

A prior section 6319, Pub. L. 89-10, title I, §1118, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3550, related to parental involvement, prior to the general amendment of this subchapter by Pub. L. 107-110.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as an Effective Date of 2015 Amendment note under section 6301 of this title.

**§ 6320. Participation of children enrolled in private schools**

**(a) General requirement**

**(1) In general**

To the extent consistent with the number of eligible children identified under section 6315(c) of this title in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall—

(A) after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis and individually or in combination, as requested by the officials to best meet the needs of such children, special educational services, instructional services (including evaluations to determine the progress being made in meeting such students' academic needs), counseling, mentoring, one-on-one tutoring, or other benefits under this part (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs; and

(B) ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to section 6318 of this title.

**(2) Secular, neutral, nonideological**

Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

**(3) Equity**

**(A) In general**

Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

**(B) Ombudsman**

To help ensure such equity for such private school children, teachers, and other educational personnel, the State educational agency involved shall designate an ombudsman to monitor and enforce the requirements of this part.

**(4) Expenditures**

**(A) Determination**

**(i) In general**

Expenditures for educational services and other benefits to eligible private

school children shall 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.

**(ii) Proportional share**

The proportional share of funds shall be determined based on the total amount of funds received by the local educational agency under this part prior to any allowable expenditures or transfers by the local educational agency.

**(B) Obligation of funds**

Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

**(C) Notice of allocation**

Each State educational agency shall provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under this part that the local educational agencies have determined are available for eligible private school children.

**(D) Term of determination**

The local educational agency may determine the equitable share under subparagraph (A) each year or every 2 years.

**(5) Provision of services**

The local educational agency, or, in a case described in subsection (b)(6)(C), the State educational agency involved, may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

**(b) Consultation**

**(1) In general**

To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on issues such as—

(A) how the children's needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated under subsection (a)(4)(A) for such services, and how that proportion of funds is determined;

(F) the method or sources of data that are used under subsection (c) and section 6313(c)(1) of this title to determine the number of children from low-income families in participating school attendance areas who attend private schools;

(G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers;

(H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor;

(I) whether the agency shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(J) whether to provide equitable services to eligible private school children—

(i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools; or

(ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools;

(K) when, including the approximate time of day, services will be provided; and

(L) whether to consolidate and use funds provided under subsection (a)(4) in coordination with eligible funds available for services to private school children under applicable programs, as defined in section 7881(b)(1) of this title<sup>1</sup> to provide services to eligible private school children participating in programs.

## **(2) Disagreement**

If a local educational agency disagrees with the views of private school officials with respect to an issue described in paragraph (1), the local educational agency shall provide in writing to such private school officials the reasons why the local educational agency disagrees.

## **(3) Timing**

Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

## **(4) Discussion**

Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

## **(5) Documentation**

Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the meaningful consultation required by this section has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.

## **(6) Compliance**

### **(A) In general**

A private school official shall have the right to file a complaint with the State educational agency asserting that the local educational agency did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school students equitably as required by this section.

### **(B) Procedure**

If the private school official wishes to file a complaint, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

### **(C) State educational agencies**

A State educational agency shall provide services under this section directly or through contracts with public or private agencies, organizations, or institutions, if the appropriate private school officials have—

(i) requested that the State educational agency provide such services directly; and

(ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

## **(c) Allocation for equitable service to private school students**

### **(1) Calculation**

A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools by—

<sup>1</sup> So in original. A comma probably should appear.

(A) using the same measure of low income used to count public school children;

(B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;

(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or

(D) using an equated measure of low income correlated with the measure of low income used to count public school children.

**(2) Complaint process**

Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 7883 of this title.

**(d) Public control of funds**

**(1) In general**

The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

**(2) Provision of services**

**(A) Provider**

The provision of services under this section shall be provided—

- (i) by employees of a public agency; or
- (ii) through contract by such public agency with an individual, association, agency, or organization.

**(B) Requirement**

In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

**(e) Standards for a bypass**

If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—

- (1) waive the requirements of this section for such local educational agency;
- (2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 7883 and 7884 of this title; and
- (3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

(Pub. L. 89-10, title I, §1117, formerly §1120, as added Pub. L. 107-110, title I, §101, Jan. 8, 2002,

115 Stat. 1508; renumbered §1117 and amended Pub. L. 114-95, title I, §§1000(3), 1011, Dec. 10, 2015, 129 Stat. 1814, 1871.)

PRIOR PROVISIONS

A prior section 6320, Pub. L. 89-10, title I, §1119, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3555, related to professional development, prior to the general amendment of this subchapter by Pub. L. 107-110.

A prior section 1117 of Pub. L. 89-10 was classified to section 6317 of this title, prior to repeal by Pub. L. 114-95.

Another prior section 1117 of Pub. L. 89-10 was classified to section 6318 of this title prior to the general amendment of this subchapter by Pub. L. 107-110.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114-95, §1011(1)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “To the extent consistent with the number of eligible children identified under section 6315(b) of this title in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 6318 and 6319 of this title.”

Subsec. (a)(3). Pub. L. 114-95, §1011(1)(B), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.”

Subsec. (a)(4). Pub. L. 114-95, §1011(1)(C), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “Expenditures for educational services and other benefits to eligible private school children shall 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, which the local educational agency may determine each year or every 2 years.”

Subsec. (a)(5). Pub. L. 114-95, §1011(1)(D), inserted “, or, in a case described in subsection (b)(6)(C), the State educational agency involved,” after “local educational agency”.

Subsec. (b)(1). Pub. L. 114-95, §1011(2)(A)(i), in introductory provisions, substituted “part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on issues such as—” for “part, on issues such as—”.

Subsec. (b)(1)(E). Pub. L. 114-95, §1011(2)(A)(ii), struck out “and” before “the proportion of funds”, substituted “(a)(4)(A)” for “(a)(4)”, and inserted “, and how that proportion of funds is determined” before semicolon at end.

Subsec. (b)(1)(I) to (L). Pub. L. 114-95, §1011(2)(A)(iii)-(v), added subpars. (I) to (L).

Subsec. (b)(2) to (4). Pub. L. 114-95, §1011(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 114-95, §1011(2)(B), (D), redesignated par. (4) as (5), inserted “meaningful” before “consultation” in first sentence, inserted second sentence,

and substituted “such consultation has, or attempts at such consultation have, taken place” for “such consultation has taken place” in last sentence. Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 114-95, § 1011(2)(B), redesignated par. (5) as (6).

Subsec. (b)(6)(A). Pub. L. 114-95, § 1011(2)(E)(i), substituted “right to file a complaint with” for “right to complain to”, inserted “asserting” after “State educational agency”, struck out “or” before “did not give due consideration”, and inserted “, or did not make a decision that treats the private school students equitably as required by this section” before period at end.

Subsec. (b)(6)(B). Pub. L. 114-95, § 1011(2)(E)(ii), substituted “wishes to file a complaint,” for “wishes to complain.”

Subsec. (b)(6)(C). Pub. L. 114-95, § 1011(2)(E)(iii), added subpar. (C).

Subsec. (c)(2). Pub. L. 114-95, § 1011(3), made technical amendment to reference in original act which appears in text as reference to section 7883 of this title.

Subsec. (e)(2). Pub. L. 114-95, § 1011(4), made technical amendment to reference in original act which appears in text as reference to sections 7883 and 7884 of this title.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

### § 6321. Fiscal requirements

#### (a) Maintenance of effort

A local educational agency may receive funds under this part for any fiscal year only if the State educational agency involved finds that the local educational agency has maintained the agency’s fiscal effort in accordance with section 7901 of this title.

#### (b) Federal funds to supplement, not supplant, non-Federal funds

##### (1) In general

A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds.

##### (2) Compliance

To demonstrate compliance with paragraph (1), a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under this part.

##### (3) Special rule

No local educational agency shall be required to—

(A) identify that an individual cost or service supported under this part is supplemental; or

(B) provide services under this part through a particular instructional method or in a particular instructional setting in order to demonstrate such agency’s compliance with paragraph (1).

#### (4) Prohibition

Nothing in this section shall be construed to authorize or permit the Secretary to prescribe the specific methodology a local educational agency uses to allocate State and local funds to each school receiving assistance under this part.

#### (5) Timeline

A local educational agency—

(A) shall meet the compliance requirement under paragraph (2) not later than 2 years after December 10, 2015; and

(B) may demonstrate compliance with the requirement under paragraph (1) before the end of such 2-year period using the method such local educational agency used on the day before December 10, 2015.

### (c) Comparability of services

#### (1) In general

##### (A) Comparable services

Except as provided in paragraphs (4) and (5), a local educational agency may receive funds under this part only if State and local funds will be used in schools served under this part to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving funds under this part.

##### (B) Substantially comparable services

If the local educational agency is serving all of such agency’s schools under this part, such agency may receive funds under this part only if such agency will use State and local funds to provide services that, taken as a whole, are substantially comparable in each school.

##### (C) Basis

A local educational agency may meet the requirements of subparagraphs (A) and (B) on a grade-span by grade-span basis or a school-by-school basis.

#### (2) Written assurance

##### (A) Equivalence

A local educational agency shall be considered to have met the requirements of paragraph (1) if such agency has filed with the State educational agency a written assurance that such agency has established and implemented—

(i) a local educational agency-wide salary schedule;

(ii) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and

(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

##### (B) Determinations

For the purpose of this subsection, in the determination of expenditures per pupil from State and local funds, or instructional salaries per pupil from State and local funds, staff salary differentials for years of employment shall not be included in such determinations.

##### (C) Exclusions

A local educational agency need not include unpredictable changes in student en-