

**Ofc. of Elem. & Secondary Ed., Education**

**§ 200.90**

§200.84 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

**§ 200.86 Use of MEP funds in schoolwide projects.**

Funds available under part C of Title I of the ESEA may be used in a schoolwide program subject to the requirements of §200.29(c)(1).

(Authority: 20 U.S.C. 6396)

[67 FR 71736, Dec. 2, 2002; 68 FR 19152, Apr. 18, 2003]

**§ 200.87 Responsibilities for participation of children in private schools.**

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the ESEA.

(Authority: 20 U.S.C. 6394)

**§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.**

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the ESEA, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the ESEA.

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the ESEA, and is evaluated in a manner consistent with those program targets.

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements.

(4) The grantee monitors program performance to ensure that these requirements are met.

(Approved by the Office of Management and Budget under control number 1810-0662)

(Authority 20 U.S.C. 6321(d))

[67 FR 71736, Dec. 2, 2002; 68 FR 19152, Apr. 18, 2003]

**§ 200.89 [Reserved]**

**Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out**

SOURCE: 67 FR 71736, Dec. 2, 2002, unless otherwise noted.

**§ 200.90 Program definitions.**

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the ESEA:

*Children and youth* means the same as “children” as that term is defined in §200.103(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA:

*Institution for delinquent children and youth* means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

*Institution for neglected children and youth* means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

**§ 200.91**

**34 CFR Ch. II (7-1-08 Edition)**

*Regular program of instruction* means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of Title I of the ESEA:

*Immigrant children and youth and limited English proficiency* have the same meanings as the term “immigrant children” is defined in section 3301 of the ESEA and the term “limited English proficient” is defined in section 9101 of the ESEA, except that the terms “individual” and “children and youth” used in those definitions mean “children and youth” as defined in this section.

*Locally operated correctional facility* means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

*Migrant youth* means the same as “migratory child” as that term is defined in §200.81(d).

(Authority: 20 U.S.C. 6432, 6454, 6472, 7801)

**§ 200.91 SEA counts of eligible children.**

To receive an allocation under part D, subpart 1 of Title I of the ESEA, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section.

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a

regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency must specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified must be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA must adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Approved by the Office of Management and Budget under control number 1810-0060)

(Authority: 20 U.S.C. 6432)

**§§ 200.92-200.99 [Reserved]**

**Subpart E—General Provisions**

SOURCE: 67 FR 71738, Dec. 2, 2002, unless otherwise noted.

**§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.**

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:

(a) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the ESEA, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under