

§ 299.6

(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 or 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