

# Federal Register

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Tuesday  
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## Part IV

# Department of Education

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Part A of Title I of the Elementary and  
Secondary Education Act of 1965; Notice

**DEPARTMENT OF EDUCATION****Part A of Title I of the Elementary and Secondary Education Act of 1965****AGENCY:** Department of Education.**ACTION:** Notice of Interpretation.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education interprets section 1112(c)(1)(H) of Title I of the Elementary and Secondary Education Act of 1965 to permit a local educational agency (LEA) providing early childhood development services under Title I, Part A prior to January 1, 1998 to comply with either § 1304.21 of the revised Head Start performance standards (published in final elsewhere in this issue of the Federal Register) or the current Head Start performance standards in 45 CFR 1304.2-1—1304.2-3 (1995). This interpretation is needed because section 1112(c)(1)(H) of Title I requires an LEA providing early childhood development services to comply with Head Start performance standards beginning with fiscal year 1997 funds for use in the 1997-98 school year. However, the newly revised Head Start performance standards, including § 1304.21, will not take effect until January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Portals Building, Room 4400), Washington, D.C. 20202-6132. Telephone (202) 260-0826. 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:** Section 1112(c)(1)(H) of Title I of the Elementary and Secondary Education Act of 1965 requires a local educational agency (LEA) to assure in its Title I, Part A plan that, beginning in fiscal year 1997, if the LEA "chooses to use [Part A funds] to provide early childhood development services to low-income children below the age of compulsory school attendance, [the LEA will] ensure that such services comply with the

performance standards established under section 641A(a) of the Head Start Act or under section 651 of such Act, as such section 651 was in effect on the day preceding the date of enactment of the Human Services Amendments of 1994." Section 1112(c)(3) of Title I exempts an LEA from complying with Head Start performance standards if it is using Title I, Part A funds to operate a preschool program using the Even Start model or to expand its Even Start program.

On April 22, 1996, pursuant to the Head Start Act Amendments of 1994, the Associate Commissioner of the Head Start Bureau, Administration for Children, Youth and Families, U.S. Department of Health and Human Services, published proposed regulations revising the Head Start performance standards (61 FR 17754-17792). At the same time, the Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education (Assistant Secretary), published a notice of interpretation (61 FR 17794-17795) in which he indicated that, to meet the requirement in section 1112(c)(1)(H) of Title I, an LEA providing early childhood development services must comply with the proposed Head Start standards in § 1304.21—Education and Early Childhood Development.

Section 1304.21 is published in final elsewhere in this issue of the Federal Register. Consistent with the Assistant Secretary's prior notice of interpretation, the performance standards in that section apply to early childhood development services under Title I, Part A. Cross-references in § 1304.21 to other sections of the Head Start performance standards do not make those sections applicable to early childhood development services under Title I, Part A.

As the preamble of the final Head Start performance standards indicates, those standards, including § 1304.21, will take effect on January 1, 1998. The Associate Commissioner of the Head Start Bureau selected this date in response to comments from Head Start grantees that sufficient lead time was needed to implement changes necessitated by the revised performance standards. Section 1112(c)(1)(H) of Title

I, however, requires an LEA to comply with Head Start performance standards beginning with fiscal year 1997 Title I, Part A funds—that is, funds appropriated for use in the 1997-98 school year. Thus, an LEA would have to comply with Head Start performance standards before the newly revised § 1304.21 takes effect.

To afford maximum flexibility to LEAs in designing and implementing early childhood development services under Title I, Part A during the 1997-98 school year, the Assistant Secretary offers the following interpretation of section 1112(c)(1)(H) of Title I. Although § 1304.21 will not be effective until January 1, 1998, an LEA that complies with the performance standards in that section in providing early childhood development services under Title I, Part A prior to January 1, 1998 will satisfy the requirement in section 1112(c)(1)(H) of Title I. In the alternative, during the 1997-98 school year, an LEA may comply with the comparable current Head Start performance standards that will remain in effect until January 1, 1998. Those comparable standards are contained in 45 CFR 1304.2-1—1304.2-3 (1995).

**Waiver of Rulemaking**

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. However, under section 553(b)(A) of the APA, the Secretary is not required to offer the public an opportunity to comment on an interpretive rule that merely advises the public of the Department's construction of a statute that it administers. Because this notice concerns an interpretation with respect to section 1112(c)(1)(H) of Title I, public comment, pursuant to 5 U.S.C. 553(b)(A), is unnecessary.

(Catalog of Federal Domestic Assistance Number 84.010, Improving Programs Operated by Local Educational Agencies)

Dated: October 28, 1996.

Gerald N. Tirozzi,

*Assistant Secretary for Elementary and Secondary Education.*

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