

## DEPARTMENT OF EDUCATION

## 34 CFR Part 280

RIN 1810-AA76

## Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final rule.

**SUMMARY:** The Secretary revises the regulations governing the Magnet Schools Assistance Program (MSAP) to conform them to statutory provisions that authorize Magnet Schools Assistance. These regulations make technical changes in the existing regulations to incorporate the statutory amendments.

**EFFECTIVE DATE:** These regulations take effect April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, D.C. 20202-6140. Telephone: (202) 260-2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Improving America's Schools Act (IASA) reauthorized the MSAP, which is now authorized under Part A of Title V of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. The MSAP provides Federal financial assistance to local educational agencies (LEAs) for magnet schools that are part of approved desegregation plans that LEAs are implementing.

**B. Explanation of Changes**

The Secretary amends regulations in 34 CFR part 280 to conform to the amended statute. The statutory amendments incorporated in the regulations include—

- Add two new elements to the statement of purpose for the MSAP (§ 280.1(b) and (c))—one element addresses the development and implementation of magnet schools that will assist LEAs in achieving systemic reform; the other element addresses the development and design of innovative educational methods and practices;

- In § 280.2(a), add “consortia of LEAs” to those eligible to receive assistance under the MSAP;

- Clarify the definition of the term “Magnet school” in § 280.4(b) by inserting the words “public elementary

or secondary” before the words “school” and “education center;”

- Add a new assurance at § 280.20(b)(7) that applicants will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects;

- Modify the assurance in § 280.20(b)(2) regarding the employment of teachers in courses of instruction assisted under the MSAP to include both teachers and those who supervise others who are teaching. Under the assurance both teachers and those who supervise other instructional personnel must be appropriately certified or licensed by the State;

- Modify the information required in grant applications by adding language in § 280.20(i)(1) that indicates that, as a part of an applicant's description of how MSAP assistance will promote desegregation, information must be included that describes how the proposed project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

- Further modify the information required in grant applications by specifying in § 280.20(i)(3) that applications must describe how an applicant will continue the magnet school project after MSAP assistance is no longer available including, if applicable, an explanation of why magnet schools that have been previously supported with MSAP funds cannot be continued without further assistance;

- Add requirements for information describing how and the extent to which MSAP assistance will increase student achievement in the instructional area or areas of the magnet school (§ 280.20(i)(2)); how MSAP assistance will be used to implement services and activities that are consistent with other programs under the ESEA, the Goals 2000: Educate America Act, and other Acts, as appropriate (§ 280.20(i)(4)); and what criteria will be used to select students to attend each magnet school proposed for the project (§ 280.20(i)(5));

- Add “reading skills” and “geography” to the subject areas identified in § 280.31(c)(2)(iii) and § 280.40(b)(2) in which instruction may be provided in magnet schools projects;

- Eliminate special considerations for “Recentness of the implementation of the approved desegregation plan;” “Involvement of minority group children;” and “Degree of achievement.” In their place, priorities are established for projects that propose to: carry out new, or significantly revised, magnet schools (§ 280.32(c));

select students to attend magnet schools by methods such as lottery, rather than through academic examination (§ 280.32(d)); and implement innovative educational approaches that are consistent with State and local systemic reform plans, if any, under title III of the Goals 2000: Educate America Act (§ 280.32(e)). The priority for “Collaborative efforts” (§ 280.32(f)) is revised to give priority to applicants whose projects seek to draw on comprehensive community involvement plans. This provides flexibility for applicants to promote various kinds of broad community collaboration (such as collaboration with business) in designing and implementing their magnet programs;

- Delete § 280.34, which indicates that a condition for receipt of a continuation award is satisfactory progress towards achieving the purposes of the program. However, the standard set forth in 34 CFR 75.253(a) of Education Department General Administrative Regulations requiring substantial progress continues to apply;

- Amend the rules governing allowable costs in § 280.40(a) by including planning and promotional costs directly related to the development of academic programs and services offered at magnet schools, in addition to the expansion, continuation, or enhancement of those programs and services;

- Further amend the allowable costs regulations in § 280.40(d) by including “instructional staff, where applicable,” to the personnel whose salaries may be paid or subsidized with MSAP funds. This permits funds to be used to employ instructional personnel other than licensed or certified teachers—such as instructional aides, artists in residence, instructors from institutions of higher education, and others—who would provide instruction to students;

- Further amend the allowable costs regulations in § 280.40(e) by permitting instructional activities designed to make the special curriculum of a magnet program available to students who are enrolled in the magnet school, but who are not enrolled in the magnet program, provided that the implementation of those instructional activities furthers the purposes of the MSAP;

- Eliminate the prohibition on the use of grant funds for consultants from § 280.41;

- Add a prohibition (§ 280.41(d)) on the use of funds for planning after the third year;

- Change the limitation in § 280.41(a) on the amount of funds that can be used for planning activities (e.g., curriculum development, staff training) to permit

up to 50 percent of the amount received for the first year of the project to be used for planning; up to 15 percent of the amount received for the second year; and up to 10 percent of the amount received for the third year of the project;

- Remove § 280.42, which limited the amount that could be carried over from one budget period to the subsequent budget period; and
- Remove § 280.50, which prohibited a State from reducing State aid to an LEA because of assistance made available under the MSAP;

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these grants effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

**Intergovernmental Review**

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

**Waiver of Proposed Rulemaking**

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

**List of Subjects in 34 CFR Part 280**

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet

schools, Reporting and recordkeeping requirements.

Dated: March 8, 1995.

**Thomas W. Payzant,**

*Assistant Secretary for Elementary and Secondary Education.*

(Catalog of Federal Domestic Assistance Number 84.165A—Magnet Schools Assistance Program)

The Secretary amends Part 280 of Title 34 of the Code of Federal Regulations as follows:

**PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM**

1. The authority citation for part 280 is revised to read as follows:

**Authority:** 20 U.S.C. 7201–7213, unless otherwise noted.

2. Section 280.1 is amended by adding the words “or consortia of LEAs” following “(LEAs)” and after “LEAs” in the undesignated introductory text; removing the word “and” at the end of paragraph (a); redesignating paragraph (b) as paragraph (d); adding new paragraphs (b) and (c); and revising the authority citation to read as follows:

**§ 280.1 What is the Magnet Schools Assistance Program?**

\* \* \* \* \*

(b) The development and implementation of magnet school projects that will assist LEAs in achieving systemic reforms and providing all students the opportunity to meet challenging State content standards and challenging State performance standards;

(c) The development and design of innovative educational methods and practices; and

\* \* \* \* \*

(Authority: 20 U.S.C. 7202)

3. Section 280.2 is amended by adding “or consortium of LEAs” after “LEA” in paragraphs (a), (a)(1), and (a)(2); by adding the words “or those agencies” after “that agency” at the end of paragraph (a)(1); and by revising the authority citation to read as follows.

(Authority: 20 U.S.C. 7205)

4. The authority citation for § 280.3 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

5. Section 280.4 paragraph (b) is amended by removing the definitions of “Community-based organization,” “Implementation date,” and “Institution of higher education,” by adding the words “public elementary or secondary” before the words “school” and “education center” in the definition

of “Magnet school,” and by adding “or consortium of LEAs” after “LEA” in the definition of “Special curriculum”, and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7201–7213)

6. Section 280.10 paragraph (c) is amended by adding “(1)” after “§ 280.2(a)” and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7203)

7. Section 280.20 is amended by adding “or consortium of LEAs” after “LEA” in paragraphs (a), (b) introductory text, (c), (d), (e), (f), (f)(1), (f)(4), and (f)(5) introductory text; adding “or consortium of LEAs” after “LEA’s” in paragraph (f)(4)(ii), (f)(5)(ii), and (h); removing the word “two” in paragraphs (f)(4)(i)(C), (f)(4)(ii)(C), (f)(5)(i)(B), and (f)(5)(ii)(B); revising paragraphs (b) and (i); and revising the authority citation to read as follows:

**§ 280.20 How does one apply for a grant?**

\* \* \* \* \*

(b) In its application, the LEA or consortium of LEAs shall provide assurances that it—

- (1) Will use funds made available under this part for the purposes specified in section 5102 of the Act;
- (2) Will employ teachers in the courses of instruction assisted under this part who are certified or licensed by the State to teach, or supervise others who are teaching, the subject matter of the courses of instruction;
- (3) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;
- (4) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the assignment of students to schools or to courses of instruction within schools of the agency, except to carry out the approved desegregation plan;
- (5) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in designing or operating extracurricular activities for students;
- (6) Will carry out a high-quality education program that will encourage greater parental decisionmaking and involvement; and
- (7) Will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects.

\* \* \* \* \*

(i) In addition to including the assurances required by this section, an LEA or consortium of LEAs shall describe in its application—

(1) How the applicant will use assistance made available under this part to promote desegregation, including how the proposed magnet school project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(2) How and to what extent the assistance will increase student achievement in instructional areas offered;

(3) How the LEA or consortium of LEAs will continue the magnet schools project after assistance under this program is no longer available, including, if applicable, why magnet schools cannot be continued without the use of funds under this program.

(4) How assistance will be used to implement services and activities that are consistent with other programs under the Elementary and Secondary Education Act of 1965, the Goals 2000: Educate America Act, and other Acts, as appropriate, in accordance with section 14306 of the Act; and

(5) What criteria will be used in selecting students to attend the proposed magnet schools projects.

(Authority: 20 U.S.C. 7206)

8. Section 280.30(a) and (c) are amended by removing the words “special consideration” and inserting the word “priority” before the word “factors”. The authority citation for § 280.30 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

9. In § 280.31 paragraph (c)(2)(iii) is amended by adding “reading skills or” after “students” and “geography,” before “English”, and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

10. Section 280.32 is amended by revising the heading, removing paragraph (b), redesignating paragraph (d) as paragraph (b), removing the parenthetical reference to “15 points” from the redesignated paragraph (b), adding a new paragraph (d), and revising paragraphs (a), (c), (e), (f) and the authority citation to read as follows:

**§ 280.32 How is priority given to applicants?**

(a) *How priority is given.* In addition to the points awarded under § 280.31, the Secretary gives priority to the factors listed in paragraphs (b) through (f) of this section by awarding additional points for these factors. The Secretary indicates in the application notice published in the **Federal Register** how these additional points will be distributed.

\* \* \* \* \*

(c) *New or revised magnet schools projects.* The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

(d) *Selection of students.* The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

(e) *Innovative approaches and systemic reform.* The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State’s and LEA’s systemic reform plan, if any, under the Goals 2000: Educate America Act.

(f) *Collaborative efforts.* The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

(Authority: 20 U.S.C. 7207)

11. The authority citation for § 280.33 is revised to read as follows:

(Authority: 20 U.S.C. 7213(b))

12. Section 280.34 is removed.

13. Section 280.40 is amended by adding “or consortium of LEAs” after “LEA” in the undesignated introductory text; by adding “development,” before “expansion” and removing “restriction in § 280.41(a)” and adding, in its place, “restrictions in § 280.41(a) and (d)” in paragraph (a); by adding “reading skills or” before “the knowledge” and “geography,” before “English” in paragraph (b)(2); by adding “reading skills or” before “the knowledge” and

“geography,” before “English” in paragraph (c)(3); by adding new paragraphs (d) and (e); and by revising the authority citation to read as follows:

**§ 280.40 What costs are allowable?**

\* \* \* \* \*

(d) The payment or subsidization of the compensation of instructional staff, where applicable, who satisfy the requirements of paragraphs (c)(2) and (3) of this section.

(e) With respect to a magnet school program offered to less than the entire school population, for instructional activities that—

(1) Are designed to make available the special curriculum of the magnet school program to students enrolled in the school, but not in the magnet school program; and

(2) Further the purposes of the program.

(Authority: 20 U.S.C. 7208)

14. Section 280.41 is revised to read as follows:

**§ 280.41 What are the limitations on allowable costs?**

An LEA or consortium of LEAs that receives assistance under this part may not—

(a) Expend for planning more than 50 percent of the funds received for the first fiscal year, 15 percent of the funds received for the second fiscal year, and 10 percent of the funds received for the third fiscal year;

(b) Use funds for transportation;

(c) Use funds for any activity that does not augment academic improvement; or

(d) Use funds for planning after the third year.

(Authority: 20 U.S.C. 7209, 7210(b))

**§ 280.42 [Removed]**

15. Section 280.42 is removed.

**Subpart F Removed**

**§ 280.50 [Removed]**

16. Subpart F consisting of § 280.50 is removed.

[FR Doc. 95–6707 Filed 3–17–95; 8:45 am]

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