

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), 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 VIII, § 8502, formerly title IX, § 9502, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1977; renumbered title VIII, § 8502, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(5), (b)(4), 8016, Dec. 10, 2015, 129 Stat. 2088, 2089, 2111.)

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 former subchapter IX of this chapter by Pub. L. 107–110.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–95, § 8001(b)(4), made technical amendment to reference in original act which appears in two places in text as reference to section 7881 of this title.

Subsec. (a)(2). Pub. L. 114–95, § 8016, made technical amendment to reference in original act which appears in text as reference to sections 7883 and 7884 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.

**§ 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 45 days.

**(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 the 45-day time limit. The appeal shall be accompanied by a copy of the State educational agency's resolution, and, if there is one, a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal.

(Pub. L. 89–10, title VIII, § 8503, formerly title IX, § 9503, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1977; renumbered title VIII, § 8503, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(5), 8017, Dec. 10, 2015, 129 Stat. 2088, 2089, 2111.)

AMENDMENTS

2015—Pub. L. 114–95, § 8017, added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to procedures for complaints and appeals to Secretary, respectively.

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.

**§ 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 VIII, § 8504, formerly title IX, § 9504, as added Pub. L. 107-110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1978; renumbered title VIII, § 8504, and amended Pub. L. 114-95, title VIII, §§ 8001(a)(5), (b)(4), 8018, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

AMENDMENTS

2015—Subsec. (a)(1)(A). Pub. L. 114-95, § 8018, made technical amendment to reference in original act which appears in text as reference to section 7882 of this title.

Subsec. (b). Pub. L. 114-95, § 8001(b)(4), made technical amendment to reference in original act which appears in text as reference to section 7881 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.

**§ 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 VIII, § 8505, formerly title IX, § 9505, as added Pub. L. 107-110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1979; renumbered title VIII, § 8505, Pub. L. 114-95, title VIII, § 8001(a)(5), Dec. 10, 2015, 129 Stat. 2088, 2089.)

**§ 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 or<sup>1</sup> whether or not a home school is treated as a private school under state<sup>2</sup> law, nor shall any funds under this chapter be used for this purpose.

(Pub. L. 89-10, title VIII, § 8506, formerly title IX, § 9506, as added Pub. L. 107-110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1979; renumbered title VIII, § 8506, Pub. L. 114-95, title VIII, § 8001(a)(5), Dec. 10, 2015, 129 Stat. 2088, 2089.)

<sup>1</sup> So in original. Probably should be "of".

<sup>2</sup> So in original. Probably should be capitalized.