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 ESEA:

Immigrant children and youth and limited English proficiency have the same meanings as the term "immigrant children" is defined in section 3301 of the ESEA and the term "limited English proficient" is defined in section 9101 of the ESEA, 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 §200.81(d).

§ 200.91 SEA counts of eligible children.

To receive an allocation under part D, subpart 1 of Title I of the ESEA, 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 must 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 must 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 must 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)

§§ 200.92–200.99 [Reserved]

Subpart E—General Provisions

Source: 67 FR 71738, Dec. 2, 2002, unless otherwise noted.

§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:
(a) **School improvement.** (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the ESEA, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal years 2002 and 2003; and

(ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal year 2004 and succeeding years.

(2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the ESEA below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year.

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a)(1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1) of this section.

(b) **State administration.** (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the ESEA no more than the greater of—

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

(ii) $400,000 ($50,000 for the Outlying Areas).

(2)(i) An SEA reserving $400,000 under paragraph (b)(1)(ii) of this section must reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the ESEA; or

(ii) $400,000 ($50,000 for the Outlying Areas).

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (b)(1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (b)(1) of this section.

(d) **Reservations and hold-harmless.** In reserving funds under paragraphs (b) and (c) of this section, an SEA may—

(1) Proportionately reduce each LEA’s total allocation received under section 1002(a) of the ESEA while ensuring that no LEA receives in total less than the hold-harmless percentage under §200.73(a)(4), except that, when the amount remaining is insufficient to pay all LEAs the hold-harmless amount provided in §200.73, the SEA shall ratably reduce each LEA’s hold-harmless allocation to the amount available; or

(2) Proportionately reduce each LEA’s total allocation received under section 1002(a) of the ESEA even if an LEA’s total allocation falls below its hold-harmless percentage under §200.74(a)(3).

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6303, 6304, 6317(c)(2)(A))

§§ 200.101–200.102 [Reserved]

§ 200.103 Definitions.

The following definitions apply to programs 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