

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 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 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.)

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

² So in original. Probably should be capitalized.

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, subject to the requirements of subsection (b).

(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), if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years.

(2) Special rule

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

(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 a change in the organizational structure of the local educational agency; or
- (2) a precipitous decline in the financial resources of the local educational agency.

(Pub. L. 89–10, title VIII, § 8521, formerly title IX, § 9521, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, § 8521, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(6), 8019, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

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

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–95, § 8019(1), inserted “, subject to the requirements of subsection (b)” after “for the second preceding fiscal year”.

Subsec. (b)(1). Pub. L. 114–95, § 8019(2), inserted before period at end “, if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years”.

Subsec. (c)(1). Pub. L. 114–95, § 8019(3), inserted “or a change in the organizational structure of the local educational agency” after “such as a natural disaster”.

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.

§ 7902. Prohibition regarding State aid

A State shall not take into consideration payments under this chapter (other than under subchapter VII) 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 VIII, § 8522, formerly title IX, § 9522, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, § 8522, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(6), 8020, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

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

AMENDMENTS

2015—Pub. L. 114–95, § 8020, substituted “subchapter VII” for “subchapter VIII”.

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.

§ 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 VIII, § 8523, formerly title IX, § 9523, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, § 8523, Pub. L. 114–95, title VIII, § 8001(a)(6), Dec. 10, 2015, 129 Stat. 2088, 2089.)

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, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107–110.

§ 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