

DEPARTMENT OF EDUCATION

34 CFR Parts 200, 201, 203, 205, and 212

RIN 1810-AA73

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: As specifically required by statute, the U.S. Secretary of Education (Secretary) issues a single set of final regulations implementing the programs under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994. In order to provide maximum flexibility to grantees implementing the programs under Title I, these regulations address only those few provisions for which the Secretary believes rulemaking is absolutely necessary. These regulations replace the regulations currently found at 34 CFR Parts 200, 201, 203, 205 and 212.

EFFECTIVE DATE: These regulations take effect on August 2, 1995.

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SUPPLEMENTARY INFORMATION: The 1994 reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) revised Federal elementary and secondary education programs extensively to help ensure that all children acquire the knowledge and skills they will need to succeed in the 21st century. Under the reauthorized ESEA, Federal education programs for the first time are designed to work together with, rather than separately

from, one another. In addition, rather than operating apart from the broader education that children receive, the ESEA reinforces State and community reform efforts geared to challenging State standards, particularly those initiated or supported by the Goals 2000: Educate America Act. In fact, all of the major ESEA programs are redesigned to support comprehensive State and local reforms of teaching and learning and ensure that all children—whatever their background and whatever school they attend—can reap the benefit of those reforms.

As the largest by far of all ESEA programs, Title I is the centerpiece of the ESEA's efforts to help the neediest schools and students reach the same challenging standards expected of all children. Effective July 1, 1995, the four Title I programs—the basic program in local educational agencies (LEAs) (Part A), the Even Start Family Literacy program (Part B), the Migrant Education program (Part C), and the Neglected, Delinquent, and At-Risk Youth program (Part D)—are designed to work together in support of this common purpose. Moreover, the programs embrace the same fundamental new strategies to help ensure that the intended beneficiaries are not left behind in State and local efforts to promote higher standards. These strategies include: a schoolwide focus on improving teaching and learning, strong program coordination by LEAs, flexibility at the local level combined with clear accountability for results, more focused targeting of resources on the neediest schools, and stronger partnerships between schools and communities to support higher achievement for all children.

On May 1, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for Title I in the Federal Register (60 FR 21400-21419). The preamble to the NPRM included a discussion of the provisions enacted by Congress that were addressed in the NPRM. The preamble also included a summary of the results of the negotiated rulemaking process the Secretary implemented under section 1601(b) of Title I. In developing the proposed regulations, the Secretary considered the comments of persons who responded to the October 28, 1994 **Federal Register** notice requesting advice and recommendations on regulatory issues under Title I (59 FR 54372-74) and also the comments of participants in the negotiated rulemaking process.

Changes From the NPRM and Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, 370 letters were received from State and LEA officials, teachers, organizations, Members of Congress, citizens, and students. An analysis of the comments and the Secretary's responses to those comments is published as an appendix to these final regulations.

In these final regulations, the Secretary has considered these comments, balancing the concerns of State and local school officials, parents, and others with the statutory purposes of the program and the needs of the children to be served. The following sections provide a brief summary of the final regulations that differ from the regulations proposed in the NPRM.

State Responsibilities for Assessment (§§ 200.1, 200.4)

The Secretary has revised §§ 200.1 and 200.4 to clarify that a State's set of high-quality yearly assessments must measure performance in at least mathematics and reading/language arts, but need not be focused solely on reading/language arts or mathematics. Rather, as indicated in § 200.4(a)(1), a State may meet this requirement by developing or adopting assessments in other academic subjects as long as those assessments sufficiently measure performance in mathematics and reading/language arts. For example, an assessment in an academic subject such as social studies may sufficiently measure performance in reading/language arts. Particularly at the secondary level, the Secretary believes it may be especially appropriate to measure performance in reading/language arts through assessments in content areas. In addition, the Secretary emphasizes the importance of all children attaining high levels of performance in all core academic subjects. Limiting the focus of Title I accountability in no way is intended to alter the overall responsibility of States, local school districts, and schools for success of all students in the core academic subjects determined by the State. If a State has standards and assessments for all students in subjects beyond mathematics and reading/language arts, the regulations do not preclude a State from including, for accountability purposes, additional subject areas, and the Secretary encourages them to do so.

Schoolwide Program Requirements (§ 200.8)

Section 200.8(c)(3)(ii)(B)(1)(A) of the proposed regulations would have required a school that combines in its schoolwide program funds received under Part C of Title I, in consultation with parents of migratory children or organizations representing those parents, to 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. The Secretary has revised this section to clarify that both parents and organizations representing those parents may participate in consultation together to clarify that the two parties are not mutually exclusive.

Responsibilities for Providing Services to Children in Private Schools (§ 200.10)

Recognizing that some LEAs identify a public school as eligible for Title I on the basis of student enrollment rather than because it serves an eligible attendance area, the Secretary has amended § 200.10(b) to clarify that if an LEA identifies a public school as eligible on the basis of enrollment, the LEA must, in consultation with private school officials, determine an equitable way to identify eligible private school children.

Payments to LEAs for Capital Expenses (§ 200.16)

Section 200.16(a)(2)(i)(D) makes clear that the salaries of noninstructional technicians who monitor computer-assisted instruction in private schools are administrative costs to be taken off the top of an LEA's allocation. As such, the LEA may fund those technicians from its capital expense funds.

Reservation of Funds by an LEA (§ 200.27)

The Secretary has amended § 200.27 to clarify that capital expenses incurred to implement alternative delivery systems necessary to serve private school students in compliance with *Aguilar v. Felton* that are not reimbursed under section 1002(e) of Title I are administrative costs that must be taken off the top of an LEA's Part A allocation.

Allocation of Funds to School Attendance Areas and Schools (§ 200.28)

The Secretary has made several changes in § 200.28. First, the Secretary has added flexibility in paragraph (a)(3) to permit an LEA that ranks its school attendance areas or schools below 75

percent poverty by grade span groupings to determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

Second, the Secretary has addressed a significant problem concerning the availability of adequate poverty data on children who reside in participating public school attendance areas but who attend private schools. Paragraph (a)(2)(i) provides that, if the same data are not available for private school children as are available for public school children, an LEA may use comparable data collected through alternative means such as a survey or from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. Under paragraph (a)(2)(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 poor private school children. If adequate data are not available under paragraph (a)(2)(i) or (ii), the LEA, for the 1995-96 school year only, shall derive the number of private school children from low-income families by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

For example, if a participating public school area has 50 percent poverty and 100 children who reside in that area attend private schools, 50 private school children would be deemed to be poor and thus would generate Part A funds. For school years after 1995-96, however, actual poverty data (or a reasonable estimate based on an adequate sample) will be required. Finally, the Secretary has made clear in paragraph (b)(1) that an LEA must calculate 125 percent of the per-pupil amount of funds the LEA receives for a given fiscal year before the LEA reserves any funds under § 200.27.

Migrant Education Program (MEP) Definitions (§ 200.40)

The proposed regulations contained definitions of "migratory agricultural worker" and "migratory fisher" to require a move to obtain temporary or seasonal agricultural or fishing work "as a principal means of livelihood." This term was proposed to focus MEP services on children who are truly migratory, i.e., children in families with an actual, significant dependency on migratory agricultural or fishing work. In doing so, the new requirement was intended to correct a situation in which persons who move across school district lines to perform temporary or seasonal

agricultural or fishing activities for only a short time are considered "migratory" under the MEP, even when they do not have a significant economic dependence on the agricultural or fishing activities. Because many commenters appeared to have misunderstood the scope and intent of the "principal means of livelihood" language, and the degree of burden that its use would place on State and local program staff and parents of migratory children, the regulations have been revised to more clearly define the term, "principal means of livelihood," for purposes of the MEP and clarify the term's applicability to moves within 15,000 square mile districts.

Use of Program Funds for Unique Program Function Costs (§ 200.41)

The proposed regulations permit an SEA to use MEP funds to carry out other administrative activities, beyond those allowable under § 200.61, that are unique to the MEP "or that are the same or similar to those performed by LEAs in the State under subpart A." In response to comment, the regulations have been revised to clarify that administrative activities "that are the same or similar to those performed by LEAs in the State under subpart A" are included under those administrative activities that are unique to the MEP.

Executive Order 12866

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 benefits associated with these final regulations are clear. Because the Secretary has chosen to regulate on very few statutory provisions, SEAs and LEAs have considerable flexibility in implementing the provisions of Title I to meet their particular needs and circumstances. Moreover, the potential costs associated with these final regulations are minimal; they result from specific statutory requirements or have been determined by the Secretary to be necessary for administering the Title I programs effectively and efficiently.

Intergovernmental Review

Grants to SEAs for the MEP and grants to SEAs and LEAs for the Migrant Education Coordination Program are 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 this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of individuals with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

34 CFR Part 201

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor, Reporting and recordkeeping requirements.

34 CFR Part 203

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Reporting and recordkeeping requirements.

34 CFR Part 205

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor.

34 CFR Part 212

Adult education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Migrant labor, Reporting and recordkeeping requirements.

Dated: June 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.144, Migrant Education Coordination Program; 84.213, Even Start Family Literacy Program)

The Secretary amends Title 34 of the Code of Federal Regulations by removing Parts 201, 203, 205, and 212 and revising Part 200 as follows:

PART 201 [Removed]

1. Part 201 is removed.

PART 203 [Removed]

2. Part 203 is removed.

PART 205 [Removed]

3. Part 205 is removed.

PART 212 [Removed]

4. Part 212 is removed.
5. Part 200 is revised to read as follows:

PART 200—TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

Sec.

- 200.1 Contents of a State plan.
- 200.2 State responsibilities for developing challenging standards.
- 200.3 Requirements for adequate progress.
- 200.4 State responsibilities for assessment.
- 200.5 Requirements for school improvement.
- 200.6 Requirements for LEA improvement.
- 200.7 [Reserved]

Schoolwide Programs

- 200.8 Schoolwide program requirements.
- 200.9 [Reserved]

Participation of Eligible Children in Private Schools

- 200.10 Responsibilities for providing services to children in private schools.
- 200.11 Factors for determining equitable participation of children in private schools.
- 200.12 Requirements to ensure that funds do not benefit a private school.
- 200.13 Requirements concerning property, equipment, and supplies for the benefit of private school children.
- 200.14 [Reserved]

Capital Expenses

- 200.15 Payments to SEAs for capital expenses.
- 200.16 Payments to LEAs for capital expenses.
- 200.17 Use of LEA payments for capital expenses.
- 200.18–200.19 [Reserved]

Procedures for the Within-State Allocation of LEA Program Funds

- 200.20 Allocation of funds to LEAs.
- 200.21 Determination of the number of children eligible to be counted.
- 200.22 Allocation of basic grants.
- 200.23 Allocation of concentration grants.
- 200.24 Allocation of targeted grants.

200.25 Applicable hold-harmless provisions.

200.26 [Reserved]

Procedures for the Within-District Allocation of LEA Program Funds

200.27 Reservation of funds by an LEA.

200.28 Allocation of funds to school attendance areas and schools.

200.29 [Reserved]

Subpart B—Even Start Family Literacy Programs

200.30 Migrant Education Even Start program definition.

200.31–200.39 [Reserved]

Subpart C—Migrant Education Program

200.40 Program definitions.

200.41 Use of program funds for unique program function costs.

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

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

200.44 Use of MEP funds in schoolwide projects.

200.45 Responsibilities for participation of children in private schools.

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.

200.51 SEA counts of eligible children.

200.52–200.59 [Reserved]

Subpart E—General Provisions

200.60 Reservation of funds for State administration and school improvement.

200.61 Use of funds reserved for State administration.

200.62 [Reserved]

200.63 Supplement, not supplant.

200.64 Maintenance of effort.

200.65 Definitions.

200.66–200.69 [Reserved]

Authority: 20 U.S.C. 6301–6514, unless otherwise noted.

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—

(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 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 timeframe; 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 children, 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 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.

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

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

§ 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 student 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.

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

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

§ 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, except programs under the Individuals with Disabilities Education Act (IDEA), that is included on the most recent notice published by the Secretary in the **Federal Register**.

(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.

(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 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, 6396(b))

§ 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 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 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))

§ 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 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
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.

(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:

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 reallocate 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—

(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.

(iii) For the 1995–96 school year only, if adequate data on the number of private school children from low-income families are not available under paragraph (a)(2) (i) or (ii) of this section, the LEA shall derive the number of private school children from low-income families by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

(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))

§ 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;

(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)

§ 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)(1).

(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—

(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 remaining 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 Supplement, not supplant.**

(a) Except as provided in paragraph (c) of this section, a grantee or subgrantee under subparts A, C, or D of this part may use funds available under these subparts only to supplement the amount of funds that would be made available, in the absence of funds made available under subparts A, C, and D from non-Federal sources for the education of pupils participating in programs assisted under subparts A, C, and D and in no case may funds available under these subparts be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, a grantee or subgrantee under subparts A, C, or D is not required to provide services under subparts A, C, or D through the use of a particular instructional method or in a particular instructional setting.

(c)(1) For purposes of determining compliance with paragraph (a) of this section, a grantee or subgrantee under subparts A or C may exclude supplemental State and local funds spent in any eligible school attendance area or eligible school for programs that meet the requirements of section 1114 or section 1115 of the Act.

(2) A supplemental State or local program will be considered to meet the requirements of section 1114 if the program—

(i) Is implemented in a school that meets the schoolwide poverty threshold for eligibility in § 200.8(b);

(ii) Is designed to upgrade the entire educational program in the school to support students in their achievement toward meeting the State's challenging student performance standards;

(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 to review the effectiveness of the program.

(3) A supplemental State or local program will be considered to meet the requirements of section 1115 if the program—

(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 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 to review the effectiveness of the program.

(4) These conditions 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(b))

§ 200.64 Maintenance of effort.

(a) *General.* An LEA receiving funds under subparts A or C may receive its full allocation of funds under subparts A and C if it finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Meaning of "preceding fiscal year".* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1995, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1994 (which began on October 1, 1993) and the "second preceding fiscal year" is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the "preceding fiscal year" is the 12-month period ending on June 30, 1994, and the "second preceding fiscal year, is the period ending on June 30, 1993.

(c) *Expenditures.* (1) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures

for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(i) Any expenditures for community services, capital outlay, and debt service; and

(ii) Any expenditures made from funds provided by the Federal Government for which the LEA is required to account to the Federal Government directly or through the SEA.

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

§ 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]

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations)

TITLE I—HELPING DISADVANTAGED CHILDREN MEET HIGH STANDARDS

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

Standards, Assessment, and Accountability

Section 200.1 Contents of a State Plan

Comment: One commenter suggested that the regulations include the assurances or a reference to the

assurances required by section 1111(c) of Title I to be included in a State plan.

Discussion: The assurances in section 1111(c) relate to the additional responsibilities of States to support teaching and learning. The Department mailed to all States guidance for the development of a Title I State plan and for consolidated applications that include Title I. There is no need also to reference the assurances in the regulations.

Changes: None.

Comment: A number of commenters commented on the requirement in § 200.1(b)(2)(iii) of the regulations to identify the languages other than English for which yearly student assessments are needed but not available, and then develop assessments for all those languages according to a timetable established in the State plan. Several commenters contended that this requirement is unreasonable because it would be very expensive and time consuming. Moreover, in some cases, the assessment would apply only to a few students and might not meet the same standards of validity and reliability established for other assessments. Several commenters suggested that the development of these assessments in languages other than English be required only “to the extent practicable,” tied to a minimum percentage of students that speak a certain language in a State, or only be required when instruction is actually given in that language. One commenter suggested that the requirement to develop a timetable for progress towards the development of these assessments is unreasonable because of the large number of languages spoken in a State. Another commenter suggested that a survey rather than a binding regulation be used to identify languages other than English that are spoken by Title I participating students.

On the other hand, several commenters supported this requirement. One commenter emphasized that States have a special obligation with regard to assessing limited-English proficient (LEP) students and must make every effort to develop assessments in languages that will yield accurate information. Another commenter suggested that more specific reporting requirements be included for identifying spoken languages and developing assessments. One commenter suggested that the regulations provide guidelines for inclusion of LEP students in State assessments and another commenter suggested that the regulations address access to assistance from the Department's Office of Bilingual

Education and Minority Languages Affairs.

Discussion: Section 1111(b)(3)(F)(iii) of Title I requires that each State's assessments provide for the inclusion of LEP students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do to determine such students' mastery of skills in subjects other than English. Also, section 1111(b)(5) of Title I requires that each State plan identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student assessments are not available and are needed.

Section 200.1(b)(2)(iii)(B) of the regulations requires each State plan to include a timetable for progress towards the development of these assessments to ensure that States match their needs for LEP assessments to a workable timetable that, over time, would improve participation of LEP students in high-quality, yearly assessments. The Secretary recognizes that there are many problems that must be addressed in the process, including issues involving time, expense, and usefulness of such assessments. To help address these issues, the Department's Office of Bilingual Education and Minority Languages Affairs and Office of Elementary and Secondary Education are developing nonregulatory guidance on options that States might consider in determining their own policy regarding the development of assessments in other languages and criteria for inclusion of LEP students.

Changes: None.

Comment: Two commenters suggested that Title I State plans include evidence that States used recognized professional and technical knowledge to develop challenging content standards and performance standards that may serve as benchmarks for student performance and as a means of issuing rewards and sanctions for schools and districts. Another commenter recommended that performance standards in Title I schools be comparable to those established for schools that serve middle- and upper-income families.

Discussion: Section 1111(b)(1)(D)(i) of Title I and § 200.2(a)(2)(i) of the regulations require States to demonstrate in their plan that they have established, or will establish, challenging content standards in academic subjects that specify what all children are expected to know and be able to do, contain coherent and rigorous content, and encourage the teaching of advanced skills to all

children. In addition, section 1111(b)(1)(D)(ii) of Title I and § 200.2(a)(2)(ii) of the regulations require States to establish challenging student performance standards that are aligned with the State's content standards and that include two levels of high performance and a third level of partial proficiency against which the progress of students and schools can be measured. Also, § 200.1(b)(1)(i)(B) of the regulations requires that a State plan include evidence that the State's procedure for setting student performance levels applies recognized professional and technical knowledge. Finally, provisions in sections 1116 and 1117 of Title I focus on recognized professional and technical knowledge as a basis for State systems for rewarding school districts and holding them accountable for progress. The Secretary believes these provisions adequately address the concerns of the commenters.

Changes: None.

Comment: Several commenters suggested that § 200.1(b)(2)(ii)(B) of the regulations, which requires the State plan to describe the transitional set of yearly statewide assessments the State will use to assess students' performance in mastering complex skills and challenging subject matter, be replaced with the statutory language in section 1111(b)(7) of Title I that, in the commenters' opinion, makes transitional assessments an option for States instead of a requirement. Two commenters expressed concerns that, because the regulatory provision only requires States to describe transitional assessments, it sends the message that States need not go through the approval process.

Discussion: Section 1111(b)(7) of Title I states that, if a State does not have final assessments that fully meet the statutory requirements, "the State may propose to use a transitional set of yearly statewide assessments that will assess the performance of complex skills and challenging subject matter." The Secretary does not believe that use of the word "may" in this context means that transitional assessments are optional. Rather, the Secretary believes that the word "may" permits the use of transitional assessments while final assessments are being developed, rather than requiring final assessments immediately. Moreover, because transitional assessments are part of the State plan, they are subject to peer review and approval under section 1111(d) of Title I.

Changes: None.

Section 200.2 State Responsibilities for Developing Challenging Standards

Comment: One commenter suggested that the regulations and guidance need to clarify that a State may adopt or approve locally developed standards and assessments under the Goals 2000 process or another State process for use in the Title I program. Another commenter recommended that the Department clarify whether State standards and assessments must be uniform throughout the State for Title I accountability purposes. This commenter suggested that past experience with LEAs establishing high school graduation standards resulted in high-level proficiencies for affluent communities and low-level proficiencies for poor communities.

Discussion: Section 1111(b)(1)(B) of Title I and §§ 200.2(b) and 200.4(c) of the regulations make clear that, if a State has State content standards or State student performance standards and an aligned set of assessments for all students developed under Title III of the Goals 2000: Educate America Act or another process, the State must use those standards and assessments, modified, if necessary, to conform with the requirements of section 1111 of Title I, to carry out Part A. Guidance for Goals 2000 requires that participating States develop or adopt challenging content and performance standards. It does not require that there be a single set of content or performance standards that are applied uniformly to every LEA within the State. A State may choose to develop or adopt model standards or criteria against which locally developed standards would be measured and approved.

Changes: None.

Section 200.3 Requirements for Adequate Progress

Comment: One commenter suggested that the phrase "except as provided in paragraph (c) of this section" should be deleted from § 200.3(a) of the regulations, suggesting that it appears to require States to develop two different definitions of adequate yearly progress. The commenter argued that, while Congress intended for States to use different measures in transitional and final assessment periods to determine adequate yearly progress, Congress also intended that States develop one standard for determining adequate yearly progress regardless of the assessment period.

Discussion: The Secretary believes that § 200.3 (a) and (c) of the regulations accurately reflect the statute and is necessary to give each State the

flexibility to develop and refine, over the next five years, its own approach for establishing high-quality assessments that will effectively assess learning. The definition of adequate yearly progress must be flexible to accommodate changes in State approaches to assessment. It does not make sense to require one standard for determining adequate progress when assessments used to measure that progress may be different during the transition period. The Secretary, however, does not expect States to establish lower expectations during the transitional period.

Changes: None.

Comment: One commenter suggested that references to adequate yearly progress in different regulatory sections are repetitive and could be confusing.

Discussion: State and local accountability for helping Title I children meet high standards is a central theme in the Title I statute. Adequate yearly progress plays a pivotal role in measuring accountability and it is part of several different statutory sections. The regulations clarify these statutory provisions, first with regard to the State plan and then in subsequent sections devoted to implementation. The Secretary believes that adequate yearly progress needs emphasis in the regulations to help maintain an overall focus on enabling children in Title I programs to meet the same high standards expected of all children.

Changes: None.

Comment: Two commenters argued that repetition of the statute regarding adequate yearly progress without additional explanation provides insufficient guidance to grantees.

Discussion: Section 200.3(b)(2) of the regulations provides that a State's determination of adequate yearly progress must be sufficiently rigorous to achieve the goal of helping all children served under Part A, particularly economically disadvantaged and LEP children, meet the State's proficient and advanced levels of performance within an appropriate timeframe. Each State has the flexibility to develop its own definition within its framework for standards and assessments. Standards and assessments will differ from State to State, along with definitions of adequate progress for each State's schools and LEAs. Some models and examples will be provided through policy guidance.

Changes: None.

Comment: One commenter suggested that adequate yearly progress be based on empirical data on or knowledge about growth in academic performance of schools and LEAs in the State in order to prevent States from arbitrarily using a benchmark.

Discussion: Section 200.3(b)(3) of the regulations requires that adequate yearly progress be defined in a manner that 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. The Secretary expects that a State, in developing its definition of adequate progress, would draw on knowledge and empirical data about the degree of progress that should be expected of effective schools.

Changes: None.

Comment: One commenter suggested that the regulations require SEAs and LEAs to make every effort to notify private schools about the SEA's definition of adequate yearly progress.

Discussion: The definition of adequate yearly progress that an SEA establishes will be the standard against which schools and LEAs will be measured as to whether they are enabling children to meet the State's challenging student performance standards. While private schools are not recipients of Title I funds, the Department will issue policy guidance that will, for the purpose of private school student Title I participants, address whether private school students served by Title I, but not private schools, are making adequate yearly progress toward meeting the standards.

Changes: None.

Comment: One commenter expressed concern regarding the statement in the preamble of the Notice of Proposed Rulemaking (NPRM) that the new Title I will shift from "an evaluation of how individual students are performing to an evaluation of how well schools and LEAs are helping students meet the challenging standards" since States will be assessing changes in the performance of different cohorts of students. The commenter argued that changes in test scores are likely to reflect differences in the groups of students instead of changes in school or LEA performance, particularly in poor urban districts with high rates of student mobility.

Discussion: The impact of the Title I program cannot be divorced from that of the regular program. This is particularly true as an increasing number of Title I schools develop schoolwide programs. Although the assessment systems operated by States and LEAs generally test only some grades, the Secretary believes that they will provide more revealing data than the current Chapter 1 testing system on the success of Title I schools and children served by Title I because they will be tied to high standards and will show how Title I

schools are doing compared to other schools in the district and State. In addition, Chapter assessments, which used gains of individual students, rather than a specified level of expected achievement, often resulted in minimal expectations of gains being set for Chapter 1 children. While the children improved, they were still performing far below a level needed for successful completion of school and employment. Classroom teachers will continue—as they do now—to assess individual children to determine their performance and improvement on an ongoing basis.

Changes: None.

Comment: One commenter requested that the regulations allow a State to define adequate progress in terms of progress made over either a one- or two-year period for the purpose of meeting the requirements of Title I accountability.

Discussion: States have the discretion to define adequate yearly progress over a one- or two-year period as long as the definition is sufficiently rigorous to achieve the goal that all children served under Part A, particularly economically disadvantaged and LEP children, meet the State's proficient and advanced levels of performance within an appropriate timeframe.

Changes: None.

Section 200.4 State Responsibilities for Assessment

Comment: One commenter suggested that the regulations inform SEAs and LEAs of their responsibilities regarding the assessment of participating private school children and specify that the expenses of conducting the assessment are allowable costs under Title I.

Discussion: The assessment requirements in the statute apply to private school students as well as public school students who participate in Title I. The Department will clarify in guidance that Title I funds may be used to assess private school children if they would not otherwise be participating in the State assessment. However, if private school children, in general, are included in the State assessment, Title I funds may not be used to pay for the assessment of those private school children participating in Title I.

Changes: None.

Comment: Many comments were received regarding the issue on which the Secretary specifically invited comments in the NPRM: whether accountability under Title I should be based on all subject areas for which a State has developed or adopted standards and assessments for all children or whether assessments in mathematics and reading/language arts

are sufficient for Title I accountability purposes as permitted in § 200.4(c)(1) of the regulations. Many commenters agreed with the regulations that accountability in math and reading/language arts was sufficient for Title I purposes. A number of other commenters, however, recommended that Title I schools be held accountable for all areas in which the State has developed standards and assessments in order to break the mold of Title I as a remedial reading and math program with lower expectations for the children served. A handful of commenters recommended a different resolution—that science be assessed in addition to reading and math to reflect the importance of that subject or that Title I accountability be based on those subject areas in which Title I services are provided.

Discussion: This issue continues to be one of the most difficult to resolve because each of the two major options has important advantages but also significant drawbacks. A major goal of the reauthorization is to redirect Title I from a low-level reading and math add-on program to a significant resource for high-poverty Title I schools to use to promote comprehensive schoolwide improvement in teaching and learning geared to the same challenging standards expected of all children. There is significant and legitimate concern that permitting Title I accountability to be limited to reading and math will stymie the shift toward comprehensive schoolwide reform, reinforce lower expectations for Title I schools, and send a message that other subjects are not important for children in high-poverty schools to learn. There is also the concern that this provision will lead States, LEAs, and schools to abrogate their responsibility for the performance of students served by Part A in all other subject areas besides reading and math. Extending Title I accountability to include all subjects in which a State has standards and assessments, including applying Title I assessment requirements to each of those subjects, however, also raises significant concerns about federal overreaching and the imposition of unwarranted and excessive burden. In addition, it risks creating additional disincentives to developing new State standards and limits the ability of States and LEAs to take advantage of innovations in performance assessments since, in the short run, many of those assessments will not be able to satisfy the Title I assessment requirements—at least in a timely and cost-efficient way.

Needing to give effect to the statutory language that a State must have

developed or adopted a set of assessments in at least mathematics and reading/language arts while not imposing additional requirements at the Federal level, the Secretary has retained the requirement that a State must use assessments that measure performance in math and reading/language arts to determine accountability under Part A. Nevertheless, the Secretary is concerned that Title I not continue to be viewed as solely a remedial program in math and reading. In addition, he wishes to afford appropriate flexibility to States as they begin to implement Goals 2000 plans. Therefore, the Secretary has revised § 200.4 to clarify that a State's assessments need not be focused solely on math and reading/language arts. Rather, a State may meet Title I's assessment requirements by developing or adopting assessments in other academic subjects as long as those assessments sufficiently measure performance in math and reading/language arts. For example, an assessment in an academic subject such as social studies may sufficiently measure performance in reading/language arts. Particularly at the secondary level, the Secretary believes it may be especially appropriate to measure performance in reading/language arts through assessments in content areas.

The Secretary emphasizes the importance of all children attaining high levels of performance in all core academic subjects. Limiting the focus of Title I accountability to math and reading/language arts in no way is intended to alter the overall responsibility of States, LEAs, and schools for the success of all students in the core academic subjects determined by the State. If a State has standards and assessments for all students in subjects beyond math and reading/language arts, the regulations do not preclude a State from including, for accountability purposes, additional subject areas, and the Secretary encourages them to do so.

Changes: Section 200.4(a)(1) of the regulations has been revised to clarify that a State may satisfy the requirement to develop or adopt a set of high-quality yearly assessments, including assessments that measure performance in at least mathematics and reading/language arts if the State has developed or adopted a set of high-quality yearly student assessments in other academic subjects that measure the performance in mathematics and reading/language arts. Likewise, § 200.4(e)(1)(i) has been revised to clarify that a State's transitional set of yearly statewide assessments may be assessments in academic subjects other than

mathematics and reading/language arts that measure performance in mathematics and reading/language arts. References to these clarifications are reflected in § 200.1 regarding State plan requirements and throughout § 200.4 in provisions related to the development or adoption of State assessments.

Comment: A number of commenters proposed that some or all of the criteria applicable to the final assessments under Title I be applied to the transitional assessments. The commenters were concerned that, without additional transitional requirements, States would be relieved of accountability during the entire reauthorization period. A number of commenters recommended that the regulations require all, or at least one, transitional assessment to be valid and reliable and consistent with existing professional and technical standards. A number of commenters also proposed that disaggregated data be required during the transition period, particularly for LEP children and poor children and for schoolwide programs. Other transitional assessment criteria that commenters recommended include: that all students, including LEP, minority, and poor students, be included in transitional assessments; that transitional assessments be aligned with State standards once these standards are developed; that LEP criteria for assessments be provided; that there be individual student and interpretive reports; and that parents receive the achievement information they need to be involved in the education of their children. In addition, three commenters supported applying all of the requirements of the final assessments to the interim assessments, although one would be willing to exempt specific technical requirements that need to be field tested, while the two others would only grant narrow exceptions after careful examination.

Discussion: Section 1111(a)(3)(7) of Title I allows States developing final assessments to use a transitional set of yearly statewide assessments that assesses the performance of complex skills and challenging subject matter. The Act itself contains no other criteria for these assessments and § 200.4(e) of the regulations only clarifies that these assessments must be at least in mathematics and reading/language arts and be administered during the grade spans required of the final assessments. Neither the statute nor the legislative history supports the application of other requirements on transitional assessments. In fact, the Secretary believes that requiring transitional assessments to meet a host of

requirements, particularly those relating to validity, reliability, and disaggregation, may end up frustrating Title I's longer-term goal of promoting high-quality innovative assessments aligned with challenging standards. Developing new, high-quality assessments that conform with these requirements will require time—time that the transition period is precisely designed to provide. If the same criteria are applied to transitional assessments as to the final assessments, this purpose would be nullified and States, in effect, may have to develop two systems.

Title I and the regulations, however, clearly intend that all children within the grades tested during the transition period participate in the assessment. Moreover, section 1111(b)(7)(B) of Title I and § 200.3(c) make clear that LEAs and schools must be identified for improvement during the transitional period based on accurate information about the academic progress of each such local education agency and school.

Changes: Section 200.4(e)(1)(iii) has been added to clarify that transitional assessments must include all students in the grades assessed.

Comment: One commenter recommended that the reliability and validity of assessments used to evaluate Title I programs be established and described for each specific purpose or use of the scores. Another commenter emphasized the importance of conducting and reporting on validation studies to ensure that accountability decisions are not based on flawed results, and another suggested that the Department make clear that following a particular validation process is not required.

Discussion: Section 200.4(b)(3)(i) of the regulations requires that each State's assessments be used for purposes for which they are valid and reliable and to be consistent with relevant, nationally recognized professional and technical standards for those assessments. The Secretary believes that this provision adequately addresses the commenters' concerns yet does not require a particular validation process.

Changes: None.

Comment: One commenter expressed concern that the individual, group, total school, and district reports required by the regulations will be subject to error from several sources, including measurement and sampling error: many schools will have too few students in some of the groups for which disaggregated reporting is required to provide reliable estimates of group performance (let alone reliable estimates of change). The requirements also overlook that some State assessment

programs are designed to provide school-level rather than student-level estimates of performance. At a minimum, the commenter recommends: adding language in § 200.4(b)(9) requiring that individual student reports include estimates of measurement error for the scores and any limitations of the results to permit accurate interpretation; adding language in § 200.4(b)(10) that reports of disaggregated data should be modified when the results would be unreliable or invalid due to inadequate numbers of students in the categories; or permitting a school to report annual results in a three-year rolling average to reflect that estimates from individual years contain too much error to be interpreted in isolation.

Discussion: Section 200.5(a)(2)(iii)(C) of the regulations clarifies that disaggregated data should be reported to the public only when those data would be statistically sound. It is appropriate for a State to have considerable flexibility in determining the content of its assessment reports so long as those reports conform with the requirements of the law.

Changes: None.

Comment: One commenter described some of the difficulties involved in disaggregating data by economically disadvantaged children: the definition is subject to various interpretations; schools currently do not collect these data in disaggregated form; collection of such data would be very difficult; and current USDA guidelines limit the use of individual student eligibility free and reduced price lunch data to USDA purposes only. Another commenter, reinforcing this position, suggested that the regulations provide as much flexibility as possible regarding disaggregation of data by poverty status.

Discussion: The Secretary recognizes that there are difficulties involved in complying with this requirement. However, the need to determine how well Title I is assisting poor children to meet challenging standards is acute.

Changes: None.

Comment: One commenter suggested deleting the phrase "in the grades being assessed" from § 200.4(b)(7)(i) of the regulations on the grounds that it may cause unnecessary problems for students who are placed in "ungraded" classes, or who have disabilities and are not in the age-appropriate grade. According to the commenter, this phrase is not necessary to clarify that students in all grades need not be assessed and might create perverse incentives for schools wanting to exclude students from assessments. Another commenter suggested that § 200.4(b)(7)(i) of the regulations be

modified to read "participation in the assessment of all students, including students served under this subpart, in the grades being assessed."

Discussion: Inclusion of the phrase "in the grades being assessed" in § 200.4(b)(7)(i) of the regulations is necessary to clarify that assessments used for Title I purposes do not have to assess all students in a school or all students served by Title I, but only those students in the specific grades being assessed. Within the grades being assessed, however, students being served under Title I must be included in the assessment.

Changes: None.

Comment: One commenter stated that the requirement in § 200.4(b) of the regulations that the "same assessments be used to measure the performance of all children" should be relaxed to permit appropriate modifications for children with diverse learning needs. The commenter recommended regulatory language stating that "reasonable adaptations may require modifications in item format, item content, test structure, administrative procedures and time limits that result in a different test form and/or procedure." The commenter would also require those modifications to be described and the validity and reliability of those assessments estimated and reported. Another commenter suggested that the regulations state that all students, including those who are limited English proficient, have a disability, or otherwise might not always be included in State and local assessment systems, be included under Title I assessment requirements, with appropriate modifications.

Discussion: Section 1111(b)(3)(A) of Title I and § 200.4(b)(1) of the regulations make clear that assessments used for Title I purposes must be the same assessments used to measure the performance of all children, if the State measures the performance of all children. These provisions remedy the situation under Chapter 1, in which a separate testing system was often used to assess only Chapter 1 participants. Section 200.4(b)(7)(i) of the regulations makes clear that State assessments must provide for the participation of *all* students in the grades being assessed. Section 200.4(b)(7)(ii) further clarifies that *all* students includes students with diverse learning needs. However, it also makes clear that reasonable adaptations and accommodations must be made for students with diverse learning needs so that the State's assessment measures the achievement of those students relative to the State's content and performance standards. Moreover, under

§ 200.4(b)(7)(iii), children with limited English proficiency must 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. The Secretary believes these provisions effectively address the commenters' concerns.

Changes: None.

Comment: Several commenters focused specifically on § 200.4(b)(7)(iii) concerning the assessment of limited English proficient children. One commenter recommended modifying this section to make clear that the State must make every effort to use or develop linguistically accessible assessment measures and develop appropriate modifications to test formats and administration procedures for LEP students assessed in English. Another commenter recommended deleting "to the extent practicable" from § 200.4(b)(7)(iii)(A) to ensure the assessment of all students without regard to primary language.

Discussion: The Secretary believes that § 200.4(b)(7) of the regulations, which replicates, by and large, the language in section 1111(b)(3)(F) of Title I is clear in its requirements that all students participate in the assessments, that reasonable adaptations and accommodations be provided where necessary, and that children with limited English proficiency 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.

Changes: None.

Comment: Several commenters expressed concerns about the addition of the phrase "to meet this requirement" in § 200.4(b)(7)(iii)(B) of the regulations. To some, it suggests that States can meet the requirement that they include LEP students in their assessment by making every effort to use linguistically accessible assessment measures even though these are two distinct and important provisions. To another commenter, the provision gives the impression that assessment of LEP students is required only when assessments are available in the students' native languages. Recommendations included either deleting the phrase, or substituting the words "in meeting" for "to meet" in § 200.4(b)(7)(iii)(B).

Discussion: The Secretary agrees with the commenter that, as proposed, the provision did not make clear the

requirement for including LEP students in the State assessments. In meeting this requirement, States must make every effort to develop linguistically accessible assessments. However, even without such assessments, LEP students must be included in the State's assessments.

Changes: Section 200.4(b)(7)(iii)(B) has been modified by deleting the phrase "to meet this requirement" and inserting "in meeting this requirement."

Comment: One commenter suggested that clarification is needed in § 200.4(b)(8) of the regulations regarding determining of those children from mobile families who have attended schools in the LEA for "a full academic year." Specifically, in districts operating year-round programs, the commenter suggested that students who have attended school in the district for the amount of time required of any particular student must be included in determining the progress of the LEA.

Discussion: The Secretary agrees that students from mobile families must be included in determining an LEA's progress if they have attended school in that LEA for the period of time necessary to meet the State's annual requirement for compulsory education.

Changes: None.

Comment: One commenter recommended that the regulations expressly state that group-administered, norm-referenced tests below grade 4 are inappropriate. The same commenter recommended that LEAs, not SEAs, select the particular approaches to assess children's school performance during the first 3-4 years of elementary school.

Discussion: Under Title I, States are provided with the responsibility of developing assessments aligned with State-developed standards. LEAs may also implement any additional assessments. The Secretary, therefore, believes it is inappropriate to prescribe the type of assessments that SEAs and LEAs should use.

Changes: None.

Section 200.5 Requirements for school improvement

Comment: One commenter requested that §§ 200.5 and 200.6 of the regulations be expanded to cover the numerous interrelated and complex provisions of Title I on which no regulations for program improvement have been included.

Discussion: The Secretary is committed to issuing regulations only where absolutely necessary and, when regulating, to promoting flexible approaches to meeting the requirements of the law. As a result, the Secretary has

not expanded the provisions on school improvement through regulations. The Secretary intends, however, to issue nonregulatory guidance on these provisions, including examples to illustrate possible approaches to school improvement.

Changes: None.

Comment: One commenter suggested that, when an LEA reviews a targeted assistance school to determine if the school has made adequate progress, the State should have the flexibility to decide whether to include only students served by Title I or all students who participate in the assessment.

Discussion: Section 1116(c)(1)(B)(ii) of Title I states that an LEA shall identify for school improvement any school served under this part that has not made adequate progress as defined in the State's plan for two consecutive school years, except that, in the case of a targeted assistance school, such school may be reviewed on the progress of only those students that have been or are served under this part. Additionally, section 1116(d)(3)(A)(i) of Title I provides a State some flexibility in reviewing the progress of an LEA. In a State's review of an LEA, schools served by the LEA that are operating targeted assistance programs may be reviewed on the basis of the progress of only those students served under Part A.

Changes: None.

Comment: One commenter suggested that language be added to § 200.5(a)(2) to include parental involvement in the annual review of the progress of each school for school improvement since parental involvement is a key theme in Title I of the Act.

Discussion: The Secretary strongly supports parental involvement efforts and participation by parents in their children's learning process and believes that such participation is crucial to the children's success in school. However, the progress of a school is measured on the basis of student achievement, not the process to elicit that achievement. Section 1118 of Title I contains comprehensive parental involvement requirements, including a requirement for the yearly review of the effectiveness of the parental involvement policy in increasing the participation of parents.

Changes: None.

Comment: One commenter supported the Secretary's position in § 200.5(a)(2)(iii)(c) that in conducting its annual review, an LEA must report disaggregated data to the public only when those data are statistically sound. This commenter explained that reporting data that are not statistically sound will mislead policymakers and

the public regarding how well schools are performing.

Discussion: The Secretary supports reporting data to teachers and other staff, parents, students, and the community annually so that this information may be used to determine the effectiveness of the program and for school improvement purposes. However, informed decisions can be made only if the data are accurate and statistically sound.

Changes: None.

Schoolwide Programs

Section 200.8 Schoolwide Program Requirements

Comment: Some commenters recommended that § 200.8(a)(1) of the regulations be changed to indicate that the decision to operate a schoolwide program is an LEA decision or an LEA decision after consultation with school-level staff as opposed to a school decision after consultation with the LEA. According to one of the commenters, this change would respect the role of the LEA and, at the same time, reinforce the concept that schoolwide programs should be undertaken in a building on a voluntary basis.

Discussion: Both section 1114 of Title I on schoolwide programs and section 1115 of Title I on targeted assistance schools emphasize greater decisionmaking authority at the school level so that schools, in consultation with their LEA, determine how to use their Title I funds in ways that best meet the needs of their students. Section 1114 contains many provisions addressing a school's responsibility for conducting a schoolwide program should the school choose to operate one. By emphasizing that an eligible school makes the decision to operate a schoolwide program, in consultation with its LEA, § 200.8(a)(1) recognizes that schoolwide programs will be successful only when the school community is fully behind that decision and that accountability at the school level must be coupled with decisionmaking authority.

Changes: None.

Comment: One commenter requested that the following language be added to § 200.8(a)(2)(ii): "If a district selects a provider of School Support from another entity outside of the statewide system, it must be subject to the State Validation System before the SWP plan is approved by the local board."

Discussion: A State may choose to include, as part of its State support system addressed in section 1117 of Title I, provisions allowing its LEAs to select technical assistance providers

other than those provided by the State. Because the responsibility is placed upon a State to design its system of support, this is an individual State decision.

Changes: None.

Comment: Numerous comments were received on § 200.8(c) of the regulations combining other Federal education program funds to support schoolwide programs and exempting those funds from their specific program requirements. Two commenters viewed the proposed regulations as going beyond what Congress authorized and did not believe that the ability to combine funds exempts schools from other Federal education laws and regulations. Several commenters asked that the authority to combine funds not extend to Title VII bilingual programs. They also stated that § 200.8(c)(ii)(B), which requires only that the intent and purposes of Federal education programs whose funds are combined be met, is too vague and will allow LEAs to evade the intent of Congress. Some commenters suggested deleting § 200.8(c)(3)(i)(A) because they believe that provision misconstrues the statute by exempting "programs" as opposed to the statutory term "provisions." Other commenters suggested deleting all references to "and any other Federal program included under (c) in this section." One commenter expressed concern that protection of services children receive will be eliminated, especially if parents are not specifically informed about funding and program design.

Discussion: One of the most promising changes in the recent reauthorization of Title I is the expansion of schoolwide programs to include other Federal programs. A schoolwide program permits a school to use funds under Part A of Title I to upgrade the entire educational program of the school and to raise academic achievement for all children in the school, in contrast to categorical programs in which Federal funds may generally be used only for supplementary educational services for specific target populations.

The Secretary strongly believes that schoolwide programs hold the greatest promise for raising the achievement of all children in high-poverty schools. He also believes the success of schoolwide programs depends on the ability of the schools to combine other Federal education program funds along with Part A funds and State and local funds to support their overall instructional programs. This authority affords a schoolwide program school significant flexibility to serve more effectively all

children in the school and their families through comprehensive reforms of the entire instructional program, rather than by providing separate services to specific target populations.

The Secretary emphasizes that a school with a schoolwide program must address the needs of *all* children in the school, particularly the needs of children who are members of the target population of any other Federal education program that is included in the schoolwide program and that accountability is based on how well children in the target populations perform with respect to State standards. The Secretary has not included additional provisions in the regulations because he does not want to impede a schoolwide program school from serving all children through comprehensive reforms of its entire instructional program.

Changes: None.

Comment: One commenter stated that § 200.8(c)(3)(ii)(A)(8) and (f)(1)(iii) and (2) of the regulations concerning application of the supplement, not supplant requirement in schoolwide program schools are contradictory and confusing.

Discussion: Consistent with section 1114(a)(4)(B) of Title I, § 200.8(c)(3)(ii)(A)(8) of the regulations does not relieve an LEA or school operating a schoolwide program from applicable supplement, not supplant requirements. On the other hand, consistent with section 1114(a)(3), § 200.8(f)(1)(iii) and (2) exempts a schoolwide program school from providing supplemental services to eligible children, although it requires the school to demonstrate that Part A funds and any other Federal education funds that are combined for use in a schoolwide program supplement the total amount of funds that would, in the absence of such funds, be made available to the school from non-Federal sources. Thus, the regulations do not contradict one another. Rather, paragraph (f) clarifies paragraph (c): schoolwide program schools must comply with the modified supplement, not supplant requirements in section 1114(a)(3) of Title I and § 200.8 (f)(1)(iii) and (2) of the regulations.

Changes: None.

Comment: One commenter suggested that § 200.8(e)(1)(iv)(A)(2) of the regulations conform to the statutory requirement for the collection of disaggregated achievement and assessment results, which the commenter argues is required during the transitional assessment period.

Discussion: Section 1111(b)(3)(I) of Title I requires that final assessment

systems enable assessment results to be disaggregated. Section 1111(b)(7), which authorizes transitional assessments, does not include the requirement for disaggregation. Therefore, disaggregating assessment data for schoolwide programs during the transitional assessment period is not required by the statute. Moreover, the Secretary believes that requiring disaggregation during the transition period would frustrate Title I's long-term goal of promoting high-quality, innovative assessments aligned with challenging standards. If there are data that can be disaggregated in a schoolwide program, an LEA may certainly disaggregate that data during the transitional assessment period. Furthermore, the Secretary encourages LEAs and schools to use information available from other sources such as teacher-made assessments to determine the progress of intended beneficiaries in the programs included in the schoolwide program.

Changes: None.

Comment: One commenter requested that language be added to § 200.8(d)(8)(C) of the regulations permitting Title I funds to be used to conduct parent-teacher conferences in parents' native language in order to help LEP parents be more involved.

Discussion: The use of Title I funds to conduct parent-teacher conferences, including in a parent's native language, is an allowable and appropriate use of Title I funds. Given that many funding sources may be combined to conduct schoolwide programs, any of the funding sources, including Title I, could provide such language-related services. The Department is planning to issue guidance on schoolwide programs that covers additional issues, including this one. Furthermore, the Department is consulting with many groups with knowledge on and experience with issues concerning the specific needs of children and their parents with limited-English proficiency and will produce specific guidance on activities related to working with LEP children and their families.

Changes: None.

Comment: One commenter requested that § 200.8(c)(3)(ii)(B)(I) of the regulations concerning a special rule for migratory children in schoolwide programs be expanded to include students from homeless, highly mobile, and isolated families.

Discussion: Part C of Title I includes a specific provision with respect to migratory children in schoolwide programs, which is reflected in the regulations. There is no authority to

expand that provision to cover other target populations.

Changes: None.

Comment: One commenter requested that § 200.8(c)(3)(ii)(B)(1)(i) of the regulations be revised to refer to parents of migratory children "and/or" organizations representing those parents.

Discussion: The Secretary agrees that an LEA may consult with both parents of migratory children and organizations representing those parents. These parties are not mutually exclusive.

Changes: The Secretary has revised § 200.8(c)(3)(ii)(B)(1)(i) to include "or both."

Comment: One commenter recommended that § 200.8(d)(8)(ii)(A) and (B) of the regulations be deleted, arguing that the language on Individualized Education Programs (IEP) is an unnecessary clarification that unfairly targets an effective strategy that helps children with special needs improve their academic achievement.

Discussion: This provision is included to prevent misinterpretation of the statutory provision that requires a schoolwide program to discuss with parents what the school will do to help students meet the standards and identify additional assistance that may be available. Section 200.8(d)(8)(ii)(A) of the regulations makes clear the statute does not require that IEPs, like those required under the Individuals with Disabilities Education Act, be developed for children not served in special education. This clarification does not, however, prohibit IEPs from being developed should a schoolwide program school elect to do so.

Changes: None.

Comment: One commenter suggested that the Secretary focus on curriculum and instruction in its guidance to States, school districts, and schools regarding the development of schoolwide plans. The commenter also suggested that schools be required to explain how and why they designed their instructional program and to describe any evidence that their approach has been researched and evaluated in peer-reviewed publications. In addition, the commenter suggested that the Secretary ask schools to explain how their schoolwide programs will help students master the knowledge and skills outlined in the State content standards. Further, the commenter suggested that the Secretary urge schools to include a timetable in their schoolwide plans showing what changes will take place immediately and what other changes will follow.

Discussion: Section 1114(b)(1) of Title I contains the components required of a

schoolwide program, including, among other things, schoolwide reform strategies that provide opportunities for all children to meet the State's proficient and advanced levels of student performance, that are based on effective means of improving the achievement of children, and that use effective instructional strategies. Further, section 1114(b)(2) provides that a school operating a schoolwide program must develop a comprehensive plan for reforming the school that incorporates the components required in section 1114(b)(1). Therefore, the statute already sufficiently ensures that the schoolwide program plan include information on those areas critical to the improvement of teaching and learning.

Changes: None.

Participation of Eligible Children in Private Schools

Section 200.10 Responsibilities for Providing Services to Children in Private Schools

Comment: Two commenters suggested that § 200.10(a) of the regulations be augmented to clarify that timely and meaningful consultation must occur before decisions are made that affect the opportunities of participating private school children and that a unilateral offer of services would not suffice.

Discussion: Section 1120(a) of Title I requires an LEA to provide equitable services to eligible private school children *after* timely meaningful consultation with private school officials. Section 1120(b) further elaborates on what constitutes timely and meaningful consultation. Paragraph (b)(2) requires consultation to occur "before the [LEA] makes any decision that affects the opportunities of eligible private school children to participate" in Part A programs. These statutory provisions clearly preclude an LEA from making a unilateral offer of services or consulting after services are already being provided, and no further regulations are needed.

Changes: None.

Comment: Several commenters argued that the definition of eligible students in section 1115 of Title I does not require eligible Title I children attending private schools to reside in a participating attendance area as stated in § 200.10(b)(1) of the regulations. They argued that the poverty of a private school is reflective of a larger area such as an entire LEA and, therefore, the attendance areas of the public school system are not relevant.

Discussion: Section 1113(a) of Title I defines a public school attendance area as the geographic area in which children

who are normally served by the school reside. To be eligible for Title I services, a school attendance area must have a higher percentage of poverty than the LEA as a whole. The degree of poverty in a private school is irrelevant because private schools do not participate in Title I. Rather, private school children are eligible because they reside in a public school attendance area that is participating in Title I; thus, they would have been eligible for services had they attended the public school. In essence, Title I puts private school children in the same place they would have been in had they attended a public school.

Changes: None.

Section 200.11 Factors for Determining Equitable Participation of Children in Private Schools

Comment: Several commenters commented on § 200.11(a)(2)(ii) (A)–(B) of the regulations, which provides two options to an LEA for determining which eligible private school children to serve. One commenter suggested that a combination of the options should be allowed as a third option. Another commenter recommended that paragraph (A), which permits the pooling of funds generated by poor private school children in all participating areas, be deleted because it provides greater flexibility in serving private school children than exists for serving public school children. Other commenters recommended that paragraph (B) be deleted, arguing that it is administratively burdensome and appears to directly benefit private schools.

Discussion: The regulations provide two options for utilizing the funds allocated on the basis of the number of low-income children who reside in participating Title I attendance area. In consultation with private school officials, an LEA may select one option or combine the options to best serve eligible private school children. Thus, an LEA does not need to select the option in paragraph (B) if the LEA believes it is administratively burdensome. The Secretary does not believe the option for pooling funds in paragraph (A) favors private school children. Rather, it adds needed flexibility, particularly because the number of poor children who reside in participating public school attendance areas and attend a particular private school may be so small that the funds those children generate are not commensurate with the educational needs of eligible children in that school.

Changes: None.

Comment: One commenter suggested that § 200.11(b)(2)(iii) of the regulations

be modified to require that private school children be provided with an opportunity to participate in Title I in a manner that addresses the particular needs of the private school children.

Discussion: Section 1120 of Title I clearly provides private school children an opportunity to participate in Title I in a way that addresses their particular educational needs. It requires that equitable services be provided and requires an LEA to consult with private school officials about how private school children's needs will be identified and what services will be provided. Moreover, because there is no longer a districtwide needs assessment, the needs of private school children can be determined independently from the needs of public school children.

Changes: None.

Section 200.13 Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children

Comment: Several commenters recommended that § 200.13(d) of the regulations be revised to afford LEAs discretion in deciding whether to remove equipment and materials no longer needed to provide services to private school children if there is the possibility that the program would be resumed in a subsequent year. The commenters explained that new zoning ordinances in many districts make it very expensive, once portable units, for example, are removed, to resituate the units.

Discussion: The Secretary recognizes that, under the new law, services to eligible private school children may differ from those provided under Chapter 1. The Secretary has attempted in § 200.28 of the regulations to provide maximum flexibility to ease the transition to the new law. Consistent with that flexibility, however, if equipment is no longer needed to provide equitable services to private school children, it must be removed as required in § 200.13(d).

Changes: None.

Capital Expenses

Section 200.16 Payments to LEAs for Capital Expenses

Comment: Two commenters recommended amending § 200.16(a)(1)(i)(B) of the regulations to also allow capital expenses to pay for costs that would be incurred to improve the quality of services provided to private school students.

Discussion: Capital expenses funds may pay the costs of noninstructional goods and services needed to improve

the quality of equitable services provided to private school children. The Secretary did not amend the regulations because these costs would be covered under § 200.16(a)(1)(i)(A)—that is, capital expenses an LEA “is currently incurring” to provide equitable services.

Changes: None.

Comment: One commenter suggested that § 200.16(a)(1)(ii) of the regulations be revised to allow an LEA to apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed “only” if the LEA demonstrates that its current needs for capital expenses have been met.

Discussion: The Secretary believes that the regulatory language in § 200.16(a)(1)(ii) clearly does not permit payments for previously incurred capital expenses if the LEA cannot demonstrate that its current needs for capital expenses have been met.

Changes: None.

Section 200.17 Use of LEA Payments for Capital Expenses

Comment: One commenter supported the use of capital expenses for reimbursement of costs in prior years but suggested that such reimbursement not be contingent upon approval by the SEA.

Discussion: Section 200.16(a)(1)(ii) of the regulations makes clear that an LEA may apply to the SEA for capital expense funds to cover expenses it incurred in prior years only if the LEA has demonstrated that its current needs for capital expenses have been met. Section 200.17 reflects this provision.

Changes: None.

Procedures for the Within-State Allocation of LEA Program Funds

Section 200.20 Allocation of Funds to LEAs

Comment: One commenter asked why Sections 1124(a)(2) and 1125(d) of Title I and § 200.20(b)(2)(ii)(B) of the regulations concerning direct allocations to LEAs require the SEA to establish appeal procedures for an LEA dissatisfied with the determination by the SEA when section 14401(c) of the ESEA prohibits the Secretary from waiving any statutory or regulatory requirement relating to the allocations or distribution of funds to States, LEAs, or other recipients of funds under the ESEA.

Discussion: Section 200.20(b)(2)(ii)(B) of the regulations follows the statute, which requires that a State applying for authorization to allocate funds directly to LEAs without regard to counties assure that its SEA has established procedures through which LEAs

dissatisfied with the SEA's determination may appeal directly to the Secretary. In reviewing an LEA's appeal, the Secretary would consider whether the SEA's allocation procedures in general comply with the statute and regulations. The Secretary could not waive any of the statutory or regulatory requirements related to allocating funds, however.

Changes: None.

Comment: One commenter requested clarification of the provision in § 200.20(c) of the regulations concerning LEAs that contain two or more counties in their entirety. In the case of New York City, for example, the SEA is required to allocate funds to each county within the city school system as if each county were a separate LEA. The commenter asked whether the LEA or SEA could adjust individual county allocations within New York City to account for poor children who live in one county but attend school in another county. The commenter believes that the Title I allocation procedures would be more equitable if adjustments could be made to county allocations in cases where poor children who live in one county attend school in another county, even though those poor children are in the same LEA.

Discussion: The situation described by the commenter is similar to that provided for in section 1126(b) of Title I. Section 1126(b) allows an SEA, in cases where an LEA provides free public education for children who reside in the school district of another LEA, to adjust the amount of grants among the affected LEAs. Because the statute requires an SEA to treat the individual counties within a single school district as separate LEAs for allocation purposes, section 1126(b) authorizes an SEA to adjust the counties' amounts because they are treated as LEAs. Therefore, the SEA may adjust amounts made available to the counties within a single LEA to account for poor children who live in one county but attend school in another county.

Changes: None.

Comment: Because of the disruption the “one LEA with two or more counties” provision in § 200.20(c) of the regulations will cause the New York City school system, one commenter recommended that the regulations allow such LEAs to use current Chapter 1 allocation procedures for two more years in order to minimize disruption to ongoing projects and make the transition to the new law smoother.

Discussion: Section 3(a)(1)(A) of the IASA provides that Title I shall take effect on July 1, 1995. The Secretary

does not have authority to delay this effective date.

Changes: None.

Section 200.25 Applicable Hold-Harmless Provisions

Comment: One commenter opposed the provision in § 200.25(c) of the regulations that requires an LEA to be eligible for basic, concentration, or targeted grants in order for the respective hold-harmless provisions to apply. The commenter believes this provision penalizes poor students with educational needs who live in wealthy districts.

Discussion: Sections 1124 (basic grants), 1124A (concentration grants), and 1125 (targeted grants) of Title I all contain requirements limiting the eligibility of certain LEAs to receive grants under those sections. The hold-harmless provisions in section 1122(c) of Title I apply to "the amount made available to each local educational agency" under sections 1124, 1124A, and 1125. If an LEA is not eligible, no funds would be "made available" to it and, thus, the hold-harmless protection would not apply. These sections help implement the statute's purpose to target funds more effectively on LEAs with the highest concentrations of poverty and are supported by research findings that show children from low-income families attending schools in relatively wealthy school districts tend on average to do better academically than similar children attending schools in school districts with high concentrations of poverty.

Changes: None

Procedures for the Within-District Allocation of LEA Program Funds

Section 200.27 Reservation of Funds by an LEA

Comment: One commenter asked for clarification about how the reservation of funds provision in § 200.27 of the regulations works with regard to calculating 125 percent of an LEA's allocation per poor child and how this provision affects an LEA that serves only attendance areas or schools with poverty rates of 35 percent or more.

Discussion: Section 1113(c)(2)(A) of Title I requires that, in allocating funds to eligible attendance areas or schools, an LEA provide an amount per poor child for each area or school that is at least 125 percent of the amount per poor child that the LEA received under Part A of Title I. Thus, an LEA must calculate 125 percent of its allocation per poor child based on its total allocation before reserving any funds. An LEA that serves only attendance

areas or schools with poverty rates of 35 percent or more is not subject to this requirement.

Changes: A change has been made. The Secretary has amended § 200.27(b)(1) of the regulations to make clear that an LEA subject to the 125 percent rule must calculate its minimum per pupil allocation before the LEA reserves any funds.

Comment: One commenter believed the reference to capital expenses in § 200.27(c) of the regulations is incorrect because it is a separate Title I program that the SEA subgrants to LEAs. Several other commenters recommended that a separate provision be included for reserving funds for capital expenses.

Discussion: Although capital expenses is a separate Title I program, LEAs must apply to the SEA for these funds. There is no guarantee an LEA that applies will receive capital expense funds or that the amount received will be enough to cover all capital expense costs associated with implementing alternative delivery systems needed to serve private school students and comply with the requirements of *Aguilar v. Felton*. Thus, an LEA may still need to reserve administrative funds for the costs of noninstructional goods and services incurred because of the *Felton* decision.

Change: A change has been made. The Secretary has added language in § 200.27(c) of the regulations to make clear that an LEA may reserve off the top of its Part A allocation funds necessary to pay those capital expenses not reimbursed under § 200.16.

Section 200.28 Allocation of Funds to School Attendance Areas and Schools

Comment: Several commenters stated that requirements to allocate funds to schools based on poverty rather than educational need undermine the original purpose of Title I by making it a poverty program rather than an educational program. The commenters argued that basing Title I allocations on the number of poor children residing in an eligible school attendance area adversely affects the number of educationally needy public and private school students who can participate.

Discussion: Section 1113(c) of Title I requires an LEA to allocate funds to participating attendance areas and schools based on the number of children from low-income families. Congress enacted this provision to target funds on areas with the highest concentrations of poverty, recognizing the close relation between high concentrations of poverty and low academic achievement and realizing that successful schools have been penalized in the past by losing

Title I funds because their children made academic gains. Even though funds are allocated to participating areas and schools on the basis of poverty, however, educationally needy children in those schools do not need to be poor to receive services. Title I continues to be an education program.

Changes: None

Comment: One commenter stated that the Secretary should not regulate how LEAs distribute funds to schools with poverty rates of at least 35 percent. According to the commenter, the decision on how to allocate funds in such cases should be an LEA decision; regulations in this area represent a Federal intrusion into local school decisionmaking.

Discussion: LEAs that serve only schools with poverty rates of 35 percent or more do, in fact, have more flexibility in allocating funds than other LEAs. Nevertheless, the statute does place certain requirements concerning the allocation of funds on all LEAs. Section 1113(a) of Title I requires that an LEA with more than 1,000 students rank its school attendance areas in order of poverty based on the percentage of children from low-income families in each area. Section 1113(c) requires an LEA to allocate funds to eligible school attendance areas or schools in rank order based on the number of children from low-income families. The Secretary believes that regulations are needed to clarify that an LEA serving only school attendance areas or schools with poverty rates of 35 percent or more has the flexibility to use an amount per poor child that the LEA deems appropriate and is not required to allocate an amount based on 125 percent of the LEA's allocation per poor child. However, for an LEA that serves any school with a poverty level under 35 percent, this provision applies to all its schools. The regulations further clarify that an LEA is not required to allocate the same amount per poor child to each participating school attendance area or school, provided that the LEA allocates higher amounts per poor child to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

Changes: None.

Comment: One commenter raised the issue that schools with similar allocations may need to spend different amounts because of variations in salaries and benefits of Title I staff. The commenter suggested that the regulations be modified to allow for the use of a pupil-teacher ratio instead of a funding ratio or to allow a 15 to 20

percent leeway among schools in the per-pupil allocation.

Discussion: Section 1113(c) of Title I requires that Part A funds be allocated to school attendance areas and schools based on the number of children from low-income families in each area or school. The provision assumes, for example, that two schools with the same number of poor children need similar amounts of funds to provide comparable education programs to participating children. The Secretary recognizes that an inequity may occur, however, if schools with similar allocations offering similar instructional programs need to spend different amounts due the salary and fringe benefit costs of the staff providing the instruction. To address this situation, the Secretary has issued guidance that allows an LEA to consider variations in personnel costs, such as seniority pay differentials or fringe benefits differentials, as LEA-wide administrative costs, rather than as part of the funds allocated to school attendance areas or schools. The LEA would pay the differential salary and fringe benefit costs from its administrative funds taken off the top of the LEA's Part A allocation. This policy would have to be applied consistently to staff serving both public and private school children throughout the LEA.

Changes: None.

Comment: One commenter noted that § 200.28 of the regulations does not specifically address the issue of variations in per-pupil amounts by grade spans.

Discussion: The Secretary has clarified this issue in guidance. An LEA opting to serve schools below 75 percent poverty using grade span groupings may determine different amounts per poor child for different grade spans as long as those amounts do not exceed the amount allocated to any area or school above 75 percent poverty. Amounts per poor child within grade spans may also vary as long as the LEA allocates higher amounts per poor child to areas or schools with higher poverty rates than it allocates to areas or schools with lower poverty rates.

Changes: None.

Comment: For LEAs that select eligible school attendance areas according to grade spans, a commenter recommended that the poverty percentage to determine eligibility be based on the districtwide average for the grade span rather than the overall districtwide poverty percentage.

Discussion: Section 1113(a)(4) of Title I allows an LEA, after ranking eligible attendance areas or schools above 75 percent, to rank its remaining eligible school attendance areas by grade span.

Sections 1113(a)(2) defines an eligible school attendance area as one in which the percentage of poor children is at least as high as the percentage of such children in the LEA as a whole. The Secretary has determined that it is reasonable to continue the flexibility contained in the current Chapter 1 regulations. Thus, an LEA may base school eligibility on (1) the overall poverty percentage for the LEA as a whole or (2) the districtwide poverty percentage for each grade span.

Changes: The Secretary has added § 200.28(a)(3) of the regulations, which permits an LEA that ranks its school attendance areas or schools at or below 75 percent poverty by grade span to determine the percentage of children from low-income families in the LEA as a whole for each grade span grouping.

Comment: One commenter noted that proposed regulations do not address how LEAs may handle carryover funds when allocating funds to school attendance areas.

Discussion: LEAs have considerable discretion in handling carryover funds. For example, an LEA may: (1) allow each school to retain its carryover funds for use in the subsequent year; (2) add carryover funds to the LEA's subsequent year's allocation and distribute to participating areas and schools in accordance with allocation procedures; or (3) designate carryover funds for particular activities that could best benefit from additional funding (examples: parental involvement activities or for schools with the highest concentrations of poverty). The Secretary has provided guidance to clarify this issue.

Changes: None.

Comment: A number of commenters raised issues concerning the within-district allocation of funds to provide for children residing in participating public school attendance areas but attending private schools. Virtually all of the comments focused on problems with the availability for the 1995-96 school year of adequate poverty data on those children. Because of the difficulty in obtaining reliable poverty data for private school children, several commenters suggested that there be a one-year delay in implementing the within-district allocation procedures and that the procedures used during the 1994-95 school year be used for one more year. Other commenters recommended that, if reliable poverty data on private school children residing in a participating school attendance area are not available, an LEA be allowed to apply the poverty percentage of public school children residing in the participating school attendance area to

the number of children from that attendance area attending private schools to determine a count of poor private school children.

Discussion: Under Part A of Title I, an LEA must distribute funds generally to participating school attendance areas based on the total number of children from low-income families residing in those attendance areas, including children from low-income families attending private schools. The level of services available for eligible private school children will be determined by the amount of funds generated by poor private school children residing in participating areas. The Secretary realizes that the collection of data needed to implement these provisions becomes complicated because many private schools do not participate in the free and reduced price lunch program, whose data will likely be used by most LEAs.

Section 200.28(a)(2) of the proposed regulations addressed this issue by making clear that, if poverty data are not available for private school children as are available for public school children, an LEA may use comparable data for private school children collected through an alternative means such as a survey. The Secretary has expanded this provision in the final regulations to also make clear that an LEA may use data from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. The Secretary has also added paragraph (a)(2)(ii), which provides that, 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 poor private school children residing in a particular attendance area. For example, if parents of half the private school children who reside in a participating school attendance area respond to a survey and 50 percent of the private school children whose parents respond are poor, the LEA may project from this sample that 50 percent of the private school children residing in that attendance area are poor. The sample size should be large enough to draw a reasonable conclusion that the poverty estimate is accurate.

Even with this additional flexibility, however, an LEA may still not have adequate poverty data on private school children that it needs for the 1995-96 school year in time to make allocations to participating school attendance areas, complete the planning process with respect to services for both public and private school children, and submit timely plans to their SEA for approval.

Thus, for the 1995–96 school year only, an LEA that does not have adequate poverty data on private school children must apply the poverty percentage of each participating public school attendance area to the number of private school children in that area. For example, if a participating public school area has 50 percent poverty and 100 children who reside in that area attend private schools, 50 private school children would be deemed to be poor and thus generate Title I funds. For school years after 1995–96, actual poverty data (or a reasonable estimate based on an adequate sample) will be required.

The Secretary realizes that there may be issues about the adequacy of the poverty data available for private school children. These issues need to be resolved in consultation with private school officials. Because sampling would be permitted, an LEA would not need to have actual data on each private school child residing in a participating school attendance area for the data to be adequate. Moreover, to allay privacy concerns, an LEA does not need to collect or maintain the names of individual poor children attending private schools or signatures of their parents or guardians. In determining the adequacy of the data, an LEA should take into consideration factors such as the reliability of the data, the response rate, and whether the data are comparable to the data on public school children.

The Secretary urges public and private school officials to continue their efforts to collect actual poverty data for the 1995–96 school year, particularly in light of the flexibility to use sampling. To facilitate these efforts, SEAs and LEAs may wish to extend deadlines and amend applications, as necessary. Assuming adequate poverty data on private school children are not available for the 1995–96 school year, efforts to collect actual data should continue, because the alternative method requiring an LEA to apply the poverty rate for each public school attendance area to the private school children in that area will be allowed only for the 1995–96 school year.

Changes: Several changes have been made. The Secretary has added § 200.28(a)(2)(i)(B)(2) to make clear that an LEA may use data from existing sources such as Aid to Families with Dependent Children or tuition scholarship programs. The Secretary has also added paragraph (a)(2)(ii), which provides that, if complete actual poverty data on private school children are not available, an LEA may extrapolate from actual data on a representative sample

of private school children the number of poor private school children. Finally, the Secretary has added paragraph (a)(2)(iii) to require, for the 1995–96 school year only, an LEA that does not have adequate data on the actual number of private school children from low-income families under either paragraph (a)(2)(i) or (ii) to derive the number of those children by applying the poverty percentage of each participating public school attendance area to the number of private school children who reside in that area.

Comment: Several commenters recommended that § 200.28 of the regulations permit an LEA, in order to provide services to eligible private school children, to reserve an amount of funds that is proportionate to the number of children from low-income families who attend private school in the entire LEA compared to the number of children from low-income families who attend public schools in the LEA.

Discussion: The clear meaning of the statute requires an LEA to allocate Title I funds based on the number of poor private school children residing in participating public school attendance areas. Under section 1113(c)(1) of Title I, funds are allocated to participating school attendance areas “on the basis of the total number of children from low-income families in each area or school.” The “total number of children from low-income families” includes both poor public and private school children residing in each public school attendance area. Consistent with this provision, section 1120(a)(4) of Title I requires expenditures for services to eligible private school children to be “equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools (emphasis added).” Determining the amount of funds available for services to private school children at the LEA level would be inconsistent with allocating funds to participating areas based on the number of poor public and private school children in each area.

Changes: None.

Comment: One commenter interpreted § 200.28 of the regulations to require only that the allocation of funds to school attendance areas be based on the number of children from low-income families from both public and private schools. According to the commenter, § 200.28 would allow an LEA to select and rank eligible attendance areas or schools based only on the number of public school poor children.

Discussion: Section 200.28 deals only with the allocation of funds to participating school attendance areas and schools and makes clear that funds must be allocated on the basis of the total number of children—public and private—from low-income families in each area or school. Thus, adequate data on the number of private school children from low-income families in participating school attendance areas is essential. To include numbers of private school children in identifying and selecting eligible school attendance areas and schools, however, would require adequate poverty data on private school children throughout the LEA. Because obtaining these data for the entire LEA may be extremely difficult, an LEA may identify and rank its eligible school attendance areas and schools on the basis of children from low-income families attending public schools only.

Changes: None.

Comment: Several commenters raised the issue of how private school children would be identified as residing in a participating attendance area if an LEA is operating under an open enrollment, a desegregation, or magnet school plan where there are no geographically defined attendance areas. A number of commenters recommended that the regulations allow LEAs to allocate Title I funds for poor private school children based on their relative share of the total population of public and private school children for the LEA as a whole.

Discussion: An LEA operating under an open enrollment, desegregation, or magnet school plan must still offer equitable services to eligible private school children. Determining which private school children are eligible, however, is often very difficult because it is not clear to which public school they would have gone were they not in a private school. Because of the wide variety of open enrollment arrangements, the Secretary was unable to fashion a regulation that would appropriately govern each situation. Rather, the Secretary will assist SEAs and LEAs on a case-by-case basis to design reasonable approaches that will allow for the provision of equitable services for eligible private school children.

Changes: The Secretary has added § 200.10(b)(2) to make clear that an LEA that identifies a school as eligible on the basis of enrollment because the school is operating, for example, under an open enrollment or desegregation plan, must determine an equitable way to identify eligible private school children.

Comment: Several commenters recommended that Title I expenditures

for private school children be set at 85 percent of the Title I amount spent on them in the previous year.

Discussion: The statute does not authorize a hold harmless for services to private school students based on the prior year's expenditures.

Changes: None.

Subpart C—Migrant Education Program

Section 200.40 Program Definitions

Comment: One hundred and sixty-seven letters were received objecting to the proposal to require that, to be a migratory agricultural worker or fisher, temporary or seasonal employment in an agricultural or fishing activity must be a "principal means of livelihood." Most of the commenters on this issue read into the proposed language a requirement that, for a child to qualify for services under the Migrant Education Program (MEP), the child's parents or guardians either must derive the majority of their income from, or spend the majority of their time performing, agricultural or fishing activities. Most of the commenters were concerned that the proposed language imposed a specific recordkeeping burden on migratory workers. Specifically, they believed that, for a child to be determined eligible under the MEP, his/her parent or guardian now would be required to maintain, and produce for inspection by State and local MEP staff, records documenting the percentage of time or income associated with their agricultural or fishing work.

Many commenters also suggested that the proposed language would place an unreasonable burden on local MEP staff, by requiring them to make subjective determinations of eligibility based on review of parents' income or occupational history records. Several commenters noted that these determinations would vary from place to place and from MEP staff member to staff member.

While the majority of commenters suggested eliminating the proposed language, several commenters suggested that the Secretary should clarify the proposed language and/or issue clear guidance on how to determine whether a migratory worker's agricultural or fishing work constitutes "a principal means of livelihood."

Discussion: The commenters have misinterpreted the scope and intent of the proposed language regarding what constitutes "a principal means of livelihood." As noted in the preamble to the NPRM, the Secretary proposed this language to better focus MEP services on children of persons with an actual,

significant dependency on migratory agricultural or fishing work.

The Secretary never intended the proposed language to mean that agricultural or fishing activities had to constitute the principal means of livelihood for a worker. That is to say, this work need not be the only type of work performed by a worker during the year, nor the one which provides the largest portion of income or which employed the worker for a majority of time. Additionally, the Secretary never intended the proposed language to require a worker or his or her family to maintain, or an SEA or operating agency to review, written documentation on income or work history as a condition of determining the eligibility of children for the MEP.

With regard to the concern about the burden the proposed language might place on State and local MEP staff, the Secretary believes that it is necessary for SEAs and operating agencies receiving MEP funds to determine that children eligible for the MEP are those for whom temporary or seasonal employment in an agricultural or fishing activity constitutes an important part of their families' livelihood. However, this determination should be no more difficult than the determinations currently made by State and local MEP staff regarding the reasonableness of other eligibility information provided by a parent or guardian as to work activities and mobility. State and local officials responsible for determining MEP eligibility often rely on oral information from parents, guardians, as well as employers and others regarding a move to seek or obtain seasonal agricultural or fishing employment. State and local MEP staff currently use their best judgment regarding the accuracy of this information, especially in cases where agricultural or fishing work was sought but not found. The Secretary's interpretation of eligibility requirements under the MEP will continue to permit reliance on any credible source, without the need to secure written documentation from a parent or guardian. The Secretary only intends, with this new eligibility requirement, that State and local staff be reasonably assured that, in view of a family's circumstances, it is sensible to conclude that temporary or seasonal employment in an agricultural or fishing activity is one important way of providing a living for the worker and his or her family.

Changes: In order to clarify the meaning of the new language, the Secretary has revised the regulatory definition in § 200.40(f) of the regulations to clarify that the term

"principal means of livelihood" as used in § 200.40 (c) and (e) of the regulations means that "temporary or seasonal employment in an agricultural or fishing activity plays an important part in providing a living for the worker and his or her family." The Secretary will issue guidance regarding how SEAs and their operating agencies may exercise flexibility in the ways in which they identify and recruit migratory children consistent with this regulatory requirement.

Comment: Thirty-four commenters noted that the "principal means of livelihood" language included in the proposed MEP regulatory definitions was not found in the statute. Seven commenters suggested that the inclusion of this language in the regulations would violate the Department's principles for regulating insofar as the proposed language was not absolutely necessary and/or contrary to the intent of the statute to give flexibility to States and local operating agencies in implementing the new statute.

Discussion: The Secretary believes that the proposed language regarding "principal means of livelihood" is a necessary addition to the longstanding definitions of "migratory agricultural worker" and "migratory fisher" and, therefore, conforms to the Department's regulatory principles. Because the existing definitions had been frozen by prior statutes, children have been identified and served as migratory children simply because they moved with or to join a parent or guardian who, though having another full-time occupation, indicated that he or she moved across a school district line to perform, however briefly, an agricultural or fishing activity. ESEA has removed this statutory freeze. Continuing to allow children to be served as migratory children on the basis of a purely technical application of the definition would perpetuate an injustice against those children whose lives are disrupted by moves made because their families are truly dependent, to a significant degree, on temporary or seasonal agricultural or fishing activities. In this way, the Secretary continues to believe that this change in the MEP definitions is absolutely necessary.

Changes: None.

Comment: None.

Discussion: In order to conform to the statutory language, the Secretary has revised the definition of a "migratory child" in § 200.40(d) by replacing the term, "has moved," in subsection (3) with the term, "migrates."

Changes: Section 200.40(d)(3) is changed accordingly.

Comment: None.

Discussion: The second sentence of the definition of a "migratory fisher" in § 200.40(e) notes that the definition also includes a person who resides in a school district of more than 15,000 square miles, and moves a distance of 20 miles or more to a temporary residence to engage in a fishing activity. As purely an editorial clarification, the Secretary has revised this sentence to read, "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."

Changes: Section 200.40(e) is changed accordingly.

Section 200.41 Use of Program Funds for Unique Program Function Costs

Comment: Two commenters addressed this section of the proposed regulations. Both commenters agreed that it was appropriate to use program funds to address those administrative functions that are unique to the MEP; however, one commenter questioned why the proposed regulation also mentioned the use of program funds for "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." This commenter suggested deleting the language or providing examples of what these activities might include.

Discussion: The MEP is a State-operated as well as a State-administered program. In cases where it directly operates aspects of the program, rather than having local operating agencies do so, an SEA has to perform the same kind of administrative activities that an LEA carries out when it administers a project under subpart A. While these activities could be described as unique to the nature of the MEP, the Secretary believes deleting the term, which has been in the prior regulations, would create unnecessary confusion about the scope of permissible uses of funds under § 200.41 of the regulations. Instead, the Secretary has decided to make minor modifications to clarify that those "administrative activities * * * that are unique to the MEP" include "administrative activities * * * that are the same or similar to those performed by LEAs in the State under subpart A." The list of permissible activities has also been expanded to include an example of this type of administrative activity.

Changes: Section 200.41 is changed accordingly.

Section 200.42 Responsibilities of SEAs and Operating Agencies for Assessing the Effectiveness of the MEP

Comment: Two commenters addressed this section of the proposed regulations. One commenter agreed with the proposed language. The other commenter noted that the schoolwide program requirements in § 200.8 of the regulations do not require the identification of particular children as eligible to participate, and questioned how an operating agency can meet its responsibility under § 200.42 of the regulations to evaluate the effectiveness of how a school within the agency which combines MEP funds in a schoolwide program serves migratory children.

Discussion: The commenter misconstrues the applicable provisions of § 200.8, regarding schoolwide programs. While § 200.8(f)(1) does not require a schoolwide program to identify particular children as eligible to participate (emphasis added), a schoolwide program will have to identify a given child in terms of needs. This is necessary in order for the school to meet other schoolwide program requirements to (1) employ instructional strategies which address the needs of children who are members of the target population of any program whose funds are included in the schoolwide program [§ 200.8(d)(2)(iv)(A)]; and (2) address the identified needs of migratory children specifically, and document how these needs have been met in the schoolwide program [§ 200.8(c)(3)(ii)(B)(1)]. A schoolwide program is also required, under § 200.8(e)(1)(iv)(A)(2), to disaggregate assessment data according to specific categories, including migrant status. In this way, a schoolwide program which includes MEP funds will be able to meet the requirements of § 200.42 to determine the effectiveness of the program for migratory students.

Changes: None.

Section 200.44 Use of MEP Funds in Schoolwide Programs

Comment: Nine comments were received regarding the inclusion of MEP funds in schoolwide programs. Seven of the commenters expressed support for the continued inclusion of the proposed language in § 200.8(c)(3)(ii)(B)(1) of the regulations. As developed through the negotiated rulemaking process, this subsection requires schoolwide programs to (1) first address, in consultation with parents and other representatives, or both, of migratory children, the identified needs of those children that result from the effects of their migratory lifestyle or are needed to

permit them to function effectively in school; and (2) document that services to address those needs have been provided. One commenter expressed concern that the special needs of migratory children will not be addressed in a schoolwide program without a requirement to "identify and document the services that supplemented the regular academic program." Another commenter suggested that the language of § 200.8(c)(3)(ii)(B) of the regulations was too vague and flexible, and would "allow school districts to evade the intentions of Congress."

Discussion: The Secretary continues to believe that the language in § 200.8(c)(3)(ii)(B)(1) of the regulations, as drafted in negotiated rulemaking, provides an adequate safeguard that the special needs of migratory children will be addressed in schoolwide programs. In particular, subsection (1)(B) requires that schoolwide programs document that services have been provided to address the identified needs of migratory children. The Secretary continues to believe that it is neither necessary nor desirable—and, in fact, is contrary to the purpose of schoolwide programs—for schoolwide programs to have a requirement to demonstrate that services provided using Federal funds, e.g. MEP funds, combined under the schoolwide program authority supplement the services regularly provided in that school.

Changes: None.

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

Comment: One commenter indicated that the regulations do not adequately address many of the statutory changes, particularly as they relate to prevention and intervention. The commenter suggests organizing the regulations into State agency and locally operated program categories.

Discussion: In developing regulations for programs authorized by Title I, the Department sought to regulate only where absolutely necessary, and when regulating, to promote flexible approaches to meeting the requirements of the law. The Secretary believes that the statute provides sufficient direction to State agencies (SAs) and local educational agencies (LEAs) operating Part D subpart 1 and 2 programs for children and youth who are neglected, delinquent, or at-risk of dropping out and does not require regulations. The Department, however, is developing more detailed guidance to help SAs and LEAs design programs that meet the

needs of this population. This guidance will be organized to provide guidance related specifically to the Part D, Subpart 1 State agency N or D program and the Subpart 2 local agency program.

Changes: None.

Comment: For the Part D, Subpart 2 local agency program, a commenter asked for clarification about the distinction in funds and services between delinquent and at-risk children and youth. The commenter further asked if LEAs may reserve a portion of their funds for at-risk students who have not been adjudicated delinquent or must LEAs use those funds only for delinquent youth transferring from institutions into the district's schools.

Discussion: LEAs must use a portion of its Title I, Part D, Subpart 2 funds to operate a dropout prevention program for at-risk youth in local schools in the LEA. At the same time, the LEA must also use some of its Subpart 2 funds for programs that will serve children and youth in locally operated correctional facilities and in locally operated institutions or community day programs for delinquent children and youth in accordance with the requirements in section 1425 of Title I.

The statute, however, provides that if more than 30 percent of the children or youth in a local correctional facility or delinquent institution within an LEA do not reside in the LEA after leaving the facility or institution, the LEA is not required to operate a dropout prevention program in a local school.

Changes: None.

Comment: One commenter expressed concern about the low status of "prison education," particularly in his State, where the lack of support for juvenile institutions has reduced both the number and the quality of course offerings and has relegated correctional education to a supplemental or support role. The commenter indicated that there should be more recognition of the status of correctional education and hopes that the Title 1 program in these institutions will help N or D children and youth attain the high standards expressed in Goals 2000 and State school reform initiatives.

Discussion: The Secretary expects consolidated State plans for ESEA programs or individual State plans for Part D funds to provide an overall plan for meeting the needs of N or D children and youth and, where applicable, youth at-risk of dropping out of school that is integrated with the State's other educational programs.

Changes: None.

Comment: One commenter expressed concern that section 1603 of Title I does not require that the membership of the

State's Committee of Practitioners include a representative from State agencies (SAs) operating N or D institutions.

Discussion: Section 1603 of Title I requires that the Committee of Practitioners review and comment on all proposed rules, regulations, and policies relating to programs authorized in Title I, including Part D. The Secretary expects that a representative from SAs operating Title I N or D programs will be included on the Committee of Practitioners so it can address issues related to the State agency N or D program.

Changes: None.

Comment: A commenter noted that the regulations do not address how an SEA awards Part D, Subpart 2 grants to LEAs with high numbers or percentages of youth residing in locally operated correctional facilities for youth (including institutions and community day programs or schools that serve delinquent children and youth).

Discussion: The SEA has flexibility in establishing the criteria used to determine which LEAs have high numbers or percentages of children and youth in local correctional facilities or institutions and community day programs for delinquent children. Once an SEA determines which LEAs are eligible, the SEA may award Part D, Subpart 2 subgrant to eligible LEAs through a formula or on a discretionary basis.

Changes: None.

Section 200.50 Program Definitions

Comment: One commenter expressed concern that the definition for locally operated correctional facility does not include institutions or community day programs that serve neglected children and that the Part D, Subpart 2 local agency program does not address the educational needs of these neglected children.

Discussion: The specific educational needs of neglected children are met through several Title I programs. The State agency N or D program, authorized in Part D, Subpart 1 of Title I, serves the needs of neglected children in State-operated or supported institutions or community day programs. Part A, section 1113 of Title I requires that an LEA receiving Title I funds reserve funds to meet the educational needs of children in local institutions for neglected children. If the LEA is unable or unwilling to provide services to children in local institutions for neglected children, the State educational agency must reduce the LEA's allocation by the amount generated by the neglected children and

assign those funds to another agency or LEA that agrees to assume educational responsibility for those children.

Changes: None.

Section 200.51 SEA Counts of Eligible Children

Comment: One commenter strongly supported the change requiring the use of enrollment rather than average daily attendance.

Discussion: Section 200.51 of the regulations follows the statute, which requires that counts used for allocating Part D, State agency N or D funds be based on the number of children and youth under aged 21 enrolled in a regular program of instruction for 20 hours per week if in a institution or community day program for N or D children and youth and 15 hours per week if in an adult correctional facility.

Changes: None.

Comment: One commenter objected to requirements in the proposed regulations that State agency N or D allocations be based on counts of children enrolled in a regular program of instruction for 20 hours per week if in an institutions or community day program for N or D children; and only children and youth in institutions with an average length of stay of 30 days or more can be counted. The commenter argued these requirements will result in an under count of the children and youth that State institutions serve and does not take turnover into account.

Discussion: The criteria that children be enrolled in a regular program of instruction for 15 or 20 hours of instruction per week, depending on the type of institution, reflect statutory requirements. The statute, however, addresses the issue of turnover in part by requiring that enrollment be adjusted to take into consideration the relative length of the program's school year.

Although short-term institutions such as detention, diagnostic, and reception centers provide basic education services for youth, the Secretary believes that Title I services are most effective when their duration is longer and is requiring in regulations that the average length of stay in institutions and programs eligible for Title I funds average at least 30 days.

Changes: None .

Subpart E—General Provisions

Section 200.60 Reservation of Funds for State Administration and School Improvement

Comment: One commenter argued that Congress appropriated fiscal year 1995 funds specifically for School Improvement as a limitation or cap on

the amount that could be spent by States for this activity in the same manner that Congress provided funds specifically for State Administration in prior years. According to the commenter, the line item appropriation, therefore, provides the entire amount that may be expended for school improvement activities for 1995-96, and SEAs have no authority to reserve any additional funds for that purpose from their allocations under sections 1002 (a), (c), and (d) of Title I in 1995-96.

Discussion: In the 1995 Appropriations Act (P.L. 103-333), Congress appropriated funds for activities authorized by Title I and specifically provided \$27,560,000 for "program improvement activities." Because the ESEA had not been enacted at the time P.L. 103-333 became law, these funds were not appropriated under the authority in section 1002(f) of Title I. However, legislative history accompanying the 1995 Appropriations Act (Senate Report 318, p. 177) indicates that Congress provided a specific amount for program improvement grants with the knowledge that the Senate ESEA bill, S. 1513, also authorized each State to reserve a portion of its Title I LEA and State agency grants for school improvement. Thus, the Secretary believes that Congress intended to provide funds for school improvement as a separate line item and still allow States to reserve additional funds under sections 1003 (a), (c), and (d) from its LEA and State agency grants.

Changes: None.

Section 200.61 Use of Funds Reserved for State Administration

Comment: One commenter believed § 200.61 of the regulations should be expanded to address the use of funds reserved for school improvement. The commenter recommended that any alternative system established by the State should be addressed in its State plan and thereby subject to peer review. The commenter argued that States may be tempted to use school improvement funds to support SEA staff costs that should otherwise be funded with State Administration funds.

Discussion: The Secretary believes that sections 1116 and 1117 of Title I adequately address how States must use school improvement funds. States are expected to address in individual State plans how they will monitor LEA school improvement activities, provide technical assistance, identify LEAs in need of school improvement assistance, take necessary corrective action, and establish a State school improvement support system.

Changes: None.

Comment: One commenter asked what the phrases "any of the funds" and "general administrative activities" mean in § 200.61 of the regulations.

Discussion: Section 200.61 of the regulations provides that an SEA may use any of the funds 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. This authority, provided under section 1603 of Title I, is very broad and includes activities that the SEA considers necessary to the proper and efficient performance of its duties under Title I. Such activities may, for example, include reviewing plans submitted by LEAs and State agencies, monitoring program activities at the local level, providing technical assistance, and developing rules and policy guidance needed to implement the law.

Changes: None.

Subpart E—General Provisions

Comment: One commenter strongly supported the language in § 200.63 of the regulations concerning the supplement, not supplant requirement and believed that it clarifies the language of the Title I statute. Another commenter suggested that the regulations further clarify section 1120A(b)(1)(B) of Title I pertaining to the exclusion of supplemental State and local funds from supplement, not supplant determinations, given the likelihood of unintended noncompliance in the near future.

Discussion: Although the Title I legislation on the exclusion of supplemental State and local funds from Title I supplement, not supplant and comparability determinations is different from that in the Chapter 1 legislation, the Secretary believes that the statutory language does not need further clarification beyond that contained in § 200.63(c) of the regulations. To the extent additional clarification becomes necessary, the Department will provide it in policy guidance.

Changes: None.

Comment: One commenter suggested that § 200.65 of the regulations include definitions of terms and requirements that are not clearly described in the statute so that wide variation in State and local interpretation does not result. The commenter suggested that States and LEAs need examples or minimum standards that can be used to interpret and measure terms such as "joint development," "comprehensive needs assessment," "adequate progress,"

"high quality," "sufficient," and "compacts".

Discussion: The Secretary believes that including specific definitions of these terms in the regulations would lessen State and local flexibility. To the extent clarification is needed, the Department will include it in policy guidance.

Changes: None.

Comment: One commenter suggested that sections 14401 and 14501 of Title XIV regarding ESEA waivers and maintenance of effort waivers, respectively, appear contradictory; under section 14401, maintenance of effort may not be waived yet under section 14501, the Secretary has the authority to waive maintenance of effort under certain circumstances.

Discussion: Because section 14501 contains specific maintenance of effort provisions, including the authority to waive those provisions under certain circumstances, that section takes precedence over the general waiver provisions in section 14401. Thus, the Secretary may waive maintenance of effort requirements under programs covered by section 14501, if the jurisdiction meets the statutory criteria for a waiver. If a jurisdiction does not meet those criteria or is not covered under section 14501, the Secretary may not waive maintenance of effort under section 14401.

Changes: None.

Comments on Issues Not Addressed in Final Regulations

Comment: One commenter requested that the Secretary specify a date by which an SEA must distribute its plan to its LEAs (suggesting July 1, 1995) and further specify that the draft plan and final plan be made public, stressing that, because of the LEAs' heavy reliance on the SEA plan, it is imperative that LEAs have access to the SEA plan for review prior to the plan becoming final.

Discussion: The Secretary agrees that an SEA must adequately communicate with its LEAs. In fact, the SEA must consult with LEAs, teachers and other school staff, and parents in developing its State plan. Given the variation among States, however, the Secretary does not believe establishing a national "due date" would be appropriate.

Changes: None.

Comment: One commenter recommended that regulations be added to address the provisions of section 1115(b) of Title I that are designed to ensure that students with educational needs are not excluded on the basis of English proficiency, family income, disability, or migrant status. The commenter found that many LEP

students were inappropriately excluded from Chapter 1 participation.

Discussion: Section 1115(b)(2) makes clear that children who are economically disadvantaged, children with disabilities, migrant children, and LEA children are eligible for services under Part A on the same basis as other children selected to receive services. The Secretary does not believe that regulations are needed to enforce this statutory provision.

Changes: None.

Comment: One commenter recommended that the regulations encourage the use of technology to increase learning, parental involvement, and professional development and cited the Conference Report on the legislation, which states: "The conferees intend to allow maximum flexibility for the use of funds under this Act to encourage schools to think of new ways to use technology to expand the learning day in the home, increase parental involvement with their children's education, and provide readily accessible professional development for teachers and staff."

Discussion: As reflected in the Improving America's Schools Act (IASA), the use of technology is certainly strongly encouraged. Because the design of Title I programs is a responsibility of schools and LEAs, however, the Secretary believes it is inappropriate to regulate on this issue.

Changes: None.

Comment: One commenter expressed concern that parental involvement is hardly addressed in the regulations. Specifically, because LEA and school-level parent involvement policies must be developed jointly with and agreed upon with parents, the commenter suggested that the terms "joint

development" and "agreement" be defined in the regulations. Two commenters also suggested that the regulations specify the manner in which these activities are to be carried out to ensure that (1) parents and school system personnel can understand concretely the steps for implementing the provisions; and (2) the parental involvement policies provide the SEA and LEA with sufficient information to enable them to determine that the policies are fully adequate to meet the statutory requirements. The commenters also recommended that the regulations make clear that the SEA and LEAs are responsible for ensuring that the parent involvement policies and processes are sufficient to meet Title I's parent involvement requirements.

One commenter suggested that the regulations provide additional clarification regarding school-parent compacts, specifying that the compact must be agreed upon, through informed consent, by parents as part of the school-level parent involvement policy. The commenter also asked that the regulations contain qualifying language providing that nothing in the school-parent compact section shall permit school officials to limit or deny families' rights to privacy and to determine the upbringing of their children. The commenter also suggested that the regulations connect parental involvement sections with other related sections so that parent involvement provisions are not used in isolation.

One commenter strongly supported the terms "broad-based" and "throughout the planning process" that are contained in the provisions related parental involvement in the development of the State plan and suggested the same language be added

in the regulations with respect to parent involvement in local plan and policy development. Another commenter recommended that the regulations outline a framework for parent involvement as described in section 1118 of Title I and, in addition to repeating the statute, expand on the newer parent involvement provisions such as "Shared Responsibilities for High Student Performance" and "Building Capacity for Involvement."

Discussion: The Secretary strongly agrees that parental involvement is essential for the education of children; the many detailed statutory provisions on parental involvement reflect this belief. Because the statute is very detailed, however, the Secretary does not believe additional regulations are necessary.

Changes: None.

Comment: Two commenters noted that the regulations did not contain complaint procedures. One commenter offered very detailed language to be added. The other commenter expressed concern that, without complaint procedures, many low-income parents would have nowhere to turn to attempt to redress individual and systemic wrongs, and also that LEAs and schools would receive a message that compliance is not important.

Discussion: The Secretary will be issuing in the near future proposed regulations implementing Title XIV of the ESEA and covering other general areas. These proposed regulations will contain provisions on complaint procedures that would apply to Title I.

Changes: None.

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