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Tuesday  
January 12, 1999

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**Part VIII**

**Department of  
Education**

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**Magnet Schools Assistance—Innovative  
Programs; Notice**

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.165B]

**Magnet Schools Assistance—  
Innovative Programs****AGENCY:** Department of Education.**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 1999.

*Purpose of Programs:* To award grants to local educational agencies (LEAs) or consortia of LEAs to enable them to conduct innovative programs that will assist in the desegregation of schools served by the LEA or LEAs.

*Eligible Applicants:* An LEA or consortium of LEAs that (1) is implementing a plan undertaken pursuant to a final order issued by a court of the United States, a court of any State, or any other State agency or official of competent jurisdiction that requires the desegregation of minority-group segregated children or faculty in elementary and secondary schools of that agency; or (2) has voluntarily adopted and is implementing, or, if assistance is made available under the Innovative Programs section of the Magnet Schools Assistance (MSA) statute, will voluntarily implement the plan that has been approved by the Secretary of Education as adequate under Title VI of the Civil Rights Act of 1964.

*Deadline Date for Transmittal of Applications:* February 26, 1999.

*Deadline Date for Intergovernmental Review:* April 28, 1999.

*Applications Available:* January 12, 1998.

*Available Funds:* \$5,100,000.

*Estimated Range of Awards:*

\$250,000–\$500,000.

*Estimated Average Size of Awards:* \$360,000.

*Estimated Number of Awards:* 14.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

**Priority**

While applicants may propose any project within the scope of section 5111 of the (MSA) statute, pursuant to 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of the invitational priorities does not receive competitive or absolute preference over other applications.

*Invitational Priority 1*

Elementary school projects that foster meaningful interaction among students of different racial and ethnic backgrounds, beginning at the earliest stage of the students' education, through the use of strategies such as work-site schools, interdistrict programs, partnerships with community-based organizations, or other strategies (other than magnet schools).

*Invitational Priority 2*

Secondary school projects that ensure that all students have equitable access to quality education that will prepare them to function well in a culturally diverse, technologically oriented and highly competitive global community, through the use of strategies such as interdistrict programs, partnerships with businesses, institutions of higher education or community-based organizations, innovative urban secondary school programs, or other strategies (other than magnet schools).

**General Requirements**

Innovative Programs are authorized under the MSA statute. However, while these programs must carry out the purpose of the MSA statute, (e.g., assist in the reduction, elimination or prevention of minority group isolation), Innovative Programs must involve strategies other than magnet schools, such as neighborhood or community model schools. In addition, they must be organized around a special emphasis, theme, or concept and involve extensive parent and community involvement.

In order to be eligible for an Innovative Programs grant, an LEA or consortium of LEAs must be implementing a required desegregation plan or have adopted and implemented (or agreed to implement if assistance is made available under the MSA statute) a voluntary desegregation plan. In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

Signed assurances (included in the application package);

A copy of the applicant's plan; and

An assurance that the plan is being implemented or will be implemented if the application is funded.

*Required Plans*

1. Plans Required by a Court Order:

An applicant that submits a plan required by a court must submit complete and signed copies of the plan.

2. Plans Required by a State Agency or Official of Competent Jurisdiction:

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

## 3. Title VI Required Plans:

An applicant that submits a plan required by the Office of Civil Rights under Title VI must submit a complete copy of the plan.

*Voluntary Plans*

A voluntary plan must be approved each time an application is submitted for funding. Even if ED has approved a voluntary plan in an LEA in the past, the plan must be resubmitted to ED for approval as part of the application.

An applicant submitting a voluntary plan must include in its application a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement the plan upon the award of assistance.

*Narrow Tailoring*

The purposes of the Magnet Schools Assistance Program include the reduction, elimination or prevention of minority group isolation. In many instances, in order to carry out these purposes, districts take race into account in assigning students to schools. In order to meet the requirements of Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment to the United States Constitution, applicants submitting voluntary plans that involve the use of race in decision making must ensure that the use of race satisfies strict scrutiny. That is, the use of race must be narrowly tailored to achieve the compelling interest in reducing, eliminating, or preventing minority group isolation.

In order for the Department to make a determination that a voluntary plan involving a racial classification is adequate under Title VI the plan must be narrowly tailored. Among the considerations that affect a determination of whether the use of race in a voluntary plan is narrowly tailored are (1) whether the district tried or seriously considered race-neutral alternatives and determined that the measures have not been or would not be similarly effective, before resorting to race-conscious action; (2) the scope and flexibility of the use of race, including

whether it is subject to a waiver; (3) the manner in which race is used, that is, whether race determines eligibility for a program or whether race is just one factor in the decision making process; (4) the duration of the use of race and whether it is subject to periodic review; and (5) the degree and type of burden imposed on students of other races.

Each of the considerations set out above should be specifically considered in framing a district's strategy. Some examples follow, although it must be recognized that the legal standards in this area are developing.

#### *Race-neutral*

Before resorting to race-conscious action, school districts must try or seriously consider race-neutral alternatives and determine that they have not been or would not be similarly effective. For example, it may be possible to broaden the appeal of a given school by aggressively publicizing it, making application to it as easy as possible, and broadening the geographic area from which the school is intended to draw.

#### *Use of Racial Criteria in Admissions*

It may be permissible to establish a procedure whereby race is taken into account in admissions only if race-neutral steps are considered and a determination is made that they would not prove similarly effective. Racial caps are the most difficult use of race to justify under a narrow tailoring analysis.

The decision to consider race in admission decisions should be made on a school-by-school basis.

#### *Scope and Flexibility*

Over time, the enrollment at a school may become stable and the school may attract a diverse group of students. At this point, use of race as a factor in admissions may no longer be necessary.

In some instances, exceptions to the use of race in admissions—where a relatively small number of students are adversely affected and their admission will not substantially affect the racial

composition of the program—should be available.

#### *Duration of the Program and Reexamination of the Use of Criteria*

The school or school district should formally review the steps it has taken which involve the use of race on a regular basis, such as on an annual basis, to determine whether the use of race is still needed, or should be modified.

#### *Effect on Students of Other Races*

Where there are a number of schools involved in the voluntary plan, it may also be possible to assign students to a comparable school, if they are unable to gain admission to their first preference.

Innovative Programs are exempt from certain provisions of the MSA statute, including section 5103 (Program Authorized), section 5106 (Applications and Requirements), section 5107 (Priority), and section 5108 (Use of Funds). Other MSA statute requirements apply to applications submitted under Innovative Programs. For example, under section 5109, grants may not be used for transportation or any activity that does not augment academic improvement and under section 5110, a grantee may not expend more than 50 percent of the funds received for the first year of the project for planning, not more than 15 percent of grant funds for the second year, and not more than 10 percent of the grant funds for the third year.

#### **Selection Criteria:**

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.210.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E112, Washington, DC 20202-6140. Telephone (202) 260-2476. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request of the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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**Note:** The official version of this document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C.7211.

Dated: January 7, 1999.

**Gerald N. Tirozzi,**

*Assistant Secretary, Elementary and Secondary Education.*

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