

**PART 200—TITLE I—HELPING DIS-ADVANTAGED CHILDREN MEET HIGH STANDARDS**

**Subpart A—Improving Basic Programs Operated by Local Educational Agencies**

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**Subpart A—Improving Basic Programs Operated by Local Educational Agencies**

STANDARDS, ASSESSMENT, AND ACCOUNTABILITY

**§ 200.1 Contents of a State plan.**

(a)(1) A State that desires to receive a grant under this subpart shall submit to the Secretary a plan that meets the requirements of this section.

(2) A State plan must be—

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(i) Developed with broad-based consultation throughout the planning process with local educational agencies (LEAs), teachers, pupil services personnel, other staff, parents, and administrators, including principals;

(ii) Developed with substantial involvement of the Committee of Practitioners established under section 1603(b) of the Elementary and Secondary Education Act of 1965, as amended (Act), and continue to involve the Committee in monitoring the plan's implementation; and

(iii) Coordinated with other plans developed under the Act, the Goals 2000: Educate America Act, and other acts, as appropriate, consistent with section 14307 of the Act.

(3) In lieu of a State plan under this section, a State may include programs under this part in a consolidated State plan submitted in accordance with section 14302 of the Act.

(b) A State plan must address the following:

(1) *Challenging standards.* The State plan must include—

(i) Evidence that demonstrates that—

(A) The State has developed or adopted challenging content and student performance standards for all students in accordance with § 200.2; and

(B) The State's procedure for setting the student performance levels applies recognized professional and technical knowledge for establishing the student performance levels; or

(ii) The State's strategy and schedule for developing or adopting by the beginning of the 1997-1998 school year—

(A) Challenging content and student performance standards for all students in accordance with § 200.2(b); or

(B) Content and student performance standards for elementary and secondary school children served under this subpart in accordance with § 200.2(c), if the State will not have developed or adopted content and student performance standards for all students by the 1997-1998 school year or does not intend to develop such standards.

(iii) For subjects in which students will be served under this subpart but for which a State has no standards, the State plan must describe the State's strategy for ensuring that those students are taught the same knowledge

and skills and held to the same expectations as are all children.

(2) *Assessments.* The State plan must—

(i) Demonstrate that the State has developed or adopted a set of high-quality yearly student assessments, including assessments that measure performance in at least mathematics and reading/language arts, in accordance with § 200.4, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating under this subpart to meet the State's student performance standards; or

(ii) If a State has not developed or adopted assessments that measure performance in at least mathematics and reading/language arts in accordance with § 200.4—

(A) Describe the State's quality benchmarks, timetables, and reporting schedule for completing the development and field-testing of those assessments by the beginning of the 2000-2001 school year; and

(B) Describe the transitional set of yearly statewide assessments the State will use to assess students' performance in mastering complex skills and challenging subject matter; and

(iii)(A) Identify the languages other than English that are spoken by the student population participating under this subpart; and

(B) Indicate the languages for which yearly student assessments that meet the requirements of this section are not available and are needed and develop a timetable for progress toward the development of these assessments.

(3) *Adequate yearly progress.* The State plan must—

(i) Demonstrate, based on the assessments described under § 200.4, what constitutes adequate yearly progress toward enabling all children to meet the State performance standards of—

(A) Any school served under this subpart; and

(B) Any LEA that receives funds under this subpart; or

(ii) For any year in which a State uses transitional assessments under § 200.4(e), describe how the State will identify schools under § 200.5 and LEAs under § 200.6 in accordance with § 200.3.

(4) *Capacity building.* Each State plan shall describe—

(i) How the State educational agency (SEA) will help each LEA and school affected by the State plan to develop the capacity to comply with each of the requirements of sections 1112(c)(1)(D), 1114(b), and 1115(c) of the Act that is applicable to the LEA and school; and

(ii) Other factors the State deems appropriate, which may include opportunity-to-learn standards or strategies developed under the Goals 2000: Educate America Act, to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards developed or adopted by the State.

(Authority: 20 U.S.C. 6311)

**§ 200.2 State responsibilities for developing challenging standards.**

(a) *Standards in general.* (1) A State shall develop or adopt challenging content and student performance standards that will be used by the State, its LEAs, and its schools to carry out this subpart.

(2) Standards under this subpart must include—

(i) Challenging content standards in academic subjects that—

(A) Specify what children are expected to know and be able to do;

(B) Contain coherent and rigorous content; and

(C) Encourage the teaching of advanced skills; and

(ii) Challenging student performance standards that—

(A) Are aligned with the State's content standards;

(B) Describe two levels of high performance—proficient and advanced—that determine how well children are mastering the material in the State's content standards; and

(C) Describe a third level of performance—partially proficient—to provide complete information to measure the progress of lower-performing children toward achieving to the proficient and advanced levels of performance.

(b) *Standards for all children.* A State that has developed or adopted content standards and student performance standards for all students under title III of the Goals 2000: Educate America

Act or under another process, or will develop or adopt such standards by the beginning of the 1997–1998 school year, shall use those standards, modified, if necessary, to conform with the requirements in paragraph (a) of this section and § 200.3, to carry out this subpart.

(c) *Standards for children served under this subpart.* (1) If a State will not have developed or adopted content and student performance standards for all students by the beginning of the 1997–1998 school year, or does not intend to develop those standards, the State shall develop content and student performance standards for elementary and secondary school children served under this subpart in subject areas as determined by the State, but including at least mathematics and reading/language arts. These standards must—

(i) Include the same knowledge, skills, and levels of performance expected of all children;

(ii) Meet the requirements in paragraph (a) of this section and § 200.3; and

(iii) Be developed by the beginning of the 1997–1998 school year.

(2) If a State has not developed content and student performance standards in mathematics and reading/language arts for elementary and secondary school children served under this subpart by the beginning of the 1997–1998 school year, the State shall then adopt a set of standards in those subjects such as the standards contained in other State plans the Secretary has approved.

(3) If and when a State develops or adopts standards for all children, the State shall use those standards to carry out this subpart.

(Authority: 20 U.S.C. 6311(b))

**§ 200.3 Requirements for adequate progress.**

(a) Except as provided in paragraph (c) of this section, each State shall determine, based on the State assessment system described in § 200.1, what constitutes adequate yearly progress of—

(1) Any school served under this subpart toward enabling children to meet the State's student performance standards; and

(2) Any LEA that receives funds under this subpart toward enabling children in schools served under this

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subpart to meet the State's student performance standards.

(b) Adequate yearly progress must be defined in a manner that—

(1) Results in continuous and substantial yearly improvement of each school and LEA sufficient to achieve the goal of all children served under this subpart, particularly economically disadvantaged and limited-English proficient children, meeting the State's proficient and advanced levels of performance;

(2) Is sufficiently rigorous to achieve that goal within an appropriate time-frame; and

(3) Links progress primarily to performance on the State's assessment system under §200.4, while permitting progress to be established in part through the use of other measures, such as dropout, retention, and attendance rates.

(c) For any year in which a State uses transitional assessments under §200.4(e), the State shall devise a procedure for identifying schools under §200.5 and LEAs under §200.6 that relies on accurate information about the continuous and substantial yearly academic progress of each school and LEA.

(Authority: 20 U.S.C. 6311(b)(2), (7)(B))

### §200.4 State responsibilities for assessment.

(a)(1) Each State shall develop or adopt a set of high-quality yearly student assessments, including assessments that measure performance in at least mathematics and reading/language arts, that will be used as the primary means of determining the yearly performance of each school and LEA served under this subpart in enabling all children participating under this subpart to meet the State's student performance standards.

(2) A State may satisfy this requirement if the State has developed or adopted a set of high-quality yearly student assessments in other academic subjects that measure performance in mathematics and reading/language arts.

(b) Assessments under this section must meet the following requirements:

(1) Be the same assessments used to measure the performance of all chil-

dren, if the State measures the performance of all children.

(2)(i) Be aligned with the State's challenging content and student performance standards; and

(ii) Provide coherent information about student attainment of the State's content and student performance standards.

(3)(i)(A) Be used for purposes for which the assessments are valid and reliable; and

(B) Be consistent with relevant, nationally recognized professional and technical standards for those assessments.

(ii) Assessment measures that do not meet these requirements may be included as one of the multiple measures if the State includes in its State plan sufficient information regarding the State's efforts to validate the measures and to report the results of those validation studies.

(4) Measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards.

(5) Be administered at some time during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(6) Involve multiple approaches within an assessment system with up-to-date measures of student performance, including measures that assess complex thinking skills and understanding of challenging content.

(7) Provide for—

(i) Participation in the assessment of all students in the grades being assessed;

(ii) Reasonable adaptations and accommodations for students with diverse learning needs necessary to measure the achievement of those students relative to the State's standards; and

(iii)(A) Inclusion of limited-English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English.

(B) To meet this requirement, the State—

(1) Shall make every effort to use or develop linguistically accessible assessment measures; and

(2) May request assistance from the Secretary if those measures are needed.

(8) Include, for determining the progress of the LEA only, students who have attended schools in the LEA for a full academic year, but who have not attended a single school in the LEA for a full academic year.

(9) Provide individual student interpretive and descriptive reports that include—

(i) Individual scores; or

(ii) Other information on the attainment of student performance standards.

(10) Enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status;

(v) Students with disabilities as compared to students without disabilities; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(c)(1) If a State has developed or adopted assessments for all students that measure performance in mathematics and reading/language arts under title III of the Goals 2000: Educate America Act or under another process, the State shall use those assessments, modified, if necessary, to conform with the requirements in paragraph (b) of this section and §200.3, to carry out this subpart.

(2) Paragraph (c)(1) of this section does not relieve the State from including students served under this subpart in assessments in any other subjects the State has developed or adopted for all children.

(d)(1) Except as provided in paragraph (d) (2) and (3) of this section, if a State has not developed or adopted assessments that measure performance in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section, the State shall—

(i) By the beginning of the 2000–2001 school year, develop those assessments and field-test them for one year; and

(ii) Develop a timetable and benchmarks, including reports of validity studies, for completing the development and field testing of those assessments.

(2) The State may request a one-year extension from the Secretary to test its new assessments if the State submits a strategy to correct problems identified in the field testing of its assessments.

(3) If a State has not developed assessments that measure performance in at least mathematics and reading/language arts that meet the requirements in paragraph (b) of this section by the beginning of the 2000–2001 school year and is denied an extension, the State shall adopt a set of assessments in those subjects such as assessments contained in the plans of other States the Secretary has approved.

(e)(1) While a State is developing assessments under paragraph (d) of this section, the State may propose to use a transitional set of yearly statewide assessments that will—

(i) Assess the performance of complex skills and challenging subject matter in at least mathematics and reading/language arts, which may be satisfied through assessments in academic subjects other than mathematics and reading/language arts if those assessments measure performance in mathematics and reading/language arts;

(ii) Be administered at some time during—

(A) Grades 3 through 5;

(B) Grades 6 through 9; and

(C) Grades 10 through 12; and

(iii) Include all children in the grades being assessed.

(2) Transitional assessments do not need to meet the other requirements of this section.

(Authority: 20 U.S.C. 6311(b))

#### §200.5 Requirements for school improvement.

(a) *Local review.* (1)(i) Each LEA receiving funds under this subpart shall review annually the progress of each school served under this subpart to determine whether the school is meeting or making adequate progress toward

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enabling its students to meet the State's student performance standards described in the State plan.

(ii) An LEA may review a targeted assistance school on the progress of only those students that have been or are served under this subpart.

(2) In conducting its review, an LEA shall—

(i)(A) Use the State assessments or transitional assessments described in the State plan; and

(B) Use any additional measures or indicators described in the LEA's plan; or

(ii) If the State assessments are not conducted in a title I school, use other appropriate measures or indicators to review the school's progress; and

(iii)(A) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(B) Seek to produce, in schoolwide program schools, statistically sound results for each category through the use of oversampling or other means; and

(C) Report disaggregated data to the public only when those data are statistically sound.

(3) The LEA shall—

(i) Publicize and disseminate to teachers and other staff, parents, students, the community, and administrators, including principals, the results of the annual review of all schools served under this subpart in individual school performance profiles; and

(ii) Provide the results of the annual review to schools served under this subpart so that the schools can continually refine their program of instruction to help all children participating under this subpart meet the State's student performance standards.

(Approved by the Office of Management and Budget under control number 1810-0581)

(Authority: 20 U.S.C. 6317(a))

### § 200.6 Requirements for LEA improvement.

(a) *State review.* (1)(i) Each SEA shall review annually the progress of each LEA served under this subpart to determine whether the schools receiving assistance under this subpart are making adequate progress toward enabling their students to meet the State's stu-

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dent performance standards described in the State plan.

(ii) An SEA may review the progress of the schools served by an LEA only for those students that have been or are being served under this subpart.

(2) In conducting its review, an SEA shall—

(i) Disaggregate the results of the review according to the categories specified in § 200.4(b)(10);

(ii) Consider other indicators, if applicable, in accordance with section 1112(b)(1) of the Act; and

(iii) Report disaggregated data to the public only when those data are statistically sound.

(3) The SEA shall publicize and disseminate to LEAs, teachers, and other staff, parents, students, the community, and administrators, including principals, the results of the State review.

(Approved by the Office of Management and Budget under control number 1810-0581)

(Authority: 20 U.S.C. 6317(d))

### § 200.7 [Reserved]

#### SCHOOLWIDE PROGRAMS

### § 200.8 Schoolwide program requirements.

(a) *General.* (1) An eligible school, in consultation with its LEA, may use funds or services under this subpart, in combination with other Federal, State, and local funds it receives, to upgrade the entire educational program in the school to support systemic reform in accordance with the provisions of this section.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a school may not start a new schoolwide program until the SEA provides written information to each LEA that the SEA has established a statewide system of support and improvement.

(ii) If a school desires to start a schoolwide program prior to the establishment of a statewide system of support and improvement, the school shall demonstrate to the LEA that the school has received high-quality technical assistance and support from other providers of assistance.

(b) *Eligibility for a schoolwide program.* A school may operate a schoolwide program if—

(1) The LEA determines that the school serves a participating attendance area or is a participating school under section 1113 of the Act; and

(2)(i) For the initial year of the schoolwide program, the school meets either of the following criteria:

(A) For the 1995–1996 school year—

(1) The school serves a school attendance area in which not less than 60 percent of the children are from low-income families; or

(2) Not less than 60 percent of the children enrolled in the school are from low-income families.

(B) For the 1996–1997 school year and subsequent years, the percentages of children from low-income families in paragraph (b)(2)(i)(A) may not be less than 50 percent.

(ii) The LEA may choose to determine the percentage of children from low-income families under paragraph (b)(2)(i) based on a measure of poverty that is different from the poverty measure or measures used by the LEA to identify and rank school attendance areas for eligibility and participation under this subpart.

(c) *Availability of other Federal funds.*

(1) In addition to funds under this subpart, a school may use in its schoolwide program Federal funds under any program administered by the Secretary that is included in the most recent notice published by the Secretary in the FEDERAL REGISTER or is addressed in paragraph (c)(3)(ii)(B)(3) of this section.

(2) For the purposes of this section, the authority to combine funds from other Federal programs also applies to services provided to a school with those funds.

(3)(i) Except as provided in paragraph (c)(3)(ii) of this section, a school that combines funds from any other Federal program administered by the Secretary in a schoolwide program—

(A) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but

(B) Shall meet the intent and purposes of that program to ensure that

the needs of the intended beneficiaries of that program are addressed.

(ii)(A) An LEA or a school that chooses to use funds from other programs shall not be relieved of statutory and regulatory requirements applicable to those programs relating to—

(1) Health and safety;

(2) Civil rights;

(3) Gender equity;

(4) Participation and involvement of parents and students;

(5) Private school children, teachers, and other educational personnel;

(6) Maintenance of effort;

(7) Comparability of services;

(8) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with paragraph (f)(1) (iii) and (2) of this section; and

(9) Distribution of funds to SEAs and LEAs.

(B) A school operating a schoolwide program shall comply with the following requirements if it combines funds from these programs in its schoolwide program:

(1) *Migrant education.* A school that combines in its schoolwide program funds received under part C of title I of the Act shall—

(i) In consultation with parents of migratory children or organizations representing those parents, or both, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit migratory children to participate effectively in school; and

(ii) Document that services to address those needs have been provided.

(2) *Indian education.* A school may combine funds received under subpart 1 of part A of title IX of the Act in its schoolwide program if the parent committee established by the LEA under section 9114(c)(4) of the Act approves the inclusion of those funds.

(iii) This paragraph does not relieve—

(A) An LEA from complying with all requirements that do not affect the operation of a schoolwide program; or

(B) A non-schoolwide program school from complying with all applicable requirements.

(3) *Special Education.* (i) A school may combine funds received under Part B of

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the Individuals with Disabilities Education Act (IDEA) in a schoolwide program, except that the amount so used in any schoolwide program may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

(ii) A school may also combine funds received under section 8003(d) of the Act (Impact Aid funds for children with disabilities) in a schoolwide program.

(iii) A school that combines funds under Part B of IDEA or section 8003(d) of the Act in its schoolwide program may use those funds for any activities under its schoolwide program plan but shall comply with all other requirements of Part B of IDEA, to the same extent it would if it did not combine funds under Part B of IDEA or section 8003(d) of the Act in schoolwide program.

(d) *Components of a schoolwide program.* A schoolwide program must include the following components:

(1) A comprehensive needs assessment involving the parties listed in paragraph (e)(2)(ii) of this section of the entire school that is based on—

(i) Information on the performance of children in relation to the State content standards and the State student performance standards under section 1111(b)(1) of the Act; or

(ii) Until the State develops or adopts standards under section 1111(b)(1) of the Act, an analysis of available data on the achievement of students in the school.

(2) Schoolwide reform strategies that—

(i) Provide opportunities, based on best knowledge and practice, for all children in the school to meet the State's proficient and advanced levels of student performance;

(ii) Are based on effective means of improving the achievement of children, such as utilizing research-based teaching strategies;

(iii) Use effective instructional strategies that—

(A) Increase the amount and quality of learning time, such as providing an

extended school year and before- and after-school and summer programs;

(B) Provide an enriched and accelerated curriculum; and

(C) Meet the educational needs of historically underserved populations;

(iv)(A) Address the needs of all children in the school, particularly the needs of children who are members of the target population of any program that is included in the schoolwide program under paragraph (c) of this section; and

(B) Address how the school will determine if those needs have been met; and

(v) Are consistent with, and designed to implement, the State and local improvement plans, if any, approved under title III of the Goals 2000: Educate America Act.

(3) Instruction by highly qualified professional staff.

(4)(i) Professional development, in accordance with section 1119 of the Act, for teachers and aides and, where appropriate, principals, pupil services personnel, other school staff, and parents to enable all children in the school to meet the State's student performance standards.

(ii) The school shall devote sufficient resources to effectively carry out its responsibilities for professional development, either alone or in consortia with other schools.

(5) Strategies to increase parental involvement, such as family literacy services.

(6) Strategies in an elementary school for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to the schoolwide program.

(7) Strategies to involve teachers in the decisions regarding the use of additional local, high-quality student assessments, if any, under section 1112(b)(1) of the Act to provide information on, and to improve, the performance of individual students and the overall instructional program.

(8)(i) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) of the Act during the school year will be provided effective,

timely additional assistance, which must include—

(A) Strategies to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

(B) To the extent the school determines feasible using funds under this subpart, periodic training for teachers in how to identify those difficulties and to provide assistance to individual students; and

(C) For any student who has not met those standards, parent-teacher conferences to discuss—

(1) What the school will do to help the student meet the standards;

(2) What the parents can do to help the student improve the student's performance; and

(3) Additional assistance that may be available to the student at the school or elsewhere in the community.

(ii) This provision does not—

(A) Require the school or LEA to develop an individualized education program (IEP) for each student identified under paragraph (d)(8) of this section; or

(B) Relieve the school or LEA from the requirement under the IDEA to develop IEPs for students with disabilities.

(e) *Schoolwide program plan.* (1) An eligible school that desires to operate a schoolwide program shall develop, in consultation with the LEA and its school support team or other technical assistance provider, a comprehensive plan for reforming the total instructional program in the school that—

(i) Incorporates the components under paragraph (d) of this section;

(ii) Describes how the school will use resources under this subpart and from other sources to implement those components;

(iii) Includes a list of State and local programs and other Federal programs under paragraph (c) of this section that will be included in the schoolwide program; and

(iv)(A) If the State has developed or adopted a State assessment system under section 1111(b)(3) of the Act—

(1) Describes how the school will provide individual student assessment results, including an interpretation of

those results, to the parents of each child who participates in that assessment; and

(2) Provides for the disaggregation of data on the assessment results of students and the reporting of those data in accordance with § 200.5(a); or

(B) If the State has not developed or adopted a State assessment system under section 1111(b)(3) of the Act, describes the data on the achievement of students in the school and effective instructional and school improvement practices on which the plan is based.

(2) The schoolwide program plan must be—

(i) Developed during a one-year period unless—

(A) The LEA, after considering the recommendation of its technical assistance providers, determines that less time is needed to develop and implement the schoolwide program; or

(B) The school is operating a schoolwide program under section 1015 of chapter 1 of title I of the Act during the 1994-1995 school year, in which case the school may continue its schoolwide program but shall amend its current plan or develop a new plan in accordance with this section during the first year it receives funds under this part;

(ii) Developed with the involvement of the community to be served and individuals who will carry out the plan, including—

(A) Teachers;

(B) Principals;

(C) Other school staff;

(D) Pupil services personnel, if appropriate;

(E) Parents of students in the school; and

(F) If the plan relates to a secondary school, students from the school;

(iii) Available to the LEA, parents, and the public;

(iv) Translated, to the extent feasible, into any language that a significant percentage of the parents of participating children in the school speak as their primary language; and

(v) If appropriate, developed in coordination with other programs, including those under the School-to-Work Opportunities Act of 1994, the Carl D. Perkins Vocational and Applied

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Technology Education Act, and the National and Community Service Act of 1990.

(3) The schoolwide program plan remains in effect for the duration of the school's participation under this section.

(4) A school operating a schoolwide program shall review and revise its plan, as necessary, to reflect changes in its schoolwide program or changes to reflect State standards established after the plan was developed.

(f) *Effect of operating a schoolwide program.* (1) No school operating a schoolwide program shall be required to—

(i) Identify particular children under this subpart and under any other Federal program included under paragraph (c) of this section as eligible to participate in the schoolwide program;

(ii) Document that funds available under this subpart and any other Federal program included under paragraph (c) of this section are used to benefit only the intended beneficiaries of the respective programs; or

(iii) Demonstrate that the particular services paid for with funds under this subpart and under any other Federal program included under paragraph (c) of this section supplement the services regularly provided in that school.

(2) A school operating a schoolwide program shall use funds available under this subpart and under any other Federal program included under paragraph (c) of this section only to supplement the total amount of funds that would, in the absence of those funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited-English proficiency.

(Authority: 20 U.S.C. 6314, 1413(a)(2)(D), 6396(b)(3), 7703(d), 7815(c))

[60 FR 34802, July 3, 1995, as amended at 63 FR 54997, Oct. 13, 1998]

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### § 200.9 [Reserved]

#### PARTICIPATION OF ELIGIBLE CHILDREN IN PRIVATE SCHOOLS

### § 200.10 Responsibilities for providing services to children in private schools.

(a) An LEA shall, after timely and meaningful consultation with appropriate private school officials, 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 in accordance with the requirements in §§ 200.11 through 200.17 and section 1120 of the Act.

(b)(1) Eligible private school children are children who—

(i) Reside in a participating school attendance area of the LEA; and

(ii) Meet the criteria in section 1115(b) of the Act.

(2) If an LEA identifies a public school as eligible on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA shall, in consultation with private school officials, determine an equitable way to identify eligible private school children.

(3) Among the eligible private school children, the LEA shall select children to participate in a manner that is consistent with the provisions in § 200.11.

(Authority: 20 U.S.C. 6315(b); 6321(a))

### § 200.11 Factors for determining equitable participation of children in private schools.

(a) *Equal expenditures.* (1) Expenditures of funds made available under this subpart for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under § 200.28.

(2) An LEA shall meet this requirement as follows:

(i) Before determining equal expenditures under paragraph (a)(1) of this section, the LEA shall reserve, from the

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LEA's whole allocation, funds needed to carry out §200.27.

(ii) The LEA shall reserve the amounts of funds generated by private school children under §200.28 and, in consultation with appropriate private school officials, may—

(A) Combine those amounts to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under §200.28 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits provided to public school children participating under this subpart.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

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

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of those children achieving the high levels called for by the State's student performance standards.

(3) The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(Authority: 20 U.S.C. 6321(a))

**§200.12 Requirements to ensure that funds do not benefit a private school.**

(a) An LEA shall use funds under this subpart to provide services that supplement, and in no case supplant, the level of services that would, in the absence of title I services, be available to participating children in private schools.

(b) An LEA shall use funds under this subpart to meet the special educational needs of participating private school children, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 6321(a), 6322(b))

**§200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.**

(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 this subpart for the benefit of eligible private school children.

(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 title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for title I purposes; or

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

(e) No funds under this subpart 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 LEA.

(Authority: 20 U.S.C. 6321(c))

**§200.14 [Reserved]**

**CAPITAL EXPENSES**

**§200.15 Payments to SEAs for capital expenses.**

(a) From the amount appropriated for capital expenses under section 1002(e) of the Act, the Secretary pays a State an amount that bears the same

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ratio to the amount appropriated as the number of private school children in the State who received services under this subpart in the most recent year for which data satisfactory to the Secretary are available bears to the total number of private school children served in that same year in all the States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.16 among other States on the basis of their respective needs.

(Authority: 20 U.S.C. 6321(e)(1))

## § 200.16 Payments to LEAs for capital expenses.

(a)(1)(i) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable services to eligible private school children—

(A) Is currently incurring; or

(B) Would incur because of an expected increase in the number of private school children to be served.

(ii) An LEA may apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed if the LEA demonstrates that its current needs for capital expenses have been met.

(2) *Capital expenses* means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar v. Felton*. These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including mobile educational units, and leasing of neutral sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services, including noninstructional computer technicians; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) An SEA shall distribute funds it receives under § 200.15 to LEAs that apply on the basis of need.

(Authority: 20 U.S.C. 6321(e))

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## § 200.17 Use of LEA payments for capital expenses.

(a) Unless an LEA is authorized by the SEA to reimburse itself for capital expenses incurred in prior years, the LEA shall use payments received under § 200.16 to cover capital expenses the LEA is incurring or will incur to maintain or increase the number of private school children being served.

(b) The LEA may not take the payments received under § 200.16 into account in meeting the requirements in § 200.11(a).

(c) The LEA shall account separately for payments received under § 200.16.

(Authority: 20 U.S.C. 6321(e)(3))

## §§ 200.18–200.19 [Reserved]

### PROCEDURES FOR THE WITHIN-STATE ALLOCATION OF LEA PROGRAM FUNDS

## § 200.20 Allocation of funds to LEAs.

(a) *Subcounty allocations*. (1) Except as provided in paragraph (b) of this section, § 200.23(c)(1) and (3)(ii), and § 200.25, an SEA shall allocate the county amounts determined by the Secretary for basic grants, concentration grants, and targeted grants to each eligible LEA within the county on the basis of the number of children counted in § 200.21.

(2) If an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the LEA is located, provided the LEA is eligible for a grant.

(b) *Statewide allocations*. (1) In any State in which a large number of LEAs overlap county boundaries, an SEA may apply to the Secretary for authority to make allocations under basic grants or targeted grants directly to LEAs without regard to counties.

(2) In its application, the SEA shall—

(i) Identify the data in § 200.21(b) the SEA will use for LEA allocations; and

(ii) Provide assurances that—

(A) Allocations will be based on the data approved by the Secretary under this paragraph; and

(B) A procedure has been established through which an LEA dissatisfied with the determination by the SEA

may appeal directly to the Secretary for a final determination.

(c) *LEAs containing two or more counties in their entirety.* If an LEA contains two or more counties in their entirety, the SEA shall allocate funds under paragraphs (a) and (b) of this section to each county as if such county were a separate LEA.

(Authority: 20 U.S.C. 6333-6335)

**§ 200.21 Determination of the number of children eligible to be counted.**

(a) *General.* An SEA shall count the number of children aged 5-17, inclusive, from low-income families and the number of children residing in local institutions for neglected children.

(b) *Children from low-income families.*

(1) An SEA shall count the number of children from low-income families in the school districts of the LEAs using the best available data. The SEA shall use the same measure of low-income throughout the State.

(2) An SEA may use one of the following options to obtain its count of children from low-income families:

(i) The factors under section 1124(c)(1) of the Act (excluding children in local institutions for neglected or delinquent children), which include—

(A) Census data on children in families below the poverty level;

(B) Data on children in families above poverty receiving payments under the program of Aid to Families with Dependent Children (AFDC); and

(C) Data on foster children.

(ii) Alternative data that an SEA determines best reflect the distribution of children from low-income families and that are adjusted to be equivalent in proportion to the total number of children counted under section 1124(c) of the Act (excluding children in local institutions for neglected or delinquent children).

(iii) Data that more accurately reflect the distribution of poverty.

(c) *Children in local institutions for neglected children.* The SEA shall count the number of children ages 5 to 17, inclusive, in the LEA who resided in a local institution for neglected children—and were not counted under subpart 1 of part D of title I (programs for neglected or delinquent children operated by State agencies)—for at least 30

consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(Authority: 20 U.S.C. 6333(c))

**§ 200.22 Allocation of basic grants.**

(a) *Eligibility.* An LEA is eligible for a basic grant if—

(1) In school year 1995-96, there are at least 10 children counted under § 200.21 in the LEA; and

(2) Beginning in school year 1996-97—

(i) There are at least 10 children counted under § 200.21 in the LEA; and

(ii) The number of those children is greater than two percent of the LEA's total population aged 5 to 17 years, inclusive.

(b) *Amount of the LEA grant.* An SEA shall allocate basic grant funds to eligible LEAs as provided in § 200.20, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6333)

**§ 200.23 Allocation of concentration grants.**

(a) *Eligibility.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph § 200.22(a); and

(2) The number of children counted under § 200.21 in the LEA exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17, inclusive.

(b) *Amount of the grant.* (1) Except as provided in paragraph (c) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs that—

(i) Lie, in whole or in part, within the county; and

(ii) Meet the eligibility criteria in paragraph (a) of this section.

(2) An SEA shall allocate concentration grant funds to eligible LEAs as provided in § 200.20(a), except that the SEA shall apply the hold-harmless provision described in § 200.25(a).

(c) *Exceptions—(1) Eligible LEAs in ineligible counties.* (i) An SEA may reserve not more than two percent of the amount of concentration grant funds it receives to make direct allocations to

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eligible LEAs that are located in counties that do not receive a concentration grant allocation.

(ii) If an SEA plans to reserve concentration grant funds under paragraph (c)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (b) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount, except that for school year 1996-97 an SEA may not reduce an LEA's allocation below the hold-harmless amount determined under §200.25(a);

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted under §200.21;

(E) Select in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs based on the number of children counted under §200.21.

(2) *Eligible counties with no eligible LEAs.* In a county in which no LEA meets the eligibility criteria in paragraph (a) of this section, an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted under §200.21 exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (c)(2)(i) of this section based on the number of children counted under §200.21 in each LEA compared to the number of those children in all those LEAs.

(3) *States receiving minimum allocations.* In a State that receives a minimum concentration grant under section 1124A(d) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State under

paragraphs (a), (b), and (c)(1) and (2) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Identify those LEAs in which either the number or percentage of children counted under §200.21 exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (c)(3)(ii)(A) of this section based on the number of children counted under §200.21 in each LEA.

(Authority: 20 U.S.C. 6334)

**§ 200.24 Allocation of targeted grants.**

(a) *Eligibility.* An LEA is eligible for a targeted grant if—

(1) There are at least 10 children counted under §200.21 in the LEA; and

(2) The number of those children is at least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Weighted child count.* In determining an LEA's grant, the SEA shall compute a weighted child count in accordance with section 1125(c) of the Act by taking the larger of—

(1) *Percent-weighted child count.* The number of children counted under §200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA percentage of children counted under §200.21 as a percent of total children ages 5 through 17	Weights
0 to 14.265% .....	1.00
More than 14.265% up to 21.553% .....	1.75
More than 21.553% up to 29.223% .....	2.50
More than 29.223% up to 36.538% .....	3.25
More than 36.538% .....	4.00

or;

(2) *Number-weighted child count.* The number of children counted under §200.21 multiplied by the weights shown in the following table, with the weights applied in a step-wise manner so that only those children above each weighting threshold receive the higher weight:

LEA number of children counted under §200.21	Weights
1 to 575 .....	1.0
576 to 1,870 .....	1.5

LEA number of children counted under § 200.21	Weights
1,871 to 6,910 .....	2.0
6,911 to 42,000 .....	2.5
42,001 or more .....	3.0

(c) *Amount of LEA grant.* An SEA shall allocate targeted grant funds to eligible LEAs as provided in § 200.20 based on the weighted child count determined in paragraph (b) of this section, except that the SEA shall apply the hold-harmless provisions described in § 200.25.

(Authority: 20 U.S.C. 6335)

**§ 200.25 Applicable hold-harmless provisions.**

(a) *General.* (1) An SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under section 1122(c) of the Act.

School year	LEA's § 200.21 children as a percentage of children ages 5-17, inclusive	Hold-harmless percentage	Applicable grant formulas
1995-96 .....	Not applicable .....	85	Basic Grants.
1996-97 .....	Not applicable .....	100	Basic Grants and Concentration Grants.
1997-98 and beyond .....	30% or more .....	95	Basic Grants and Targeted Grants.
	15% or more and less than 30% .....	90	
	Less than 15% .....	85	

(5) For school year 1995-96, the SEA shall compute each LEA's hold-harmless amount without regard to the amount the LEA received for delinquent children counted under section 1005 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 as in effect on September 30, 1994.

(b) *Adjustment for insufficient funds—*  
 (1) *School year 1995-96.* If the Secretary's allocation for a county is not sufficient to give an LEA 85 percent of the amount it received for school year 1994-95, without regard to the amount the LEA received for delinquent children, the SEA may use funds received under part D, subpart 2 (local agency programs) of the Act to bring such LEA up to its hold-harmless amount.

(2) *School years 1997-98 and beyond.* If the Secretary's allocation for a county is not sufficient to meet the LEA hold-harmless requirements of paragraph (a) of this section, the SEA shall reallo-

(2) The hold-harmless protection limits the maximum reduction in an LEA's allocation when compared to the LEA's allocation for the preceding year.

(3) The hold-harmless shall be applied separately for basic grants, concentration grants, and targeted grants, and shall be applied for each grant formula only in those years authorized under section 1122(c) of the Act, as shown in the table contained in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the Act, the hold-harmless percentage varies based on the year and, for school years 1997-98 and beyond, based on the LEA's number of children counted under § 200.21 as a percentage of the total number of children ages 5-17, inclusive, in the LEA, as shown in the following table:

cate funds proportionately from all other LEAs in the State that are receiving funds in excess of the hold-harmless amounts specified in paragraph (a) of this section.

(c) *Eligibility for hold-harmless protection.* An LEA must be eligible for basic grant, concentration grant, and targeted grant funds in order for the respective provisions in paragraphs (a) and (b) of this section to apply.

(Authority: 20 U.S.C. 6332(c))

**§ 200.26 [Reserved]**

PROCEDURES FOR THE WITHIN-DISTRICT ALLOCATION OF LEA PROGRAM FUNDS

**§ 200.27 Reservation of funds by an LEA.**

Before allocating funds in accordance with § 200.28, an LEA shall reserve funds as are reasonable and necessary to—

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(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Children in local institutions for neglected children; and

(2) Where appropriate—

(i) Eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters;

(ii) Children in local institutions for delinquent children; and

(iii) Neglected and delinquent children in community-day school programs;

(b) Meet the requirements for parental involvement in section 1118(a)(3) of the Act;

(c) Administer programs for public and private school children under this part, including special capital expenses not paid for from funds provided under §200.16 that are incurred as a result of implementing alternative delivery systems to comply with the requirements of *Aguilar v. Felton*; and

(d) Conduct other authorized activities such as professional development, school improvement, and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3), 6317(c), 6319(a)(3), 6320)

**§ 200.28 Allocation of funds to school attendance areas and schools.**

(a)(1) An LEA shall allocate funds under this subpart to school attendance areas or schools, identified as eligible and selected to participate under section 1113(a) or (b) of the Act, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA shall include children from low-income families who attend private schools, using—

(A) The same poverty data, if available, as the LEA uses to count public school children; or

(B) If the same data are not available, comparable data—

(1) Collected through alternative means such as a survey; or

(2) From existing sources such as AFDC or tuition scholarship programs.

(ii) If complete actual poverty data are not available on private school children, an LEA may extrapolate from actual data on a representative sample of private school children the number of children from low-income families who attend private schools.

(3) If an LEA ranks its school attendance areas or schools below 75 percent poverty by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA shall allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under subpart 2 of part A of title I. The LEA shall calculate this per-pupil amount before the LEA reserves any funds under §200.27, using the poverty measure selected by the LEA under section 1113(a)(5) of the Act.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in §200.62(c).

(e) If an LEA contains two or more counties in their entirety, the LEA shall distribute to schools within each county a share of the LEA's total grant that is no less than the county's share

of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6333(c)(2))

[60 FR 34802, July 3, 1995, as amended at 63 FR 54997, Oct. 13, 1998]

**§ 200.29 [Reserved]**

**Subpart B—Even Start Family Literacy Program**

**§ 200.30 Migrant Education Even Start Program definition.**

Eligible participants under the Migrant Education Even Start Program (MEES) are those who meet the definitions of a migratory child, a migratory agricultural worker or a migratory fisher in § 200.40.

(Authority: 20 U.S.C. 6362, 6511)

**§§ 200.31–200.39 [Reserved]**

**Subpart C—Migrant Education Program**

**§ 200.40 Program definitions.**

The following definitions apply to programs and projects operated under this subpart:

(a) *Agricultural activity* means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) *Principal means of livelihood* means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6511)

**§ 200.41 Use of program funds for unique program function costs.**

An SEA may use the funds available from its State Migrant Education Program to carry out other administrative activities, beyond those allowable under § 200.61, that are unique to the MEP, including those that are the same or similar to those performed by LEAs in the State under subpart A. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

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(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies.

(d) Collecting and using information for accurate distribution of subgrant funds; and

(e) Development and implementation of a statewide plan for needs assessment and service delivery.

(f) Supervision of instructional and support staff.

(Authority: 20 U.S.C. 6392, 6511)

**§ 200.42 Responsibilities of SEAs and operating agencies for assessing the effectiveness of the MEP.**

(a) Each SEA and operating agency receiving funds under the MEP has the responsibility to determine the effectiveness of its program and projects in providing migratory students with the opportunity to meet the same challenging State content and performance standards, required under § 200.2, that the State has established for all children.

(b) To determine the effectiveness of its program and projects, each SEA and operating agency receiving MEP funds shall, wherever feasible, use the same high-quality yearly student assessments or transitional assessments that the State establishes for use in meeting the requirements of § 200.4.

(c) In a project where it is not feasible to use the same student assessments that are being used to meet the requirements of § 200.4 (e.g., in a summer-only project, or in a project where no migratory students are enrolled at the time the State-established assessment takes place), the SEA must ensure that the relevant operating agency carries out some other reasonable process or processes for examining the effectiveness of the project.

(Authority: 20 U.S.C. 6394)

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**§ 200.43 Responsibilities of SEAs and operating agencies for improving services to migratory children.**

While the specific school improvement requirements of section 1116 of the statute do not apply to the MEP, SEAs and local operating agencies receiving MEP funds shall use the results of the assessments carried out under § 200.42 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

**§ 200.44 Use of MEP funds in schoolwide projects.**

Funds available under part C of title I of the Act may be used in a schoolwide program subject to the requirements of § 200.8(c)(3)(ii)(B)(I).

(Authority: 20 U.S.C. 6396)

**§ 200.45 Responsibilities for participation of children in private schools.**

An SEA and its operating agencies shall conduct programs and projects under this subpart in a manner consistent with the basic requirements of section 1120 of the Act.

(Authority: 20 U.S.C. 6394)

**§§ 200.46–200.49 [Reserved]**

**Subpart D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out**

**§ 200.50 Program definitions.**

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of title I of the Act:

*Children and Youth* means the same as *children* as that term is defined in § 200.65(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of title I of the Act:

*Institution for delinquent children and youth* means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

*Institution for neglected children and youth* means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

*Regular program of instruction* means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of title I of the Act:

*Immigrant children and youth* and *Limited English Proficiency* have the same meanings as those terms are defined in section 7501 of the Act, except that the terms *individual* and *children and youth* used in those definitions mean *children and youth* as defined in this section.

*Locally operated correctional facility* means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

*Migrant youth* means the same as *migratory child* as that term is defined in § 200.40(d).

(Authority: 20 U.S.C. 6432, 6472)

**§ 200.51 SEA counts of eligible children.**

To receive an allocation under part D, subpart 1 of title I of the Act, an SEA must provide the Secretary with a

count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section:

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency shall specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified shall be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA shall adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Authority: 20 U.S.C. 6432)

**§§ 200.52–200.59 [Reserved]**

**Subpart E—General Provisions**

**§ 200.60 Reservation of funds for State administration and school improvement.**

(a) *State administration.* An SEA may reserve for State administration activities authorized in section 1603 of the Act no more than—

## § 200.61

(1) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act; or

(2)(i) \$400,000 (\$50,000 for the Outlying Areas), whichever is greater.

(ii) An SEA reserving \$400,000 under paragraph (a)(2)(i) of this section shall reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(b) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA may reserve no more than .5 percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(2)(i) An SEA shall have available from funds received under section 1002(f) of the Act or reserved under paragraph (b)(1) of this section no less than \$200,000 (\$25,000 for the Outlying Areas) to carry out school improvement activities.

(ii)(A) If funds made available for school improvement under section 1002(f) of the Act do not equal \$200,000 (\$25,000 for Outlying Areas), the SEA shall reserve funds in accordance with paragraph (b)(1) of this section.

(B) If the amount reserved under paragraph (b)(1) when added to funds received under section 1002(f), does not equal \$200,000 (\$25,000 for the Outlying Areas), the SEA shall reserve additional funds under section 1002(a), (c), and (d) as are necessary to make \$200,000 (\$25,000 for the Outlying Areas) available to the SEA.

(c) *Reservation from section 1002(a) funds.* In reserving funds for State administration and school improvement under section 1002(a) of the Act, an SEA shall—

(1) Reserve proportionate amounts from each of the State's basic grant, concentration grant, and targeted grant allocations; and

(2) Ensure that from the funds remaining for basic grants, concentration grants, and targeted grants after reserving funds for State administration and school improvement, no eligible LEA receives less than the hold-harmless amounts determined under § 200.25, except when the amounts re-

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maining are insufficient to pay all LEAs the hold-harmless amounts provided in § 200.25, the SEA shall ratably reduce each LEA's hold harmless allocation to the amount available.

(Authority: 20 U.S.C. 6303, 6513(c))

### § 200.61 Use of funds reserved for State administration.

An SEA may use any of the funds that it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under title I of the Act.

(Authority: 20 U.S.C. 6513(c))

### § 200.62 [Reserved]

### § 200.63 Exclusion of supplemental State and local funds from supplementation, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under Parts A or C of Title I may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 50 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging student performance standards that all children are expected to meet;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment, if final, or the transitional assessment system to review the effectiveness of the program; or

(2)(i) Serves only children who are failing, or most at risk of failing, to meet the State's challenging student performance standards;

(ii) Provides supplementary services designed to meet the special educational needs of the children who are participating in the program to support their achievement toward meeting the State's student performance standards that all children are expected to meet; and

(iii) Uses the State's system of assessment, if final, or the transitional assessment system to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under sections 1113(b)(1)(C) and 1113(c)(2)(B) of the Act.

(Authority: 20 U.S.C. 6322(d))

[63 FR 54997, Oct. 13, 1998]

**§ 200.64 [Reserved]**

**§ 200.65 Definitions.**

The following definitions apply to programs and projects operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping.

(c) *Preschool children* means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of an age at which they can benefit from an organized instructional program provided in a school or educational setting.

(Authority: 20 U.S.C. 6315, 6511)

§§ 200.66–200.69 [Reserved]

**PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM**

**Subpart A—General**

Sec.

206.1 What are the special educational programs for students whose families are engaged in migrant and other seasonal farmwork?

206.2 Who is eligible to participate as a grantee?

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206.10 What types of services may be provided?

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206.20 What must be included in an application?

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**Subpart E—What Conditions Must Be Met by a Grantee?**

206.40 What restrictions are there on expenditures?

AUTHORITY: 20 U.S.C. 1070d-2, unless otherwise noted.

SOURCE: 46 FR 35075, July 6, 1981, unless otherwise noted.