

“PART E—UNIFORM PROVISIONS

“Subpart 1—Private Schools

“SEC. 9501. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.

“(a) PRIVATE SCHOOL PARTICIPATION.—

“(1) IN GENERAL.—Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

“(2) SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS.—Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

“(3) SPECIAL RULE.—Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

“(4) EXPENDITURES.—Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

“(5) PROVISION OF SERVICES.—An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—This section applies to programs under—

“(A) subparts 1 and 3 of part B of title I;

“(B) part C of title I;

“(C) part A of title II, to the extent provided in paragraph (3);

“(D) part B of title II;

“(E) part D of title II;

“(F) part A of title III;

“(G) part A of title IV; and

“(H) part B of title IV.

“(2) DEFINITION.—For the purpose of this section, the term ‘eligible children’ means children eligible for services under a program described in paragraph (1).

“(3) APPLICATION.—(A) Except as provided in subparagraph (B), this subpart, including subsection (a)(4), applies to funds

awarded to a local educational agency under part A of title II only to the extent that the local educational agency uses funds under that part to provide professional development to teachers and others.

“(B) Subject to subparagraph (A), the share of the local educational agency’s subgrant under part A of title II that is used for professional development and subject to a determination of equitable expenditures under subsection (a)(4) shall not be less than the aggregate share of that agency’s awards that were used for professional development for fiscal year 2001 under section 2203(1)(B) (as such section was in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001) and section 306 of the Department of Education Appropriations Act, 2001.

“(c) CONSULTATION.—

“(1) IN GENERAL.—To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this Act, on issues such as—

“(A) how the children’s needs will be identified;

“(B) what services will be offered;

“(C) how, where, and by whom the services will be provided;

“(D) how the services will be assessed and how the results of the assessment will be used to improve those services;

“(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and

“(F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

“(2) DISAGREEMENT.—If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

“(3) TIMING.—The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

“(4) DISCUSSION REQUIRED.—The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

“(d) PUBLIC CONTROL OF FUNDS.—

“(1) IN GENERAL.—The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

“(2) PROVISION OF SERVICES.—

“(A) IN GENERAL.—The provision of services under this section shall be provided—

“(i) by employees of a public agency; or

“(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

“(B) INDEPENDENCE; PUBLIC AGENCY.—In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

“(C) COMMINGLING OF FUNDS PROHIBITED.—Funds used to provide services under this section shall not be commingled with non-Federal funds.

“SEC. 1120. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

“(a) GENERAL REQUIREMENT.—

“(1) IN GENERAL.—To the extent consistent with the number of eligible children identified under section 1115(b) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 1118 and 1119.

“(2) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

“(3) EQUITY.—Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

“(4) EXPENDITURES.—Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.

“(5) PROVISION OF SERVICES.—The local educational agency may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

“(b) CONSULTATION.—

“(1) IN GENERAL.—To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency’s programs under this part, on issues such as—

“(A) how the children’s needs will be identified;

“(B) what services will be offered;

“(C) how, where, and by whom the services will be provided;

“(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;

“(E) the size and scope of the equitable services to be provided to the eligible private school children, and the proportion of funds that is allocated under subsection (a)(4) for such services;

“(F) the method or sources of data that are used under subsection (c) and section 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools;

“(G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers; and

“(H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor.

“(2) TIMING.—Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

“(3) DISCUSSION.—Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

“(4) DOCUMENTATION.—Each local educational agency shall maintain in the agency’s records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has taken place to the State educational agency.

“(5) COMPLIANCE.—

“(A) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

“(B) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

“(C) ALLOCATION FOR EQUITABLE SERVICE TO PRIVATE SCHOOL STUDENTS.—

“(1) CALCULATION.—A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools by—

“(A) using the same measure of low income used to count public school children;

“(B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;

“(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or

“(D) using an equated measure of low income correlated with the measure of low income used to count public school children.

“(2) COMPLAINT PROCESS.—Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 9505.

“(d) PUBLIC CONTROL OF FUNDS.—

“(1) IN GENERAL.—The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

“(2) PROVISION OF SERVICES.—

“(A) PROVIDER.—The provision of services under this section shall be provided—

“(i) by employees of a public agency; or

“(ii) through contract by such public agency with an individual, association, agency, or organization.

“(B) REQUIREMENT.—In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

“(e) STANDARDS FOR A BYPASS.—If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines

that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—

“(1) waive the requirements of this section for such local educational agency;

“(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 9503 and 9504; and

“(3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

“SEC. 5142. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

“(a) PARTICIPATION ON EQUITABLE BASIS.—

“(1) IN GENERAL.—To the extent consistent with the number of children in the school district of a local educational agency that is eligible to receive funds under this part, or that serves the area in which a program assisted under this part is located, who are enrolled in private nonprofit elementary schools and secondary schools, or, with respect to instructional or personnel training programs funded by the State educational agency from funds made available for State educational agency use, the local educational agency, after consultation with appropriate private school officials—

“(A) shall provide, as may be necessary, for the benefit of such children in such schools—

“(i) secular, neutral, and nonideological services, materials, and equipment, including the participation of the teachers of such children (and other educational personnel serving such children) in training programs; and

“(ii) the repair, minor remodeling, or construction of public facilities (consistent with subsection (c)); or

“(B) if such services, materials, and equipment are not feasible or necessary in one or more such private schools, as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this part.

“(2) OTHER PROVISIONS FOR SERVICES.—If no program is carried out under paragraph (1) in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the district are provided with services and materials to the same extent as would have occurred if the local educational agency had received funds under this part.

“(3) APPLICATION OF REQUIREMENTS.—The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs

carried out under this part by a State educational agency or local educational agency, whether directly or through grants to, or contracts with, other public or private agencies, institutions, or organizations.

“(b) EQUAL EXPENDITURES.—

“(1) IN GENERAL.—Expenditures for programs under subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this part for children enrolled in the public schools of the local educational agency.

“(2) CONCENTRATED PROGRAMS.—Taking into account the needs of the individual children and other factors that relate to the expenditures referred to in paragraph (1), and when funds available to a local educational agency under this part are used to concentrate programs on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, 20 USC 7217a.

or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs.

“(c) ADMINISTRATIVE REQUIREMENTS.—

“(1) FUNDS AND PROPERTY.—The control of funds provided under this part, and title to materials, equipment, and property repaired, remodeled, or constructed with such funds, shall be in a public agency for the uses and purposes provided in this part, and a public agency shall administer such funds and property.

“(2) PROVISION OF SERVICES.—Services provided under this part shall be provided by employees of a public agency or through contract by such a public agency with a person, association, agency, or corporation that, in the provision of such services, is independent of the private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such a public agency. The funds provided under this part shall not be commingled with State or local funds.

“(d) WAIVER.—

“(1) STATE PROHIBITION.—If a State educational agency or local educational agency is prohibited, by reason of any provision of law, from providing for the participation in programs of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c), the Secretary shall waive such requirements for the agency involved and shall arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section.

“(2) FAILURE TO COMPLY.—If the Secretary determines that a State educational agency or a local educational agency has substantially failed, or is unwilling, to provide for the participation on an equitable basis of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c), the Secretary may waive such requirements and shall arrange for the provision of services to such children through arrangements that shall be subject to the

requirements of this section.

“(e) WITHHOLDING OF ALLOTMENT OR ALLOCATION.—Pending final resolution of any investigation or complaint that could result in a waiver under subsection (d)(1) or (d)(2), the Secretary may withhold from the allotment or allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of services to be provided by the Secretary under such subsection.

“(f) DURATION OF DETERMINATION.—Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency or local educational agency to meet the requirements of subsections (a) through (c).

“(g) PAYMENT FROM STATE ALLOTMENT.—When the Secretary arranges for services under subsection (d), the Secretary shall, after consultation with the appropriate public school and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State educational agency under this part.

“(h) REVIEW OF DETERMINATION.—

“(1) WRITTEN OBJECTIONS.—The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary’s designee to show cause why that action should not be taken.

“(2) COURT ACTION.—If a State educational agency or local educational agency is dissatisfied with the Secretary’s final action after a proceeding under paragraph (1), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

“(3) REMAND TO SECRETARY.—The findings of fact by the Secretary with respect to a proceeding under paragraph (1), if supported by substantial evidence, shall be conclusive. The court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may make new or modified findings of fact and may modify the Secretary’s previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive, if supported by substantial evidence.

“(4) COURT REVIEW.—Upon the filing of a petition under paragraph (2), the court shall have jurisdiction to affirm the action of the Secretary or to set such action aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

“(i) PRIOR DETERMINATION.—Any bypass determination by the Secretary under title VI (as such title was in effect on the day

preceding the date of enactment of the No Child Left Behind Act of 2001) shall, to the extent consistent with the purposes of this part, apply to programs under this part.