

The Workforce Innovation and Opportunity Act, referred to in subsec. (a)(1)(B), is Pub. L. 113-128, July 22, 2014, 128 Stat. 1425, which enacted chapter 32 (§3101 et seq.) of Title 29, Labor, repealed chapter 30 (§2801 et seq.) of Title 29 and chapter 73 (§9201 et seq.) of this title, and made amendments to numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Head Start Act, referred to in subsec. (a)(1)(B), is subchapter B (§635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (a)(1)(B), is subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236, which is classified generally to subchapter II-B (§9857 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 9857(a) of Title 42 and Tables.

The Education Sciences Reform Act of 2002, referred to in subsec. (a)(1)(B), is title I of Pub. L. 107-279, Nov. 5, 2002, 116 Stat. 1941, which is classified generally to subchapter I (§9501 et seq.) of chapter 76 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9501 of this title and Tables.

The Educational Technical Assistance Act of 2002, referred to in subsec. (a)(1)(B), is title II of Pub. L. 107-279, Nov. 5, 2002, 116 Stat. 1975, which is classified generally to subchapter II (§9601 et seq.) of chapter 76 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9501 of this title and Tables.

The National Assessment of Educational Progress Authorization Act, referred to in subsec. (a)(1)(B), is title III of Pub. L. 107-279, Nov. 5, 2002, 116 Stat. 1982, which is classified generally to subchapter III (§9621 et seq.) of chapter 76 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9501 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(1)(B), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, which is classified principally to chapter 119 (§11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Adult Education and Family Literacy Act, referred to in subsec. (a)(1)(B), is title II of Pub. L. 113-128, July 22, 2014, 128 Stat. 1608, which is classified generally to subchapter II (§3271 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

Public Law 93-112, referred to in subsec. (b)(1)(E)(i)(V), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, known as the Rehabilitation Act of 1973, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. July 22, 2014, refers to the date of enactment of title IV (§401 et seq.) of Pub. L. 113-128, 128 Stat. 1631, which amended numerous sections in the Act. For complete classification of Pub. L. 93-112 to the Code, see Short Title note set out under section 701 of Title 29 and Tables. For complete classification of title IV of Pub. L. 113-128 to the Code, see Tables.

The Social Security Act, referred to in subsec. (g)(1)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts B and E of title IV of the Act are classified generally to parts B (§620 et seq.) and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 6311, Pub. L. 89-10, title I, §1111, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3523; amended Pub. L. 104-134, title I, §101(d) [title VII, §703(b)(1)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-254; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 106-554, §1(a)(4) [div. B, title XVI, §1603], Dec. 21, 2000, 114 Stat. 2763, 2763A-328, related to State plans, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1111 of Pub. L. 89-10 was classified to section 2768 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

AMENDMENTS

2015—Pub. L. 114-95 amended section generally. Prior to amendment, section related to State plan to adopt challenging academic standards to be applied to all schools and children in the State and penalties for failure to meet deadlines enacted in 1994 and 2001.

2006—Subsec. (a)(1). Pub. L. 109-270 substituted “Carl D. Perkins Career and Technical Education Act of 2006” for “Carl D. Perkins Vocational and Technical Education Act of 1998”.

2004—Subsec. (b)(2)(I)(ii). Pub. L. 108-446 substituted “section 612(a)(16)(A)” for “section 612(a)(17)(A)”.

2002—Subsec. (c)(2). Pub. L. 107-279 substituted “section 9622(b)(2) of this title” for “section 9010(b)(2) of this title”.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, with separate effective dates for subsecs. (b)(2), (c), and (d) and with special rules for implementation of interventions at certain schools and local educational agencies, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

§ 6312. Local educational agency plans

(a) Plans required

(1) Subgrants

A local educational agency may receive a subgrant under this part for any fiscal year only if such agency has on file with the State educational agency a plan, approved by the State educational agency, that—

(A) is developed with timely and meaningful consultation with teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, charter school leaders (in a local educational agency that has charter schools), administrators (including administrators of programs described in other parts of this subchapter), other appropriate school personnel, and with parents of children in schools served under this part; and

(B) as appropriate, is coordinated with other programs under this chapter, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Rehabilitation Act of 1973 (20 U.S.C. 701 et seq.),¹ the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.), the Head Start Act (42 U.S.C. 9831 et seq.), the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.), the Adult Education and Family Literacy Act (29

¹ So in original. Probably should be “(29 U.S.C. 701 et seq.)”.

U.S.C. 3271 et seq.), and other Acts as appropriate.

(2) Consolidated application

The plan may be submitted as part of a consolidated application under section 7845 of this title.

(3) State approval

(A) In general

Each local educational agency plan shall be filed according to a schedule established by the State educational agency.

(B) Approval

The State educational agency shall approve a local educational agency's plan only if the State educational agency determines that the local educational agency's plan—

- (i) provides that schools served under this part substantially help children served under this part meet the challenging State academic standards; and
- (ii) meets the requirements of this section.

(4) Duration

Each local educational agency plan shall be submitted for the first year for which this part is in effect following December 10, 2015, and shall remain in effect for the duration of the agency's participation under this part.

(5) Review

Each local educational agency shall periodically review and, as necessary, revise its plan.

(6) Rule of construction

Consultation required under paragraph (1)(A) shall not interfere with the timely submission of the plan required under this section.

(b) Plan provisions

To ensure that all children receive a high-quality education, and to close the achievement gap between children meeting the challenging State academic standards and those children who are not meeting such standards, each local educational agency plan shall describe—

(1) how the local educational agency will monitor students' progress in meeting the challenging State academic standards by—

- (A) developing and implementing a well-rounded program of instruction to meet the academic needs of all students;
- (B) identifying students who may be at risk for academic failure;
- (C) providing additional educational assistance to individual students the local educational agency or school determines need help in meeting the challenging State academic standards; and
- (D) identifying and implementing instructional and other strategies intended to strengthen academic programs and improve school conditions for student learning;

(2) how the local educational agency will identify and address, as required under State plans as described in section 6311(g)(1)(B) of this title, any disparities that result in low-income students and minority students being taught at higher rates than other students by

ineffective, inexperienced, or out-of-field teachers;

(3) how the local educational agency will carry out its responsibilities under paragraphs (1) and (2) of section 6311(d) of this title;

(4) the poverty criteria that will be used to select school attendance areas under section 6313 of this title;

(5) in general, the nature of the programs to be conducted by such agency's schools under sections 6314 and 6315 of this title and, where appropriate, educational services outside such schools for children living in local institutions for neglected or delinquent children, and for neglected and delinquent children in community day school programs;

(6) the services the local educational agency will provide homeless children and youths, including services provided with funds reserved under section 6313(c)(3)(A) of this title, to support the enrollment, attendance, and success of homeless children and youths, in coordination with the services the local educational agency is providing under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.);

(7) the strategy the local educational agency will use to implement effective parent and family engagement under section 6318 of this title;

(8) if applicable, how the local educational agency will support, coordinate, and integrate services provided under this part with early childhood education programs at the local educational agency or individual school level, including plans for the transition of participants in such programs to local elementary school programs;

(9) how teachers and school leaders, in consultation with parents, administrators, paraprofessionals, and specialized instructional support personnel, in schools operating a targeted assistance school program under section 6315 of this title, will identify the eligible children most in need of services under this part;

(10) how the local educational agency will implement strategies to facilitate effective transitions for students from middle grades to high school and from high school to post-secondary education including, if applicable—

- (A) through coordination with institutions of higher education, employers, and other local partners; and
- (B) through increased student access to early college high school or dual or concurrent enrollment opportunities, or career counseling to identify student interests and skills;

(11) how the local educational agency will support efforts to reduce the overuse of discipline practices that remove students from the classroom, which may include identifying and supporting schools with high rates of discipline, disaggregated by each of the subgroups of students, as defined in section 6311(c)(2) of this title;

(12) if determined appropriate by the local educational agency, how such agency will support programs that coordinate and integrate—

- (A) academic and career and technical education content through coordinated instruc-

tional strategies, that may incorporate experiential learning opportunities and promote skills attainment important to in-demand occupations or industries in the State; and

(B) work-based learning opportunities that provide students in-depth interaction with industry professionals and, if appropriate, academic credit; and

(13) any other information on how the local educational agency proposes to use funds to meet the purposes of this part, and that the local educational agency determines appropriate to provide, which may include how the local educational agency will—

(A) assist schools in identifying and serving gifted and talented students; and

(B) assist schools in developing effective school library programs to provide students an opportunity to develop digital literacy skills and improve academic achievement.

(c) Assurances

Each local educational agency plan shall provide assurances that the local educational agency will—

(1) ensure that migratory children and formerly migratory children who are eligible to receive services under this part are selected to receive such services on the same basis as other children who are selected to receive services under this part;

(2) provide services to eligible children attending private elementary schools and secondary schools in accordance with section 6320 of this title, and timely and meaningful consultation with private school officials regarding such services;

(3) participate, if selected, in the National Assessment of Educational Progress in reading and mathematics in grades 4 and 8 carried out under section 9622(b)(3) of this title;

(4) coordinate and integrate services provided under this part with other educational services at the local educational agency or individual school level, such as services for English learners, children with disabilities, migratory children, American Indian, Alaska Native, and Native Hawaiian children, and homeless children and youths, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program;

(5) collaborate with the State or local child welfare agency to—

(A) designate a point of contact if the corresponding child welfare agency notifies the local educational agency, in writing, that the agency has designated an employee to serve as a point of contact for the local educational agency; and

(B) by not later than 1 year after December 10, 2015, develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care, which procedures shall—

(i) ensure that children in foster care needing transportation to the school of or-

igin will promptly receive transportation in a cost-effective manner and in accordance with section 675(4)(A) of title 42; and

(ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if—

(I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;

(II) the local educational agency agrees to pay for the cost of such transportation; or

(III) the local educational agency and the local child welfare agency agree to share the cost of such transportation; and²

(6) ensure that all teachers and paraprofessionals working in a program supported with funds under this part meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification; and

(7) in the case of a local educational agency that chooses to use funds under this part to provide early childhood education services to low-income children below the age of compulsory school attendance, ensure that such services comply with the performance standards established under section 641A(a) of the Head Start Act (42 U.S.C. 9836a(a)).

(d) Special rule

For local educational agencies using funds under this part for the purposes described in subsection (c)(7), the Secretary shall—

(1) consult with the Secretary of Health and Human Services and establish procedures (taking into consideration existing State and local laws, and local teacher contracts) to assist local educational agencies to comply with such subsection; and

(2) disseminate to local educational agencies the education performance standards in effect under section 641A(a) of the Head Start Act (42 U.S.C. 9836a(a)), and such agencies affected by such subsection (c)(7) shall plan to comply with such subsection (taking into consideration existing State and local laws, and local teacher contracts), including by pursuing the availability of other Federal, State, and local funding sources to assist with such compliance.

(e) Parents right-to-know

(1) Information for parents

(A) In general

At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the agency will provide the parents on request (and in a timely manner), in-

² So in original. The word “and” probably should not appear.

formation regarding the professional qualifications of the student's classroom teachers, including at a minimum, the following:

- (i) Whether the student's teacher—
 - (I) has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
 - (II) is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived; and
 - (III) is teaching in the field of discipline of the certification of the teacher.

- (ii) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(B) Additional information

In addition to the information that parents may request under subparagraph (A), a school that receives funds under this part shall provide to each individual parent of a child who is a student in such school, with respect to such student—

- (i) information on the level of achievement and academic growth of the student, if applicable and available, on each of the State academic assessments required under this part; and
- (ii) timely notice that the student has been assigned, or has been taught for 4 or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.

(2) Testing transparency

(A) In general

At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding any State or local educational agency policy regarding student participation in any assessments mandated by section 6311(b)(2) of this title and by the State or local educational agency, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.

(B) Additional information

Subject to subparagraph (C), each local educational agency that receives funds under this part shall make widely available through public means (including by posting in a clear and easily accessible manner on the local educational agency's website and, where practicable, on the website of each school served by the local educational agency) for each grade served by the local educational agency, information on each assessment required by the State to comply with section 6311 of this title, other assessments required by the State, and where such infor-

mation is available and feasible to report, assessments required districtwide by the local educational agency, including—

- (i) the subject matter assessed;
- (ii) the purpose for which the assessment is designed and used;
- (iii) the source of the requirement for the assessment; and
- (iv) where such information is available—
 - (I) the amount of time students will spend taking the assessment, and the schedule for the assessment; and
 - (II) the time and format for disseminating results.

(C) Local educational agency that does not operate a website

In the case of a local educational agency that does not operate a website, such local educational agency shall determine how to make the information described in subparagraph (A) widely available, such as through distribution of that information to the media, through public agencies, or directly to parents.

(3) Language instruction

(A) Notice

Each local educational agency using funds under this part or subchapter III to provide a language instruction educational program as determined under subchapter III shall, not later than 30 days after the beginning of the school year, inform parents of an English learner identified for participation or participating in such a program, of—

- (i) the reasons for the identification of their child as an English learner and in need of placement in a language instruction educational program;
- (ii) the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement;
- (iii) the methods of instruction used in the program in which their child is, or will be, participating and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and a native language in instruction;
- (iv) how the program in which their child is, or will be, participating will meet the educational strengths and needs of their child;
- (v) how such program will specifically help their child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation;
- (vi) the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for English learners, and the expected rate of graduation from high school (including four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates for such program) if funds under this part are used for children in high schools;

(vii) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child, as described in section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)); and

(viii) information pertaining to parental rights that includes written guidance—

(I) detailing the right that parents have to have their child immediately removed from such program upon their request;

(II) detailing the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available; and

(III) assisting parents in selecting among various programs and methods of instruction, if more than 1 program or method is offered by the eligible entity.

(B) Special rule applicable during the school year

For those children who have not been identified as English learners prior to the beginning of the school year but are identified as English learners during such school year, the local educational agency shall notify the children's parents during the first 2 weeks of the child being placed in a language instruction educational program consistent with subparagraph (A).

(C) Parental participation

(i) In general

Each local educational agency receiving funds under this part shall implement an effective means of outreach to parents of English learners to inform the parents regarding how the parents can—

(I) be involved in the education of their children; and

(II) be active participants in assisting their children to—

(aa) attain English proficiency;

(bb) achieve at high levels within a well-rounded education; and

(cc) meet the challenging State academic standards expected of all students.

(ii) Regular meetings

Implementing an effective means of outreach to parents under clause (i) shall include holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of students assisted under this part or subchapter III.

(D) Basis for admission or exclusion

A student shall not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

(4) Notice and format

The notice and information provided to parents under this subsection shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

(Pub. L. 89-10, title I, §1112, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002, 115 Stat. 1462; amended Pub. L. 107-279, title IV, §404(d)(2), Nov. 5, 2002, 116 Stat. 1985; Pub. L. 109-270, §2(f)(2), Aug. 12, 2006, 120 Stat. 747; Pub. L. 110-134, §29(a), Dec. 12, 2007, 121 Stat. 1448; Pub. L. 114-95, title I, §1006, Dec. 10, 2015, 129 Stat. 1852.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a)(1)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(1)(B), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (a)(1)(B), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109-270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (a)(1)(B), is Pub. L. 113-128, July 22, 2014, 128 Stat. 1425, which enacted chapter 32 (§3101 et seq.) of Title 29, Labor, repealed chapter 30 (§2801 et seq.) of Title 29 and chapter 73 (§9201 et seq.) of this title, and made amendments to numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Head Start Act, referred to in subsec. (a)(1)(B), is subchapter B (§635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsecs. (a)(1)(B) and (b)(6), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, which is classified principally to chapter 119 (§11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Adult Education and Family Literacy Act, referred to in subsec. (a)(1)(B), is title II of Pub. L. 113-128, July 22, 2014, 128 Stat. 1608, which is classified generally to subchapter II (§3271 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 6312, Pub. L. 89-10, title I, §1112, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3529, related to local educational agency plans, prior to the general amendment of this subchapter by Pub. L. 107-110.

AMENDMENTS

2015—Pub. L. 114-95 amended section generally. Prior to amendment, section related to local educational agency plan to help low-achieving children meet challenging academic achievement standards.

2007—Subsec. (c)(1)(G), Pub. L. 110-134, §29(a)(1), substituted "education performance standards in effect under section 9836a(a)(1)(B) of title 42" for "performance standards established under section 9836a(a) of title 42".

Subsec. (c)(2)(B). Pub. L. 110–134, §29(a)(2), substituted “education performance standards in effect under section 9836a(a)(1)(B) of title 42” for “Head Start performance standards as in effect under section 9836a(a) of title 42”.

2006—Subsec. (a)(1). Pub. L. 109–270 substituted “Carl D. Perkins Career and Technical Education Act of 2006” for “Carl D. Perkins Vocational and Technical Education Act of 1998”.

2002—Subsec. (b)(1)(F). Pub. L. 107–279 substituted “section 9622(b)(2) of this title” for “section 9010(b)(2) of this title”.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of this title.

§ 6313. Eligible school attendance areas

(a) Determination

(1) In general

A local educational agency shall use funds received under this part only in eligible school attendance areas.

(2) Eligible school attendance areas

For the purposes of this part—

(A) the term “school attendance area” means, in relation to a particular school, the geographical area in which the children who are normally served by that school reside; and

(B) the term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.

(3) Ranking order

(A) Ranking

Except as provided in subparagraph (B), if funds allocated in accordance with subsection (c) are insufficient to serve all eligible school attendance areas, a local educational agency shall—

(i) annually rank, without regard to grade spans, such agency’s eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families; and

(ii) serve such eligible school attendance areas in rank order.

(B) Exception

A local educational agency may lower the threshold in subparagraph (A)(i) to 50 percent for high schools served by such agency.

(4) Remaining funds

If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall—

(A) annually rank such agency’s remaining eligible school attendance areas from highest to lowest either by grade span or for the entire local educational agency according to the percentage of children from low-income families; and

(B) serve such eligible school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.

(5) Measures

(A) In general

Except as provided in subparagraph (B), a local educational agency shall use the same measure of poverty, which measure shall be the number of children aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary, the number of children eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the number of children in families receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or the number of children eligible to receive medical assistance under the Medicaid Program, or a composite of such indicators, with respect to all school attendance areas in the local educational agency—

(i) to identify eligible school attendance areas;

(ii) to determine the ranking of each area; and

(iii) to determine allocations under subsection (c).

(B) Secondary schools

For measuring the number of students in low-income families in secondary schools, the local educational agency shall use the same measure of poverty, which shall be—

(i) the measure described under subparagraph (A); or

(ii) subject to meeting the conditions of subparagraph (C), an accurate estimate of the number of students in low-income families in a secondary school that is calculated by applying the average percentage of students in low-income families of the elementary school attendance areas as calculated under subparagraph (A) that feed into the secondary school to the number of students enrolled in such school.

(C) Measure of poverty

The local educational agency shall have the option to use the measure of poverty described in subparagraph (B)(ii) after—

(i) conducting outreach to secondary schools within such agency to inform such schools of the option to use such measure; and

(ii) a majority of such schools have approved the use of such measure.

(6) Exception

This subsection shall not apply to a local educational agency with a total enrollment of less than 1,000 children.

(7) Waiver for desegregation plans

The Secretary may approve a local educational agency’s written request for a waiver of the requirements of subsections (a) and (c), and permit such agency to treat as eligible, and serve, any school that children attend