

DEPARTMENT OF EDUCATION**34 Part 299**

RIN 1810-AA82

General Provisions, Elementary and Secondary Education Act**AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (the Secretary) proposes to issue general regulations governing programs under the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (the "Elementary and Secondary Education Act", "ESEA" or the "Act"). These proposed regulations would implement several provisions in Title XIV, General Provisions, of the Act. These proposed regulations would generally govern all programs under the Act, and would establish uniform provisions that would minimize burdensome differences in implementing these provisions in individual programs.

The areas that would be covered by these proposed regulations for ESEA programs include: other regulations that would apply; priorities for empowerment zones or enterprise communities in discretionary grants; the consolidation of State and local administrative funds; maintenance of effort; services to private school children and teachers; and complaint procedures. In addition, the proposed regulations would provide further flexibility to States under Title III of the Goals 2000: Educate America Act.

DATES: Comments must be received on or before May 10, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Delores Warner, U.S. Department of Education, Portals Building, 1250 Maryland Avenue SW., Room 4000, Washington, DC 20202-6110. The fax number for submitting comments is (202) 260-0310. Comments may also be sent through the Internet to General_Provisions@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: For further information on this part, please contact Delores Warner. Telephone: (202) 260-1941. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994, the President signed into law the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103-382). The IASA reauthorizes and fundamentally changes the ESEA, redesigning its programs so that they work together to support high-quality teaching and learning to help all children learn challenging material in academic areas and acquire the knowledge and skills they will need to succeed in the 21st century.

Throughout the reauthorized Elementary and Secondary Education Act, including Title XIV of the Act, provisions are designed to make it easier for programs to work together with, rather than separately from, one another. In addition, the Act fosters the operation of ESEA programs in unison with the broader education that children receive. For example, the reauthorized Act supports State and community reform efforts geared to challenging State academic standards, particularly those initiated or supported by the Goals 2000: Educate America Act.

Unlike the reauthorized ESEA programs, earlier ESEA programs often were not coordinated with each other and with other educational programs in the schools. The previous programs often were not designed to target funds to areas, schools or students with the greatest needs for assistance, nor were they designed to support State and local efforts at broader educational reform. They were often burdensome without adequate provisions for needed flexibility.

Virtually all of the major ESEA programs have been redesigned to include greater flexibility at the State and local levels, to support directly comprehensive State and local reforms of teaching and learning, and to ensure that all children—regardless of background and whatever school they attend—can achieve at high levels.

In implementing the Act, the Department, is issuing regulations only where absolutely necessary, and is providing flexibility to the maximum extent permitted by statute. The regulations proposed in Part 299 are consistent with this approach and are intended to provide support to educators at the State and local levels

for the appropriate implementation of provisions in Title XIV and of the Act as a whole. Title XIV contains provisions that allow: flexibility, promote coordinated program services and allow waivers of certain provisions to increase the quality of instruction or improve academic performance, consolidated State and local plans and applications, consolidation of State and local administrative funds, and uniform provisions that apply to programs authorized in the ESEA. Most of the provisions of Title XIV are not the subject of regulations. The Department has issued, separately from this notice of proposed rulemaking (NPRM), non-binding guidance on a number of Title XIV provisions such as State consolidated plans (sections 14302 of the Act), waivers (section 14401 of the Act), and the Gun-Free Schools Act (sections 14601-03 of the Act). Copies of this guidance are available from Delores Warner, U.S. Department of Education, 1250 Maryland Avenue SW., Room 4000, Portals Building, Washington, DC 20202-6110.

Summary of Provisions

Section 299.1 of these proposed regulations would provide general information about the scope of these regulations and the laws and regulations that would apply to ESEA programs. Further guidance about which general administrative regulations would apply is provided in the discussion of § 299.2 in the next paragraph of this summary.

Section 299.2 of these proposed regulations would provide flexibility by permitting a State to formally adopt its own general provisions, in lieu of 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) of the Education Department General Provisions Regulations for most ESEA programs if the State meets several minimal requirements. This flexibility is similar to flexibility that was previously included in regulations for Chapters 1 and 2 of ESEA before the 1994 amendments.

Section 299.2 would also indicate that 34 CFR Part 80 would apply to direct grant programs under ESEA and to Title XI. While this would provide States in ESEA State-administered programs the option of adopting and using their own procedures as an alternative to Part 80, the Department believes that the application of Part 80 to direct grant programs and to Title XI provides the appropriate balance of flexibility and accountability for results in those programs. As the Department continues to look for other ways to simplify the

direct grant process, the Department particularly invites comments on the appropriate balance of flexibility and accountability in direct grant and Title XI programs.

Section 299.2 would indicate that 34 CFR Part 80 applies to State, local, and Indian tribal governments under direct grant programs, and programs under Title XI of ESEA (Coordinated Services). 34 CFR Part 80 also applies to other programs under the ESEA unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEA) and local educational agencies (LEAs) under this part that meet certain minimal requirements contained in § 299.2. This flexibility would also apply to Title III of the Goals 2000: Educate America Act.

Section 299.2 would not affect the applicability of the Department's other general administrative regulations to ESEA programs. Therefore, unless a particular regulatory provision is inconsistent with a statutory provision (in which case the statute controls), the Department's general administrative regulations apply to ESEA programs as follows:

(a) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) applies to grantees other than State and local governments and Indian tribal organizations.

(b) 34 CFR Part 75 (Direct Grant Programs), except for § 75.650 (participation of students enrolled in private schools), applies to all direct grant programs.

(c) 34 CFR Part 76 (State-Administered Programs), except for §§ 76.650 through 76.662 (participation of students enrolled in private schools), applies to State administered grant programs.

(d) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(e) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) applies to some of the ESEA programs.

(f) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), as discussed in this preamble.

(g) 34 CFR Part 81 (General Education Provisions Act—Enforcement) applies to all ESEA programs except for Title VIII (Impact Aid) of ESEA.

(h) 34 CFR Part 82 (New Restrictions on Lobbying) applies to all ESEA programs.

(i) 34 CFR Part 85 (Governmentwide Debarment and Suspension

(Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) applies to all ESEA programs.

(j) 34 CFR Part 86 (Drug-Free Schools and Campuses) applies to institutions of higher education.

Guidance on which of these provisions apply to Title VIII (Impact Aid) will be issued separately.

Section 299.3 of these proposed regulations would authorize the Secretary to coordinate discretionary grants under the ESEA with the Empowerment Zones and Enterprise Community initiative, a critical community revitalization strategy. Under this initiative, the United States Department of Housing and Urban Development or the United States Department of Agriculture has designated certain urban and rural areas as Empowerment Zones, including Supplemental Empowerment Zones, or Enterprise Communities. These selected areas, which are characterized by pervasive poverty, unemployment, and general distress, are implementing locally designed strategies for building healthy, safe, and economically vibrant communities. Interested individuals may contact the Department of Housing and Urban Development at 1-800-998-9999 for additional information on the Empowerment Zone and Enterprise Community initiative.

The discretionary grants under the ESEA can play a key role in helping Empowerment Zones and Enterprise Communities address key educational needs as part of a community revitalization strategy. Therefore, to encourage grantees to concentrate resources to address multi-faceted problems, under the proposed § 299.3, the Secretary would be able to give priority to applications that propose projects that serve these zones and communities.

In § 299.4, the Secretary proposes to authorize each SEA to adopt and use its own reasonable standards in determining whether the majority of its resources for administrative purposes come from non-Federal sources, a prerequisite for the consolidation of State administrative funds as authorized by section 14201 of the ESEA. Under this section, SEAs would also be permitted to adopt reasonable standards for determining when to allow the consolidation of local administrative funds. This section would provide flexibility for SEAs in these State-administered programs and fulfill the Secretary's obligation to issue regulations under section 14203.

Sections 299.5–299.12 of these proposed regulations would contain

uniform provisions regarding maintaining fiscal effort, serving private school children and teachers, and for filing and resolving complaints from the public. In the past, these requirements have varied program-by-program. The revised provisions discussed as follows are designed to reduce burden for grantees by making their implementation uniform among ESEA programs.

The proposed regulations in § 299.5 for maintenance of effort would, for the first time, provide uniform provisions to reduce the burden of requiring different recordkeeping for several programs. It would also provide more flexibility than in previous regulations by excluding all Federal funds and supplemental funds spent as a result of a Presidentially declared disaster. The exclusion of Federal funds from maintenance of effort calculations is consistent with the purposes of the statutory provision. The Secretary interprets the maintenance of effort provision in section 14501 of Title XIV not to apply to Title VI programs, because of the specific maintenance of effort provision in section 6401 of Title VI. Therefore, § 299.5 also does not apply to Title VI programs.

The proposed regulations governing participation of private schools students, teachers and other personnel in §§ 299.6–299.9 are similar to the regulations for Title I of the Act (34 CFR §§ 200.10–200.14 (published on July 3, 1995 (60 FR 34800)). For example, § 299.7 on equitable participation includes the same provisions on “equal expenditures” and “equitable basis” as in 34 CFR § 200.11, except that § 299.7 does not include provisions relating to the specific distribution of Title I funds. Instead of simply cross-referencing the Title I regulations, however, for the convenience of the reader, full provisions are included in this notice.

Sections 299.6–299.9 also provide for more flexibility than in general regulations on participation of students enrolled in private schools currently in 34 CFR §§ 76.650–76.662 that would otherwise apply. Sections 299.6–299.9 would supersede the provisions of 34 CFR §§ 76.650–76.662 for the programs listed in § 299.6.

Sections 299.10–299.12 require States to establish complaint procedures in State-administered programs, so that the public is provided an opportunity to bring complaints to the attention of State program administrators. The provisions are similar to those previously included in the regulations for Chapter 1 of ESEA before the 1994 amendments, but the new regulations would provide the SEA with considerably more flexibility in

establishing reasonable procedures for resolving these complaints by authorizing SEAs to adopt their own reasonable time limits for resolving a complaint.

Executive Order 12866

1. *Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action. The potential costs and benefits associated with the proposed regulations are minimal and to the extent there are costs, the costs result from the statutory requirements and regulations determined by the Secretary to be necessary for administering these programs effectively and efficiently. To the extent there are burdens specifically associated with information collection requirements, they are identified and explained elsewhere in this preamble under the heading "*Paperwork Reduction Act of 1995*."

Thus, in assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. *Clarity of the Regulations*

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if

they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example "\$ 299.1 What are the purpose and scope of the regulations?") (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (room 5121, FOB-10), Washington, DC, 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs), and public or nonprofit private agencies receiving Federal funds under the ESEA programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Collection of Information: General Provisions, Elementary and Secondary Education Act: Complaint Process: Sections 299.10–299.12 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review under that Act.

Under sections 299.10–299.12, an SEA is required to adopt written procedures for receiving and resolving on a timely basis complaints from an organization or individual that the SEA or an agency or consortium of agencies is violating a Federal statute or regulations that apply to a covered program listed in § 299.10(b). The resolution of a complaint by the SEA may be reviewed by the Secretary, at the Secretary's discretion.

The likely respondents to the collection of information in the complaint process are individuals and organizations that submit complaints. The information submitted is used to resolve complaints and will be collected as complaints are submitted.

We estimate that each State will receive, an average of twenty complaints each year, and that each complaint will take an average of four burden hours to prepare. Therefore, the total annual reporting and recordkeeping burden that will result from the collection of this information is 4560 burden hours (fifty-seven State entities, multiplied by twenty complaints, multiplied by four burden hours for preparing each complaint).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an inter-governmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in rooms 4400 and 4100, respectively, Portals Building, 1250 Maryland Avenue, S.W., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 299

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: March 20, 1996.

Richard W. Riley,
Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 299 to read as follows:

PART 299—GENERAL PROVISIONS

Subpart A—Purpose and Applicability

Sec.

299.1 What are the purpose and scope of these regulations?

299.2 What regulations apply to ESEA programs?

Subpart B—Selection Criteria

299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

Subpart C—Consolidation of State and Local Administrative Funds

299.4 What requirements apply to the consolidation of state and local administrative funds?

Subpart D—Fiscal Requirements

299.5 What maintenance of effort requirements apply to ESEA programs?

Subpart E—Services to Private School Students and Teachers

299.6 What are the responsibilities for providing services to children and teachers in private schools?

299.7 What are the factors for determining equitable participation of children and teachers in private schools?

299.8 What are the requirements to ensure that funds do not benefit a private school?

299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

Subpart F—Complaint Procedures

299.10 What complaint procedures shall an SEA adopt?

299.11 What are included in the complaint procedures?

299.12 How does an organization or individual file a complaint?

Authority: 20 U.S.C. 1221e–3, unless otherwise noted.

Subpart A—Purpose and Applicability

§ 299.1 What are the purpose and scope of these regulations?

(a) This part establishes uniform administrative rules for programs in Titles I through XIII of the Elementary and Secondary Education Act of 1965, as amended (ESEA), except where otherwise indicated. As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute, and, to the extent applicable, Title XIV of ESEA, the General Education Provisions Act, the regulations in this part, and the Education Department General Administrative Regulations (34 CFR Parts 74 through 86) that are not inconsistent with specific statutory provisions of this Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 299.2 What regulations apply to ESEA programs?

With regard to the applicability of Education Department General

Administrative Regulations (EDGAR) to the ESEA programs (in addition to any other specific implementing regulations):

(a) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to State, local, and Indian tribal governments under direct grant programs (as defined in 34 CFR 75.1(b)), and programs under Title XI of ESEA.

(b) 34 CFR Part 80 also applies to all other programs under the ESEA and to programs under Title III of the Goals 2000: Educate America Act (Title III of Goals 2000), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEAs) and local educational agencies (LEAs) under the ESEA and Title III of Goals 2000. If a State adopts its own alternative requirements, the requirements must be available for inspection upon the request of the Secretary or the Secretary's representatives and must—

(1) Be sufficiently specific to ensure that funds received under ESEA and Title III of Goals 2000 are used in compliance with all applicable statutory and regulatory provisions;

(2) Ensure that funds received under ESEA and Title III of Goals 2000 are spent only for reasonable and necessary costs of operating programs under this part; and

(3) Ensure that funds received under ESEA and Title III of Goals 2000 are not used for general expenses required to carry out other responsibilities of State or local governments.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart B—Selection Criteria

§ 299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

For any ESEA discretionary grant program, the Secretary may establish a priority, as authorized by 34 CFR 75.105(b), for projects that will—

(a) Use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture; and

(b) Contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community, and are made an integral

part of the Zone or Community's comprehensive community revitalization strategies.

(Authority: 20 U.S.C. 2831(a))

Subpart C—Consolidation of State and Local Administrative Funds

§ 299.4 What requirements apply to the consolidation of state and local administrative funds?

An SEA may adopt and use its own reasonable standards in determining whether—

(a) The majority of its resources for administrative purposes come from non-Federal sources to permit the consolidation of State administrative funds in accordance with section 14201 of the Act; and

(b) To approve an LEA's consolidation of its administrative funds in accordance with section 14203 of the Act.

(Authority: 20 U.S.C. 8821 and 8823)

Subpart D—Fiscal Requirements

§ 299.5 What maintenance of effort requirements apply to ESEA programs?

(a) *General.* An LEA receiving funds under a covered program listed in subsection (b) may receive its full allocation of funds if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Covered programs.* Programs covered by this subpart are the following:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(3) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(c) *Meaning of "preceding fiscal year."* For purposes of determining if the requirement of paragraph (a) of this section is met, the "preceding fiscal year" means the Federal fiscal year, or the 12-month fiscal period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available for obligation by the Department.

Example: For fiscal year 1995 funds, that are first made available on July 1, 1995, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1994 (which began on October 1, 1993 and ended September 30, 1994) and the "second preceding fiscal year" is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the "preceding fiscal year" is the 12-month period ending on June 30, 1994, and the "second preceding fiscal year," is the period ending on June 30, 1993.

(d) *Expenditures.* (1) In determining an LEA's compliance with paragraph (a) of this section, the SEA shall consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) The SEA may not consider the following expenditures in determining an LEA's compliance with the requirement in paragraph (a) of this section:

(i) Any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster.

(ii) Any expenditures made from funds provided by the Federal Government.

(Authority: 20 U.S.C. 8891)

Subpart E—Services to Private School Students and Teachers

§ 299.6 What are the responsibilities for providing services to children and teachers in private schools?

(a) *General.* An agency or consortium of agencies receiving funds under a program listed in subsection (b) of this section shall, after timely and meaningful consultation with appropriate private school officials, in accordance with that section, provide special educational services or other benefits under this part, on an equitable basis, to children who are enrolled in private elementary and secondary schools, and are eligible for that program, and to their teachers or other educational personnel.

(b) *Covered programs.* In accordance with section 14503(b) of ESEA, programs covered by this subpart are the following:

(1) Part C of Title I (Migrant Education).

(2) Title II (Professional Development) (other than section 2103 and part C of this title).

(3) Title III (other than Part B of the Title) (Star Schools).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(5) Title VI (Innovative Education Program Strategies).

(6) Title VII (Bilingual Education).

(c) *Provisions not applicable.* Sections 75.650 and 76.650 through 76.662 of Part 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to covered programs.

(Authority: 20 U.S.C. 8893)

§ 299.7 What are the factors for determining equitable participation of children and teachers in private schools?

(a) *Equal expenditures.* (1) Expenditures of funds made by an agency or consortium of agencies under a covered program for services for eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the amount of funds expended for participating public school children and their teachers and other educational personnel taking into account the number and educational needs of those children and their teachers or other educational personnel.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an agency or consortium of agencies shall pay for the reasonable and necessary administrative costs of providing services to public and private school children and their teachers or other educational personnel, from the agency's or consortium of agencies' total allocation of funds under the applicable ESEA program.

(b) *Services on an equitable basis.* (1) The services that an agency or consortium of agencies provides to eligible private school children and their teachers and other educational personnel must also be equitable in comparison to the services and other benefits provided to public school children and their teachers or other educational personnel participating in a program under this subpart.

(2) Services are equitable if the agency or consortium of these agencies—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children and their teachers or other educational personnel on a comparable basis as public school children and their teachers or other educational personnel;

(ii) Determines the number of students to be served on an equitable basis;

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iii) Provides private school children and their teachers or other educational personnel with an opportunity to participate that—

(A) Is equitable to the opportunity and the benefits provided to public school children and their teachers or other educational personnel; and

(B) Provides reasonable promise of those children meeting challenging academic standards as called for by the State's student performance standards and has their teachers or other educational personnel assisting these students in meeting high standards.

(3) The agency or consortium of these agencies shall make the final decisions with respect to the services to be provided to eligible private school children and their teachers or other educational personnel.

(c) If the needs of private school students, their teachers or other educational personnel are different from the needs of students, teachers or other educational personnel in the public schools, the agency or consortium of these agencies shall provide program benefits for the private school students, teachers, or other educational personnel that are different from the benefits the subgrantee provides for the public school children and their teachers or other educational personnel.

(Authority: 20 U.S.C. 8893)

§ 299.8 What are the requirements to ensure that funds do not benefit a private school?

(a) An agency or consortium of these agencies shall use funds under a covered program to provide services that supplement, and in no case supplant, the level of services that would, in the absence of services under that ESEA program, be available to participating children and their teachers or other educational personnel in private schools.

(b) An agency or consortium of those agencies shall use funds under a listed program to meet the special educational needs of participating children who attend a private school and their teachers or other educational personnel, but may not use those funds for—

(1) The needs of the private school; or

(2) The general needs of children and their teachers or other educational personnel in the private school.

(Authority: 20 U.S.C. 8893)

§ 299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

(a) A public agency must keep title to, and exercise continuing administrative control of, all property, equipment, and supplies that the public agency acquires with funds under a covered program for the benefit of eligible private school children and their teachers or other educational personnel.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for proper ESEA program purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for ESEA program purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than ESEA program purposes.

(e) No funds may be used for repairs, minor remodeling, or construction of private school facilities.

(f) For the purpose of this section, the term public agency includes the agency or consortium of these agencies.

(Authority: 20 U.S.C. 8893)

Subpart F—Complaint Procedures

§ 299.10 What complaint procedures shall an SEA adopt?

(a) *General.* An SEA shall adopt written procedures, consistent with State law, for—

(1) Receiving and resolving any complaint from an organization or individual that the SEA or an agency or consortium of agencies is violating a Federal statute or regulations that apply to a covered program listed in subsection (b) of this section.

(2) Reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(b) *Covered programs.* Programs covered by this subpart are the following:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Part B of Title I (Even Start Family Literacy Programs).

(3) Part C of Title I (Migrant Education).

(4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out).

(5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(6) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(7) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(8) Title VI (Innovative Education Program Strategies).

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 299.11 What are included in the complaint procedures?

An SEA shall include the following in its complaint procedures—

(a) A reasonable time limit after the SEA receives a complaint for resolving the complaint, including a provision for carrying out an independent on-site investigation, if necessary.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right for the complainant to request the Secretary to review the final decision of the SEA, at the Secretary's discretion.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 299.12 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include—

(a) A statement that the SEA or an agency or consortium of these agencies has violated a requirement of a Federal statute or regulations that apply to the ESEA program; and

(b) The facts on which the statement is based, and the specific requirement violated.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[FR Doc. 96-7098 Filed 3-25-96; 8:45 am]

BILLING CODE 4000-01-P