



Thursday
May 22, 1997

Part IX

**Department of
Education**

**34 CFR Parts 200 and 299
Elementary and Secondary Education Act
General Provisions, Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 299

RIN 1810-AA82

General Provisions, Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (the Secretary) issues final 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 regulations implement several provisions in Title XIV (General Provisions) of the Act. These regulations generally govern all programs under the Act, and establish uniform provisions to minimize burdensome differences in implementing similar statutory provisions in individual programs.

The areas that are covered by these regulations for ESEA programs are: Other applicable regulations; 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, these final regulations provide further flexibility to States under Title III of the Goals 2000: Educate America Act.

EFFECTIVE DATES: These regulations take effect on June 23, 1997.

COMPLIANCE: However, affected parties do not have to comply with the information requirements in 299.11(d) until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For further information, 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. Internet: Delores_Warner@ed.gov

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.

The reauthorized ESEA, including Title XIV, is designed to make it easier for programs to work with, rather than separately from, one another. In addition, the Act fosters the coordination of ESEA programs with the broader education services 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.

The new programs are also designed to target funds to areas, schools or students with the greatest needs for assistance, and to support State and local efforts at broader educational reform. At the same time they reduce burdens and provide for needed flexibility.

Generally, in implementing the Act, the Department is issuing regulations only where absolutely necessary, or to provide increased flexibility. The regulations in Part 299 are consistent with this approach and are intended to provide support to educators at the State and local levels in their implementation of provisions in Title XIV and of the Act as a whole. Title XIV contains provisions that provide for flexibility; promote coordinated program services; authorize waivers of certain provisions to increase the quality of instruction or improve academic performance; authorize consolidated State and local plans and applications and consolidation of State and local administrative funds; and establish uniform provisions applicable 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 regulation, non-binding guidance to help grantees better understand and implement a number of Title XIV provisions such as State consolidated plans (section 14302 of the Act), waivers (section 14401 of the Act), and the Gun-Free Schools Act (sections 14601-14603 of the Act). Copies of these guidance packages are available from Delores Warner, U.S. Department of Education, 1250 Maryland Avenue S.W., Room 4000, Portals Building, Washington, DC 20202-6110. The Department is currently preparing additional non-

binding guidance addressing certain other Title XIV provisions.

On March 26, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for Title XIV in the **Federal Register** (61 FR 13324). The preamble to the NPRM included a discussion of the provisions enacted by Congress that were addressed in the NPRM.

Analysis of Comments

In response to the Secretary's invitation to comment in the NPRM, the Department received nine letters from State and local officials and various organizations. Most of the letters contained multiple comments. An analysis of the comments and the Secretary's responses to those comments is presented below.

In developing these final regulations, the Secretary has considered these comments, balancing the concerns of State and local school officials, parents, and others with the statutory purposes of Title XIV and the needs of the students, parents, and teachers to be served. In addition, the Secretary took into account the principle of only regulating where absolutely necessary. As a result of considering all of these factors, the Department has made several substantive changes to the regulations. Several clarifying and technical changes were also made to the regulations.

Subpart A—Purpose and Applicability*Section 299.2 What General Administrative Regulations Apply to ESEA Programs?*

Comment: None.

Discussion: In reviewing the notice of proposed rulemaking, the Department was concerned that it be clear that the three standards of accountability that alternative State fiscal and administrative provisions have to meet under the section, are adequate to ensure that program costs are allocable to a particular "cost objective." See OMB circular A-87, Attachment A subsection C.3. The three standards are that State provisions must ensure that (1) funds are used in compliance with all applicable Federal provisions, (2) costs are reasonable and necessary for operating these programs, and (3) funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

The Department has concluded that the three standards are sufficient and, in particular, to meet the first of the three standards, alternative State provisions must, among other things, ensure that

costs are allocable to a particular cost objective. Therefore, there is no need to add a specific additional standard on the allocability of costs, but the Department has added a clarifying note after § 299.2.

Change: The Department has added a clarifying note after § 299.2.

Subpart B—Selection Criteria

Section 299.3 What Priority May the Secretary Establish for Activities in an Empowerment Zone or Enterprise Community?

Comment: One commenter stated that establishing a priority in discretionary grants for Empowerment Zones or Enterprise Communities (EZ/EC) gives an “unfair competitive preference” to EZ/EC communities that already receive preferential consideration in several other discretionary grant programs. The commenter believes that preferential treatment of one set of identified applicants negates the fairness of discretionary grant competitions.

Discussion: The Department often establishes priorities in grant competitions. Establishment of a priority does not eliminate the fairness or the competitive nature of a grant competition. For example, even when a “competitive preference” is given, a high quality application that addresses the other published criteria thoroughly may more likely be funded than an applicant qualifying for an EZ/EC preference that files a poorer quality application that does not address the other criteria well. Additionally, the use of the proposed priority is discretionary.

As a general matter, the Department believes that the general purposes of the EZ/EC communities are appropriate to support through a priority in certain competitions. The EZ/EC communities are characterized by pervasive poverty, unemployment, and general distress, and are implementing locally designed strategies for building healthy, safe and economically vibrant communities with limited resources. Thus, in certain competitions it will be appropriate to address greatest needs by concentrating limited resources on an applicant that serves an EZ/EC community.

Change: None.

Subpart C—Consolidation of State and Local Administrative Funds

Section 299.4(a) What Requirements Apply to the Consolidation of State and Local Administrative Funds?

Comment: One commenter, representing a State educational agency (SEA), recommended that regulatory language be added that specifically states that “program funds” may not be

consolidated. The commenter believes that the specific statement would assist local educational agencies (LEAs).

Discussion: Section 14203 of the ESEA, the provision of law that the regulation implements, clearly applies only to the portion of program funds that may be used for administration. Therefore, it is not necessary to provide more detailed regulations on this point. Section 14203 requires that SEAs, in collaboration with LEAs in the State, establish procedures for responding to requests from LEAs to consolidate administrative funds, and for establishing limitations on the amount of funds that may be used for administration on a consolidated basis. As long as the State establishes reasonable provisions, including that only reasonable and necessary expenses of administering the programs properly can be incurred, the State has flexibility in establishing procedures. To the extent that LEAs have questions about these matters, SEAs have the authority to issue regulations, guidance, and procedures to address them.

Change: None.

Comment: One commenter said that the regulations would go beyond the language of the Act by specifying when and if a State can consolidate administrative funds by adding the reference to “for administrative purposes.” The commenter believes that it will be difficult to define “administrative funds”. The commenter asks the Secretary to let the wording of the statute stand and eliminate the reference to “for administrative purposes.”

Discussion: The Department believes that the regulatory language is consistent with the intent of section 14201 since this section concerns the administration of programs. The intent of the provision is to permit only SEAs with sufficient funding to support their administrative activities to consolidate ESEA administrative funds.

Change: None.

Subpart D—Fiscal Requirements

Section 299.5 What Maintenance of Effort Requirements Apply to ESEA Programs?

Comments: One commenter agreed with the proposed maintenance of effort provisions, especially with regard to the Title I program. The commenter felt that the maintenance of effort regulations are clearly stated, easy to understand, and explicit about costs that may or may not be included in calculations. The commenter also stated that requiring a level of commitment from local school districts will ensure that Title I funds

benefit the students for whom they were allocated.

Discussion: None.

Change: Because § 299.5 applies to Title I, these regulations remove the existing Title I—specific maintenance of effort regulations in 34 CFR 200.64.

Subpart E—Services to Private School Students and Teachers

Section 299.6 What Are the Responsibilities for Providing Services to Children and Teachers in Private Schools?

Comment: Two commenters asked that the term “meaningful consultation” be clarified. One commenter was concerned that the term may not mean the same thing to public school administrators as it does to private school representatives. The second commenter was concerned that the provisions of the Education Department General Administrative Regulations (EDGAR) pertaining to consultation no longer apply. One of the commenters also noted that “meaningful consultation” is, however, defined in the statute in section 14503(c) of Title XIV.

Discussion: Section 14503(c) of ESEA contains specific elements of “meaningful consultation,” and it is not necessary to restate them in the regulations. While the EDGAR provisions on consultation are no longer applicable to these programs, the Title XIV statutory provisions regarding consultation are modeled after the EDGAR provisions, so that consultation requirements have not been diminished.

Change: None.

Comment: One commenter expressed a concern that § 299.6(c) makes the private school participation provisions in EDGAR not applicable to covered programs. Of particular interest to this commenter is § 76.659 of the EDGAR regulations, which permits publicly funded personnel to provide services in other than public facilities. The commenter recommends that the EDGAR regulation be incorporated in its entirety into Subpart E of these regulations.

Discussion: Nothing in § 299.6 precludes publicly-funded personnel, in appropriate circumstances, from providing services in non-public settings. The level of detail suggested by the commenter is not necessary for this regulation. The Department will consider whether further nonregulatory guidance on this issue is necessary.

Change: None.

Section 299.7 What are the Factors for Determining Equitable Participation of Children and Teachers in Private Schools?

Comment: One commenter asked for further explanation of the term "equitable basis." The commenter wanted it made clear that LEAs must subtract administrative expenses before making an equitable distribution of the remaining funds.

Discussion: The Secretary believes that, as drafted, § 299.7(a)(2) already indicates clearly that LEAs first must take administrative expenses from the total allocation of program funds before determining "equal expenditures."

Change: None.

Comment: One commenter called for more clarification of the phrase "taking into account the number and educational needs of those children and their teachers * * *," and "other educational personnel" in § 299.7(a)(1). Another commenter asked for more specific definitions of "benefits" and "special needs" as used in § 299.7(c). All of these comments raise concern about the potential for variations in interpretation at the LEA level.

Discussion: Section 299.7(b)(3) makes clear that an agency or consortium of agencies, in consultation with private school officials, makes the final determination as to what services shall be provided to private school children. If, after timely and meaningful consultation, the agency or consortium decides that private school children need services that are different from those provided to public school children, § 299.7(c) requires them to provide those different services. The Secretary believes that decisions about equitable services are best made at the local level after meaningful consultation as described in the statute, and that detailed regulations are unnecessary.

Change: None.

Comment: One commenter suggested that this section would require an LEA to assess the specific needs and educational progress of eligible private school children and teachers. The commenter believes that such an assessment would be difficult, unworkable, burdensome and viewed by "private school operators" with "hostility" as an intrusion into their operations.

Discussion: The Secretary believes that, through meaningful consultation, the LEA can work cooperatively with private school representatives to acquire adequate information to make the types of determinations required by this section. It is in the interest of private school representatives and the LEA to

work in a cooperative manner to develop plans that ensure equitable services to meet the needs of private school children and their teachers.

Change: None.

Section 299.8 What are the Requirements to Ensure That Funds do not Benefit a Private School?

Comment: One commenter observed that this section does not contain a particular method for determining compliance with the section. The commenter believes that the lack of specific procedures will cause confusion and the expenditure of time and effort by LEAs in attempting to demonstrate to auditors and program monitors a district's compliance with this regulation. The commenter suggested deleting the section.

Discussion: The Secretary believes that, by using meaningful consultation and reasonable methods of administrative oversight, an LEA will be able to develop a relatively simple process for ensuring compliance with this section. This provision is similar to 34 CFR 76.658. The Secretary is reluctant to establish more specific requirements and procedures that may or may not be appropriate to fit particular local circumstances.

Change: None.

Section 299.9 What are the Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children and Teachers?

Comment: One commenter expressed a concern that the wording of this section is too broad and asked for greater specificity, particularly exempting "consumable" products from the requirement.

Discussion: These requirements are the same as those established for the Title I, Part A program at 34 CFR 200.13. There is no reason for treating "consumable" products differently from other supplies.

Change: None.

Subpart F—Complaint Procedures

Section 299.10 What Complaint Procedures Shall an SEA Adopt?

Comment: One commenter asked that the provision cover Title VII and the Bilingual Education Act. Three commenters asked that this provision be extended to cover other programs, outside of ESEA (e.g., the Carl D. Perkins Vocational and Applied Technology Education Act, the McKinney Homeless Assistance Act, the School to Work Opportunities Act, or Goals 2000), in addition to those listed in paragraph (b).

Discussion: The purpose of this subpart is to give the SEA the responsibility to resolve complaints where the SEA has administrative responsibilities for how a subgrantee implements the program. Because the Bilingual Education Act in Title VII is a discretionary grant program administered primarily at the LEA and Federal levels, rather than by the SEA, it is not appropriate to have SEAs establish and administer a complaint procedure. Part C of Title VII (Emergency Immigrant Education), which is State-administered, has been added to the list of covered programs. Additionally, language has been added to clarify that these procedures apply only to the State-administered portions of the Even Start programs.

Because Title XIV of ESEA, the primary subject of these regulations, applies only to programs in ESEA, these regulations were designed to fit the needs of the programs in ESEA. Once the Department has experience with the implementation of these regulations, we will consider whether they should be extended to other programs.

Change: One program has been added to the list of applicable programs, and language has been added to clarify that these procedures apply only to the State-administered portions of the Even Start programs.

Section 299.11 What Are Included in the Complaint Procedures?

Comment: Several commenters suggested that the regulations be more specific. They suggested that the regulations require the provision of specific information to parents and LEAs; include minimum time limits for resolving a complaint, and require a written decision to resolve the complaint. One commenter suggested that the regulations indicate more clearly that they apply to complaints about services to private school students as well as other matters.

Some commenters suggested that parents of eligible children be given notice that complaint procedures exist, and be provided advice on how to file complaints. A commenter further recommended that the procedures be made available in languages other than English, as appropriate.

Discussion: These regulations balance the flexibility of ESEA and the principle of regulating only when absolutely necessary with the need in certain cases to establish minimum requirements to ensure that the purposes of the statute are met. Generally, the level of detail that these commenters suggest be included in the regulations on complaint procedures goes beyond what

the Secretary considers absolutely necessary for these programs. Moreover, these matters are best left to the SEA to address after taking into account its particular circumstances. The Secretary does not think it is appropriate to prescribe further detailed specifications for the procedures. For example, although the Secretary believes that a reasonable period of time for hearing and resolving a complaint would generally be 60 to 90 days, regulating specific timelines for all complaints, no matter how detailed, does not seem necessary or appropriate.

The regulations clarify that they apply, among other things, to complaints about violations of the requirements to serve private school children and that the resolution be in writing.

On the other hand, the need for parents to be aware of the complaint procedures seems basic to ensuring proper accountability and involvement in the programs. Therefore, the Secretary has added a provision to ensure that LEAs adequately inform parents of the complaint procedures. In determining whether LEAs adequately informed parents, LEAs would be expected to make information available in languages other than English to the extent appropriate.

Change: The Secretary has added clarifying language in paragraphs (a) and (c) and added a new paragraph (d) to § 299.11 requiring that the complaint procedures include informing parents of the procedures.

Executive Order 12866

1. Assessment of Costs and Benefits

These final 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 final regulations are minimal and to the extent there are costs, the costs result primarily from the statutory requirements and regulations determined by the Secretary to be necessary for administering these programs effectively and efficiently.

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.

Summary of Potential Costs and Benefits

The potential costs and benefits are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes*.

Paperwork Reduction Act of 1995

Collection of Information: General Provisions, Elementary and Secondary Education Act: Complaint Process

1. Section 299.11(d) contains 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 this provision to the Office of Management and Budget (OMB) for its review under that Act.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations. The approval number for the information collection contained in §§ 299.10–299.12 (except for § 299.11(d)) is 1810–0591 and the approval expires 05/31/99.

2. Section 299.11(d) was added as a result of public comments, and it contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this provision to the Office of Management and Budget (OMB) for its review under the Act.

Under § 299.11(d), an SEA is required to indicate to LEAs that they must notify parents and appropriate private school officials or representatives of the complaint procedures. The likely respondents to the collection of information in the complaint process are SEAs and LEAs who will have to notify parents and the other individuals.

We estimate that the burden associated with the public notification process will amount to an additional 136,000 hours. Some 17,000 school districts will have to spend an average of eight person hours developing a notice, reproducing it, and distributing it. Some LEAs may choose to put a notification in a local newspaper; others may distribute the notification to each student or parents or private school representative or official. Our estimate is based on the latter assumption. The other option would probably save a significant amount of time reproducing and distributing the notice. Additionally, if an SEA developed a

standard notice for the LEAs in its State, burden would be reduced substantially. Therefore, if LEAs develop their own notice and distribute it to each student or parent or private school representative or official, the total annual reporting and recordkeeping burden that will result from the collection of this information is likely to be 136,000 burden hours (17,000 LEAs, multiplied by eight burden hours for developing a notice, reproducing it, and distributing it). If other options are taken by the SEA or LEA, many fewer burden hours will be involved.

Organizations and individuals desiring to submit comments on the information collection requirement in § 299.11(d) 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 this proposed collection of information in:

- Evaluating whether the proposed collection of information is 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 collection 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 § 299.11(d) 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.

Intergovernmental Review

Some of the programs affected by these final 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.

List of Subjects

34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians-education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 299

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

Dated: May 19, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 200 and adding a new Part 299 to read as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

1. The authority citation for Part 200 continues to read as follows:

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

2. Section 200.64 is amended by removing and reserving the section.

§ 200.64 [Reserved]

3. A new Part 299 is added 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 general administrative 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 of a recipient of funds 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 items are included in the complaint procedures?

299.12 How does an organization or individual file a complaint?

Authority: 20 U.S.C. 1221e–3(a)(1), 6511(a), and 7373(b) 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). 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 ESEA.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 299.2 What general administrative regulations apply to ESEA programs?

With regard to the applicability of Education Department General

Administrative Regulations (EDGAR) in Part 80 to the ESEA programs except for Title VIII programs (Impact Aid) (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 State, local, and Indian tribal governments under 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 for programs under ESEA and Title III of Goals 2000 are spent only for reasonable and necessary costs of operating those programs; 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.

Note: 34 CFR 222.13 indicates which EDGAR provisions apply to Title VIII programs (Impact Aid).

Note: To meet the first of the three standards, alternative State provisions must, among other things, ensure that costs are allocable to a particular cost objective. (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 such an Empowerment Zone, including a Supplemental Empowerment Zone, or such 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 comes 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 an applicable program listed in paragraph (b) of this section may receive its full allocation of funds only 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 the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(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 requirements 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 of a recipient of funds for providing services to children and teachers in private schools?

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

(b) *Applicable programs.* This subpart is applicable to the following programs:

(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 (Technology for Education) (other than Part B of this 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 Title 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to programs listed in paragraph (b) of this section.

(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 program listed in § 299.6 (b) 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 and 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 and 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 and other educational personnel participating in a program under this subpart.

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

(i) Addresses and assesses the specific needs and educational progress of eligible private school children and their teachers and other educational

personnel on a comparable basis to public school children and their teachers and other educational personnel;

(ii) Determines the number of students and their teachers and other educational personnel to be served on an equitable basis;

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

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

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

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

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

(c) If the needs of private school children, their teachers and other educational personnel are different from the needs of children, teachers and other educational personnel in the public schools, the agency or consortium of agencies shall provide program benefits for the private school children, teachers, and other educational personnel that are different from the benefits it provides for the public school children and their teachers and 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 agencies shall use funds under a program listed in § 299.6(b) to provide services that supplement, and in no case supplant, the level of services that would, in the absence of services provided under that program, be available to participating children and their teachers and other educational personnel in private schools.

(b) An agency or consortium of agencies shall use funds under a program listed in § 299.6(b) to meet the special educational needs of participating children who attend a private school and their teachers and

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 and 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 program listed in § 299.6(b) for the benefit of eligible private school children and their teachers and 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 purposes of the program; 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 the purposes of the program; or

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

(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 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 regulation that applies to an applicable program listed in paragraph (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) *Applicable programs.* This subpart is applicable to the following programs:

(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) (other than the federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives, and a prison that house women and children).

(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).

(9) Part C of Title VII (Emergency Immigrant Education)

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(Authority: 20 U.S.C. 1221e-3(a)(1), 8895)

§ 299.11 What items 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 in writing, 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. In matters involving violations of section 14503 (participation of private school children), the Secretary will follow the procedures in section 14505(b).

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(d) A requirement for LEAs to disseminate, free of charge, adequate information about the complaint

procedures to parents of students, and appropriate private school officials or representatives.

(Authority: 20 U.S.C. 1221e-3(a)(1), 8895)

§ 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 be in writing and signed by the complainant, and include—

(a) A statement that the SEA or an agency or consortium of agencies has violated a requirement of a Federal statute or regulation that applies to an applicable program; and

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

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(Authority: 20 U.S.C. 1221e-3(a)(1), 8895)

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