

information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether the disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information and the effects on the individual of not providing all or part of the information. The Pacific Basin Reporting Network should be exempted from this provision to avoid impairing the ability of the Office of Investigation to collect and collate investigative intelligence and enforcement data.

Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(10) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate", application of this provision to the Pacific Basin Reporting Network would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the ability of Customs to disseminate information from the Pacific Basin Reporting Network pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information.

Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Pacific Basin Reporting Network should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual.

The Pacific Basin Reporting Network is exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules exempt the Pacific Basin Reporting Network, since there are civil remedies for failure to comply

with provisions from which the Pacific Basin Reporting Network is exempted. Exemption from this provision will also protect the Pacific Basin Reporting Network from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence and law enforcement data.

A conforming amendment to 31 CFR 1.36 will be published at a later date in the Federal Register by the Department of the Treasury.

George J. Weise,
Commissioner of Customs.
Approved:

Dated: November 14, 1996.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

Dated: November 18, 1996.

Alex Rodriguez,
Deputy Assistant Secretary (Administration).

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 69

School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule provides guidance to the Department of Defense (DoD) Domestic Dependent Elementary and Secondary Schools (DDESS) implementing the National Defense Authorization Act which provides for elected School Boards in DoD DDESS. Pursuant to this legislation, school boards in DoD DDESS may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for these schools. This final rule provides guidance outlining the responsibilities, operating procedures, composition, electorate and election procedures for the DoD DDESS school boards.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Hector O. Nevarez, (703) 696-4373.

SUPPLEMENTARY INFORMATION: Because of the importance of providing guidance for elected school boards, this final rule is being issued. The Office of Management and Budget has determined that this is a significant regulatory action. However, since this

rule is not "economically significant" as defined in Executive Order 12866, the extensive analysis report is not required, and the rule complies with the requirements of the Executive Order. It has been determined that this rule is not subject to Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601) because it does not have a significant economic impact on a substantial number of small entities. The primary effect of this rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of policies. It has been determined that Public Law 109-13, "Paperwork Reduction Act 1995" (44 U.S.C. Chapter 44), does not apply because the rule does not impose any reporting or recordkeeping requirements on persons or entities outside the Federal Government.

All significant comments received following publication of the interim final rule were considered and changes made as appropriate. Many comments concerned allowing school boards more autonomy in determining terms of office for school board members and the number of consecutive terms members may serve. The language of section 69.6(c)(2) has been changed to allow school boards to make these determinations within established parameters.

Several comments addressed problems with holding school board elections to coincide with local elections and recommended that school boards determine the timing of elections to meet local situations, particularly with respect to military transfers. Section 69.6(c)(4) was modified to allow school boards to determine the schedule for regular elections. As 10 U.S.C. 2164 requires elected school boards and makes no provision for filling midterm vacancies through appointment, no change was made to section 69.6(c)(3). Special elections must be held to fill such vacancies.

List of Subjects in 32 CFR Part 69

Elementary and secondary education, Government employees, Military personnel.

Accordingly, Title 32, Chapter I, Subchapter C is revising Part 69 to read as follows:

PART 69—SCHOOL BOARDS FOR DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS

Sec.

69.1 Purpose.

69.2 Applicability and scope.

69.3 Definitions.

69.4 Policy.

69.5 Responsibilities.

69.6 Procedures.

Authority: 10 U.S.C. 2164.

§ 69.1 Purpose.

This part prescribes policies and procedures for the establishment and operation of elected School Boards for schools operated by the Department of Defense (DoD) under 10 U.S.C. 2164, 32 CFR part 345, and Public Law 92-463.

§ 69.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Coast Guard when operating as a service of the Department of the Navy or by agreement between DoD and the Department of Transportation, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities.

(b) The schools (prekindergarten through grade 12) operated by the DoD under 10 U.S.C. 2164 and 32 CFR part 345 within the continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, known as DoD DDESS Arrangements.

(c) This part does not apply to elected school boards established under state or local law for DoD DDESS special arrangements.

§ 69.3 Definitions.

(a) *Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children under 10 U.S.C. 2164 through DoD DDESS arrangements or DoD DDESS special arrangements:

(1) *DDESS arrangement.* A school operated by the Department of Defense under 10 U.S.C. 2164 and 32 CFR 345 to provide a free public education for eligible children.

(2) *DDESS special arrangement.* An agreement, under 10 U.S.C. 2164, between the Secretary of Defense, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel.

Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

(b) *Parent.* The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands *in loco parentis* to that child and contributes at least one-half of the child's support.

§ 69.4 Policy.

(a) Each DoD DDESS arrangement shall have an elected school board, established and operated in accordance with this part and other pertinent guidance.

(b) Because members of DoD DDESS elected school boards are not officers or employees of the United States appointed under the Appointments Clause of the United States Constitution (Art. II, Sec. 2, Cl. 2), they may not exercise discretionary governmental authority, such as the taking of personnel actions or the establishment of governmental policies. This part clarifies the role of school boards in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for DoD DDESS arrangements, subject to these constitutional limitations.

(c) The DoD DDESS chain of command for matters relating to school arrangements operated under 10 U.S.C. 2164 and 32 CFR part 345 shall be from the Director, DoD DDESS, to the Superintendent of each school arrangement. The Superintendent will inform the school board of all matters affecting the operation of the local school arrangement. Direct liaison among the school board, the Director, and the Superintendent is authorized for all matters pertaining to the local school arrangement.

§ 69.5 Responsibilities.

The Assistant Secretary of Defense for Force Management Policy (ASD (FMP)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(a) Make the final decision on all formal appeals to directives and other guidance submitted by the school board or Superintendent.

(b) Ensure the Director, DoD DDESS shall:

(1) Ensure the establishment of elected school boards in DoD DDESS arrangements.

(2) Monitor compliance by the Superintendent and school boards with applicable statutory and regulatory requirements, and this part. In the event of suspected noncompliance, the

Director, DoD DDESS, shall take appropriate action, which will include notification of the Superintendent and the school board president of the affected DoD DDESS arrangement.

(3) Determine when the actions of a school board conflict with an applicable statute, regulation, or other guidance or when there is a conflict in the views of the school board and the Superintendent. When such conflicts occur, the Director, DoD DDESS, shall assist the Superintendent and the school board in resolving them or direct that such actions be discontinued. Such disapprovals must be in writing to the school board and the Superintendent concerned and shall state the specific supporting reason or reasons.

(c) Ensure the school board for DoD DDESS arrangements shall:

(1) Participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the DoD DDESS arrangement concerned, consistent with this part.

(2) Approve agendas and prepare minutes for school board meetings. A copy of the approved minutes of school board meetings shall be forwarded to the Director, DoD DDESS, within 10 working days after the date the minutes are approved.

(3) Provide to the Director, DoD DDESS, names of applicants for a vacancy in the Superintendent's position after a recruitment has been accomplished. The school board shall submit to the Director, DoD DDESS, a list of all applicants based on its review of the applications and interviews (either in person or telephonically) of the applicants. The list of applicants will be accompanied by the recommended choice of the school board. The Director will select the Superintendent and will submit written notice with justification to the school board if the recommendation of the school board is not followed.

(4) Prepare an annual written on-site review of the Superintendent's performance for consideration by the Director, DoD DDESS. The written review shall be based on critical elements recommended by the school board and Superintendent and approved by the Director, DoD DDESS. The school board's review will be an official attachment to the Superintendent's appraisal.

(5) Participate in the development of the school system's budget for submission to the Director, DoD DDESS, for his or her approval as endorsed by the school board; and participate in the oversight of the approved budget, in conjunction with the Superintendent, as

appropriate for operation of the school arrangement.

(6) Invite the Superintendent or designee to attend all school board meetings.

(7) Provide counsel to the Superintendent on the operation of the school and the implementation of the approved budget.

(8) Channel communications with school employees to the DoD DDESS Superintendent. Refer all applications, complaints, and other communications, oral or written, to the DoD DDESS Arrangement Superintendents.

(9) Participate in the development of school policies, rules, and regulations, in conjunction with the Superintendent, and recommend which policies shall be reflected in the School Policy Manual. At a minimum, the Policy Manual, which shall be issued by the Superintendent, shall include following:

(i) A statement of the school philosophy.

(ii) The role and responsibilities of school administrative and educational personnel.

(iii) Provisions for promulgation of an annual school calendar.

(iv) Provisions on instructional services, including policies for development and adoption of curriculum and textbooks.

(v) Regulations affecting students, including attendance, grading, promotion, retention, and graduation criteria, and the student code of rights, responsibilities, and conduct.

(vi) School policy on community relations and noninstructional services, including maintenance and custodial services, food services, and student transportation.

(vii) School policy and legal limits on financial operations, including accounting, disbursing, contracting, and procurement; personnel operations, including conditions of employment, and labor management regulations; and the processing of, and response to, complaints.

(viii) Procedures providing for new school board member orientation.

(ix) Any other matters determined by the school board and the superintendent to be necessary.

(10) Under 10 U.S.C. 2164(b)(4)(B), prepare and submit formal appeals to directives and other guidance that in the view of the school board adversely impact the operation of the school system either through the operation and management of DoD DDESS or a specific DoD DDESS arrangement. Written formal appeals with justification and supporting documentation shall be submitted by the school board or Superintendent to ASD(FMP). The

ASD(FMP) shall make the final decision on all formal appeals. The Director, DoD DDESS, will provide the appealing body written review of the findings relating to the merits of the appeal. Formal appeals will be handled expeditiously by all parties to minimize any adverse impact on the operation of the DoD DDESS system.

(d) Ensure school board operating procedures are as follows:

(1) The school board shall operate from a written agenda at all meetings. Matters not placed on the agenda before the start of the meeting, but approved by a majority of the school board present, may be considered at the ongoing meeting and added to the agenda at that time.

(2) A majority of the total number of school board members authorized shall constitute a quorum.

(3) School board meetings shall be conducted a minimum of 9 times a year. The school board President or designee will provide school board members timely notice of all meetings. All regularly scheduled school board meetings will be open to the public. Executive session meetings may be closed under 10 U.S.C. 2164(d)(6).

(4) The school board shall not be bound in any way by any action or statement of an individual member or group of members of the board except when such action or statement is approved by a majority of the school board members during a school board meeting.

(5) School board members are eligible for reimbursement for official travel in accordance with the DoD Joint Travel Regulations and guidance issued by the Director, DoD DDESS.

(6) School board members may be removed by the ASD (FMP) for dereliction of duty, malfeasance, or other grounds for cause shown. The school board concerned may recommend such removal with a two-thirds majority vote. Before a member may be removed, the member shall be afforded due process, to include written notification of the basis for the action, review of the evidence or documentation considered by the school board, and an opportunity to respond to the allegations.

§ 69.6 Procedures.

(a) *Composition of school board.* (1) The school board shall recommend to the Director, DoD DDESS, the number of elected school board voting members, which shall be not fewer than 3 and no more than 9, depending upon local needs. The members of the school board shall select by majority vote of the total number of school board members

authorized at the beginning of each official school board term, one member to act as President and another to act as Vice President. The President and Vice President shall each serve for 1 year. The President shall preside over school board meetings and provide leadership for related activities and functions. The Vice President shall serve in the absence of the President. If the position of President is vacated for any reason, the Vice President shall be the President until the next regularly scheduled school board election. The resulting vacancy in the position of the Vice President shall be filled by the majority vote of all members of the incumbent board.

(2) The DoD DDESS Arrangement Superintendent, or designee, shall serve as a non-voting observer to all school board meetings. The Installation Commander, or designee, shall convey command concerns to the school board and the Superintendent and keep the school board and the Superintendent informed of changes and other matters within the host installation that affect school expenditures or operations.

(3) School board members may not receive compensation for their service on the school board.

(4) Members of the school board may not have any financial interest in any company or organization doing business with the school system. Waivers to this restriction may be granted on a case-by-case basis by the Director, DoD DDESS, in coordination with the Office of General Counsel of the Department of Defense.

(b) *Electorate of the school board.* The electorate for each school board seat shall be composed of parents of the students attending the school. Each member of the electorate shall have one vote.

(c) *Election of school board members.* (1) To be elected as a member of the school board, an individual must be a resident of the military installation in which the DoD DDESS arrangement is located, or in the case of candidates for the Antilles Consolidated School System School Board, be the parent of an eligible child currently enrolled in the school system. Personnel employed by a DoD DDESS arrangement may not serve as school board members.

(2) The board shall determine the term of office for elected members, not to exceed 3 years, and the limit on the number of terms, if any. If the board fails to set these terms by the first day of the first full month of the school year, the terms will be set at 3 years, with a maximum of 2 consecutive terms.

(3) When there is a sufficient number of school board vacancies that result in

not having a quorum, which is defined as a majority of seats authorized, a special election shall be called by the DoD DDESS Arrangement Superintendent or designee. A special election is an election that is held between the regularly scheduled annual school board election. The nomination and election procedures for a special election shall be the same as those of regularly scheduled school board elections. Individuals elected by special election shall serve until the next regularly scheduled school board election. Vacancies may occur due to the resignation, death, removal for cause, transfer, or disenrollment of a school board member's child(ren) from the DoD DDESS arrangement.

(4) The board shall determine a schedule for regular elections. Parents shall have adequate notice of the time and place of the election. The election shall be by secret ballot. All votes must be cast in person at the time and place of the election. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

(5) Each candidate for school board membership must be nominated in writing by at least one member of the electorate to be represented by the candidate. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

(6) The election process shall provide staggered terms for board members; e.g., on the last day of the last month of each year, the term for some board members will expire.

(7) The DoD DDESS Superintendent, in consultation with the school board, shall be responsible for developing the plans for nominating school board members and conducting the school board election and the special election process. The DoD DDESS Superintendent shall announce election results within 7 working days of the election.

Dated: November 22, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AC36

Institutional Eligibility and Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations by revising requirements for compliance audits and audited financial statements, revising the two-year performance exemption to the refund reserve requirement, and adding financial responsibility standards for foreign schools. These final regulations improve the Secretary's oversight of institutions participating in programs authorized by title IV of the Higher Education Act of 1965, as amended.

The final regulations do not contain changes to the general standards of financial responsibility, which will be considered further by the Secretary.

DATES: Effective date: These regulations take effect July 1, 1997. However, affected parties do not have to comply with the information collection requirements in § 668.23 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David Lorenzo or Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045 ROB-3, Washington, D.C. 20202, telephone (202) 708-7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs).

Compliance audits and audited financial statements provide information necessary for the Secretary to determine whether an institution that participates or seeks to participate in the