose.

(Pub. L. 89-10, title IX, §9506, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1979.)

SUBPART 2—OTHER PROVISIONS

§ 7901. Maintenance of effort

(a) In general

A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(b) Reduction in case of failure to meet

(1) In general

The State educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency).

(2) Special rule

No such lesser amount shall be used for computing the effort required under subsection (a) of this section for subsequent years.

¹ So in original. Probably should be "of".

² So in original. Probably should be capitalized.

(c) Waiver

The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

(1) exceptional or uncontrollable circumstances, such as a natural disaster; or

(2) a precipitous decline in the financial resources of the local educational agency.

(Pub. L. 89-10, title IX, §9521, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980.)

PRIOR PROVISIONS

A prior section 7901, Pub. L. 89-10, title IX, §9201, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3794, set forth short title of the Native Hawaiian Education Act, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7511 of this title.

§ 7902. Prohibition regarding State aid

A State shall not take into consideration payments under this chapter (other than under subchapter VIII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

(Pub. L. 89-10, title IX, §9522, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980.)

PRIOR PROVISIONS

A prior section 7902, Pub. L. 89-10, title IX, §9202, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3794, set forth findings, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7512 of this title.

§ 7903. Privacy of assessment results

Any results from an individual assessment referred to in this chapter of a student that become part of the education records of the student shall have the protections provided in section 1232g of this title.

(Pub. L. 89-10, title IX, §9523, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980.)

PRIOR PROVISIONS

A prior section 7903, Pub. L. 89-10, title IX, §9203, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3798, set forth purpose of provisions relating to Native Hawaiian educational programs. See section 7513 of this title.

§ 7904. School prayer

(a) Guidance

The Secretary shall provide and revise guidance, not later than September 1, 2002, and of every second year thereafter, to State educational agencies, local educational agencies, and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available on the Internet. The guidance shall be reviewed, prior to distribution, by the Office of Legal Counsel of the Department of Justice for verification that the guidance represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

(b) Certification

As a condition of receiving funds under this chapter, a local educational agency shall certify