

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(2)(B)(iv) and (b)(1)(C)(viii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

## AMENDMENTS

2007—Subsec. (b). Pub. L. 110-134, §11(b), added subsec. (b).

**§ 9838. Submission of plans to chief executive officer**

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the chief executive officer of the State, and such plan has not been disapproved by such officer within 45 days of such submission, or, if disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State), has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to such officer. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981. This section shall not apply to contracts, agreements, grants, loans, or other assistance for Indian Head Start programs or migrant or seasonal Head Start programs.

(Pub. L. 97-35, title VI, §643, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101-501, title I, §110, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, §2(k)(4), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 105-285, title I, §111, Oct. 27, 1998, 112 Stat. 2718; Pub. L. 110-134, §12, Dec. 12, 2007, 121 Stat. 1414.)

## AMENDMENTS

2007—Pub. L. 110-134 inserted at end "This section shall not apply to contracts, agreements, grants, loans, or other assistance for Indian Head Start programs or migrant or seasonal Head Start programs."

1998—Pub. L. 105-285, in first sentence, substituted "45 days" for "30 days" and "disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State)" for "so disapproved" and inserted ", as evidenced by a written statement of the Secretary's findings that is transmitted to such officer" before period.

1992—Pub. L. 102-401 substituted "such officer" for "the such officer" in two places.

1990—Pub. L. 101-501 substituted "chief executive officer" for first reference to "Governor" and "such officer" for second and third references to "Governor".

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years begin-

ning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

**§ 9839. Administrative requirements and standards**

**(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.**

(1) Each Head Start agency shall observe standards of organization, management, and administration that will ensure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible.

(2) Each Head Start agency shall make available to the public a report published at least once in each fiscal year that discloses the following information from the most recently concluded fiscal year, except that reporting such information shall not reveal personally identifiable information about an individual child or parent:

(A) The total amount of public and private funds received and the amount from each source.

(B) An explanation of budgetary expenditures and proposed budget for the fiscal year.

(C) The total number of children and families served, the average monthly enrollment (as a percentage of funded enrollment), and the percentage of eligible children served.

(D) The results of the most recent review by the Secretary and the financial audit.

(E) The percentage of enrolled children that received medical and dental exams.

(F) Information about parent involvement activities.

(G) The agency's efforts to prepare children for kindergarten.

(H) Any other information required by the Secretary.

(3) Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to—

(A) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits;

(B) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are

promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness;

(C) guard against personal or financial conflicts of interest; and

(D) define employee duties in an appropriate manner that will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action that is in violation of law.

**(b) Development and administrative costs of programs**

Except as provided in subsection (f), no financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including the required non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Head Start agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

**(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities**

The Secretary shall prescribe rules or regulations to supplement subsections (a) and (f), which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

**(d) Publication and notification of proposed rules, etc.**

At least 30 days prior to their effective date, all rules, regulations, and application forms shall be published in the Federal Register and shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

**(e) Neutrality concerning union organizing**

Funds appropriated to carry out this subchapter shall not be used to assist, promote, or deter union organizing.

**(f) Purchase of facility; approval requirements; financial assistance**

(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities, or to request approval of the purchase (after December 31, 1986) of facilities, to be used to carry out Head Start programs. The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.

(2) Financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

(A) a description of the efforts by the agency to coordinate or collaborate with other providers in the community to seek assistance, including financial assistance, prior to the use of funds under this section;

(B) a description of the site of the facility proposed to be purchased or that was previously purchased;

(C) the plans and specifications of such facility;

(D) information demonstrating that—

(i) the proposed purchase will result, or the previous purchase has resulted, in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

(ii) the lack of alternative facilities will prevent, or would have prevented, the operation of such program;

(E) in the case of a request regarding a previously purchased facility, information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program; and

(F) such other information and assurances as the Secretary may require.

(3) Upon a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes to carry out Head Start programs, and that the lack of suitable facilities will inhibit the operation of such programs, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance to make payments for the purchase of facilities owned by such tribes. The amount of such a payment for such a facility shall not exceed the fair market value of the facility.

**(g) Payments for capital expenditures**

(1) Upon a determination by the Secretary that suitable facilities (including public school

facilities) are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities will inhibit the operation of such programs, and that construction of such facilities is more cost effective than purchase of available facilities or renovation, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance under this subchapter to make payments for capital expenditures related to facilities that will be used to carry out such programs. The Secretary shall establish uniform procedures for Head Start agencies to request approval for such payments, and shall promote, to the extent practicable, the collocation of Head Start programs with other programs serving low-income children and families.

(2) Such payments may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as expenditures for—

(A) construction of facilities that are not in existence on the date of the determination;

(B) major renovation of facilities in existence on such date; and

(C) purchase of vehicles used for programs conducted at the Head Start facilities.

(3) All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

**(h) Personnel preferences to Indian tribe members**

In all personnel actions of the American Indian Programs Branch of the Head Start Bureau of the Administration for Children and Families, the Secretary shall give the same preference to individuals who are members of an Indian tribe as the Secretary gives to a disabled veteran, as defined in section 2108(3)(C) of title 5. The Secretary shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 97–35, title VI, §644, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, §§111, 112, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, §2(j), Oct. 7, 1992, 106 Stat. 1958; Pub. L. 103–218, title IV, §403, Mar. 9, 1994, 108 Stat. 96; Pub. L. 103–252, title I, §110, May 18, 1994, 108 Stat. 636; Pub. L. 105–285, title I, §106(e), Oct. 27, 1998, 112 Stat. 2712; Pub. L. 110–134, §13, Dec. 12, 2007, 121 Stat. 1414.)

**CODIFICATION**

In subsec. (g)(3), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq., commonly known as the ‘Davis-Bacon Act’)” on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

**AMENDMENTS**

2007—Subsec. (a). Pub. L. 110–134, §13(1), added subsec. (a) and struck out former subsec. (a) which related to

employment practices, nonpartisanship, staff accountability, and public access to information.

Subsec. (f)(2). Pub. L. 110–134, §13(2)(A), added subpar. (A) and redesignated former subpars. (A) to (E) as (B) to (F), respectively.

Subsec. (f)(3). Pub. L. 110–134, §13(2)(B), struck out “, from the amount reserved under section 9835(a)(2)(A) of this title,” after “financial assistance”.

1998—Subsec. (f)(2). Pub. L. 105–285 substituted “Financial assistance” for “Except as provided in section 9835(a)(3)(C)(v) of this title, financial assistance”.

1994—Subsec. (d). Pub. L. 103–252, §110(1), struck out “guidelines, instructions,” after “all rules, regulations,”.

Subsec. (f)(1). Pub. L. 103–218, §403(1), inserted “, or to request approval of the purchase (after December 31, 1986) of facilities,” after “to purchase facilities” and inserted at end “The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.”

Subsec. (f)(2). Pub. L. 103–252, §110(2)(A), substituted “section 9835(a)(3)(C)(v)” for “section 9835(a)(3)(A)(v)”.

Subsec. (f)(2)(A). Pub. L. 103–218, §403(2)(A), inserted before semicolon at end “or that was previously purchased”.

Subsec. (f)(2)(C)(i). Pub. L. 103–218, §403(2)(B)(i), inserted “, or the previous purchase has resulted,” after “purchase will result”.

Subsec. (f)(2)(C)(ii). Pub. L. 103–218, §403(2)(B)(ii), inserted “, or would have prevented,” after “will prevent” and struck out “and” after semicolon at end.

Subsec. (f)(2)(D), (E). Pub. L. 103–218, §403(2)(C), (D), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (f)(3). Pub. L. 103–252, §110(2)(B), added par. (3).

Subsecs. (g), (h). Pub. L. 103–252, §110(3), added subsecs. (g) and (h).

1992—Subsec. (b). Pub. L. 102–401, §2(j)(1), substituted “Except as provided in subsection (f), no” for “No”.

Subsec. (c). Pub. L. 102–401, §2(j)(2), substituted “subsections (a) and (f)” for “subsection (a)”.

Subsec. (f). Pub. L. 102–401, §2(j)(3), added subsec. (f). 1990—Subsec. (b). Pub. L. 101–501, §111, inserted “the required” before “non-Federal contributions”.

Subsec. (e). Pub. L. 101–501, §112, added subsec. (e).

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

**STUDY OF BENEFITS FOR HEAD START EMPLOYEES**

Pub. L. 103–252, title I, §120, May 18, 1994, 108 Stat. 648, provided that:

“(a) **STUDY.**—The Secretary of Health and Human Services shall conduct a study regarding the benefits available to individuals employed by Head Start agencies under the Head Start Act (42 U.S.C. 9831 et seq.).

“(b) REPORT.—

“(1) PREPARATION.—The Secretary shall prepare a report, containing the results of the study, that—

“(A) describes the benefits, including health care benefits, family and medical leave, and retirement pension benefits, available to such individuals;

“(B) includes recommendations for increasing the access of the individuals to benefits, including access to a retirement pension program; and

“(C) addresses the feasibility of participation by such individuals in the Federal Employees’ Retirement System under chapter 84 of title 5, United States Code.

“(2) SUBMISSION.—The Secretary shall submit the report to the appropriate committees of Congress.”

#### § 9840. Participation in Head Start programs

##### (a) Criteria for eligibility

(a)(1)(A)<sup>1</sup> The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter.

(B) Except as provided in paragraph (2), such regulation shall provide—

(i) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families’ incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance;

(ii) that homeless children shall be deemed to be eligible for such participation;

(iii) that programs assisted under this subchapter may include—

(I) to a reasonable extent (but not to exceed 10 percent of participants), participation of children in the area served who would benefit from such programs but who are not eligible under clause (i) or (ii); and

(II) from the area served, an additional 35 percent of participants who are not eligible under clause (i) or (ii) and whose families have incomes below 130 percent of the poverty line, if—

(aa) the Head Start agency involved establishes and implements outreach and enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and

(bb) in prioritizing the selection of children to be served, the Head Start agency establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause;

(iv) that any Head Start agency serving children eligible under clause (iii)(II) shall report annually to the Secretary information on—

(I) how such agency is meeting the needs of children eligible under clause (i) or (ii), in the area served, including local demographic data on families of children eligible under clause (i) or (ii);

(II) the outreach and enrollment policies and procedures established by the agency

that ensure the agency is meeting the needs of children eligible under clause (i) or (ii) (or clause (iii)(I) if the child involved has a disability) prior to meeting the needs of children eligible under clause (iii)(II);

(III) the efforts, including outreach efforts (that are appropriate to the community involved), of such agency to be fully enrolled with children eligible under clause (i) or (ii);

(IV) the policies, procedures, and selection criteria such agency is implementing to serve eligible children, consistent with clause (iii)(II);

(V) the agency’s enrollment level, and enrollment level over the fiscal year prior to the fiscal year in which the report is submitted;

(VI) the number of children served by the agency, disaggregated by whether such children are eligible under clause (i), clause (ii), clause (iii)(I), or clause (iii)(II); and

(VII) the eligibility criteria category of the children on the agency’s waiting list;

(v) that a child who has been determined to meet the eligibility criteria described in this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.

(C) In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the eligibility criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3)<sup>2</sup> of this title and is located in a health professional shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project’s eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on October 30, 1984, and ending on October 1, 1994,

<sup>1</sup> So in original. The “(a)” probably should not appear.

<sup>2</sup> See References in Text note below.