

(c) Public comment period

The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under subchapter II or subchapter III on which an opportunity for public comment is otherwise required by law.

(d) Policy letters and statements

The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

- (1) violate or contradict any provision of this chapter; or
- (2) establish a rule that is required for compliance with, and eligibility under, this chapter without following the requirements of section 553 of title 5.

(e) Explanation and assurances

Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under subchapter II shall include an explanation in the written response that—

- (1) such response is provided as informal guidance and is not legally binding;
- (2) when required, such response is issued in compliance with the requirements of section 553 of title 5; and
- (3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

(f) Correspondence from Department of Education describing interpretations of this chapter**(1) In general**

The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this chapter or the regulations implemented pursuant to this chapter.

(2) Additional information

For each item of correspondence published in a list under paragraph (1), the Secretary shall—

- (A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and
- (B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5.

(Pub. L. 91-230, title VI, §607, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2659.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 1406, Pub. L. 91-230, title VI, §607, as added Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 47, related to requirements for prescribing regulations, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 108-446.

Another section 1406, Pub. L. 91-230, title VI, §607, as added Pub. L. 94-142, §6(a), Nov. 29, 1975, 89 Stat. 795; amended Pub. L. 98-199, §§3(b), 5, Dec. 2, 1983, 97 Stat. 1358; Pub. L. 99-457, title IV, §401, Oct. 8, 1986, 100 Stat. 1172; Pub. L. 100-630, title I, §101(c), Nov. 7, 1988, 102 Stat. 3290, related to grants for removal of architectural barriers, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1407. State administration**(a) Rulemaking**

Each State that receives funds under this chapter shall—

- (1) ensure that any State rules, regulations, and policies relating to this chapter conform to the purposes of this chapter;
- (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this chapter and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this chapter.

(b) Support and facilitation

State rules, regulations, and policies under this chapter shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

(Pub. L. 91-230, title VI, §608, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2661.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 1407, Pub. L. 91-230, title VI, §608, as added Pub. L. 98-199, §6, Dec. 2, 1983, 97 Stat. 1359; amended Pub. L. 100-630, title I, §101(d), Nov. 7, 1988, 102 Stat. 3290; Pub. L. 101-476, title IX, §901(b)(24), Oct. 30, 1990, 104 Stat. 1143; Pub. L. 102-119, §25(b), Oct. 7, 1991, 105 Stat. 607, related to regulation requirements, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1408. Paperwork reduction**(a) Pilot program****(1) Purpose**

The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this chapter, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

(2) Authorization**(A) In general**

In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, subchapter II for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to

reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

(B) Exception

The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

(C) Rule of construction

Nothing in this section shall be construed to—

(i) affect the right of a child with a disability to receive a free appropriate public education under subchapter II; and

(ii) permit a State or local educational agency to waive procedural safeguards under section 1415 of this title.

(3) Proposal

(A) In general

A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B) Content

The proposal shall include—

(i) a list of any statutory requirements of, or regulatory requirements relating to, subchapter II that the State desires the Secretary to waive, in whole or in part; and

(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

(4) Termination of waiver

The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State—

(A) needs assistance under section 1416(d)(2)(A)(ii) of this title and that the waiver has contributed to or caused such need for assistance;

(B) needs intervention under section 1416(d)(2)(A)(iii) of this title or needs substantial intervention under section 1416(d)(2)(A)(iv) of this title; or

(C) failed to appropriately implement its waiver.

(b) Report

Beginning 2 years after December 3, 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 3486 of this title information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in—

(1) reducing—

(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

(B) noninstructional time spent by teachers in complying with subchapter II;

(2) enhancing longer-term educational planning;

(3) improving positive outcomes for children with disabilities;

(4) promoting collaboration between IEP Team members; and

(5) ensuring satisfaction of family members.

(Pub. L. 91-230, title VI, §609, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2661.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1408, Pub. L. 91-230, title VI, §609, as added Pub. L. 99-457, title II, §202, Oct. 8, 1986, 100 Stat. 1158, related to eligibility for financial assistance, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

§ 1409. Freely associated States

The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this chapter to the extent that such grants continue to be available to States and local educational agencies under this chapter.

(Pub. L. 91-230, title VI, §610, as added Pub. L. 108-446, title I, §101, Dec. 3, 2004, 118 Stat. 2662.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1409, Pub. L. 91-230, title VI, §610, as added Pub. L. 101-476, title I, §104, Oct. 30, 1990, 104 Stat. 1106, provided administrative provisions applicable to former subchapters III to VII of this chapter and former section 1418 of this title, prior to the general amendment of subchapters I to IV of this chapter by Pub. L. 105-17.

SUBCHAPTER II—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

§ 1411. Authorization; allotment; use of funds; authorization of appropriations

(a) Grants to States

(1) Purpose of grants

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this subchapter.

(2) Maximum amount

The maximum amount of the grant a State may receive under this section—

(A) for fiscal years 2005 and 2006 is—

(i) the number of children with disabilities in the State who are receiving special education and related services—

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and