

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

Editorial Notes

CODIFICATION

Pub. L. 103-382, title II, §261(c), Oct. 20, 1994, 108 Stat. 3927, substituted “SECRETARY” for “COMMISSIONER OF EDUCATION”.

Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326, redesignated former subchapter II as III. Former subchapter III redesignated IV.

§ 1230. Repealed. Pub. L. 103-382, title II, § 212(a)(1), Oct. 20, 1994, 108 Stat. 3913

Section, Pub. L. 90-247, title IV, §421, as added Pub. L. 93-380, title V, §507(a), Aug. 21, 1974, 88 Stat. 565; amended Pub. L. 94-482, title IV, §404(a), Oct. 12, 1976, 90 Stat. 2230; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, specified programs subject to provisions of this subchapter.

PART 1—GENERAL AUTHORITY

§ 1231. Joint funding of programs

(a) Joint projects; transfers of appropriations; contracts or grants; criteria

(1) The Secretary is authorized to enter into arrangements with other Federal agencies to jointly carry out projects of common interest, to transfer to such agencies funds appropriated under any applicable program, and to receive and use funds from such agencies, for projects of common interest.

(2) Funds transferred or received pursuant to paragraph (1) shall be used only in accordance with the statutes authorizing the appropriation of such funds, and shall be made available by contract or grant only to recipients eligible to receive such funds under such statutes.

(3) If the Secretary enters into an agreement under this subsection for the administration of a project, the agency administering the project shall use such agency's procedures to award contracts or grants and to administer such awards, unless the parties to the agreement specify the use of procedures of another agency that is a party to the agreement.

(4) If the Secretary has entered into an agreement authorized under this subsection and the Secretary and the heads of the other agencies participating in the agreement determine that joint funding is necessary to address a special need consistent with the purposes and authorized activities of each program that provides funding under the joint project, the Secretary and the heads of the other participating agencies may develop a single set of criteria for the jointly funded project and require each applicant for such project to submit a single application for review by the participating agencies.

(b) Joint applications

The Secretary may develop the criteria for, and require the submission of, joint applications under two or more applicable programs under which funds are awarded on a competitive basis, and may jointly review and approve such applications separately from other applications

under such programs, when the Secretary determines that such joint awards are necessary to address a special need consistent with the purposes and authorized activities of each such program. Any applicant for such a joint award shall meet the eligibility requirements of each such program.

(c) Limitations on joint funding

The Secretary may not construe the provisions of this section to take precedence over a limitation on joint funding contained in an applicable statute.

(d) Congressional notice

(1) The Secretary shall provide notice to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate of each joint funding agreement made with other Federal agencies not later than 60 days after the making of such agreements.

(2) Such notice shall include—

(A) a description of the purpose and objectives of the joint funding arrangement;

(B) the amounts and sources, by program, of the funds dedicated to such arrangement; and

(C) the criteria developed to govern the award of contracts and grants.

(Pub. L. 90-247, title IV, §430, formerly §411, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 166; renumbered §421 and amended Pub. L. 92-318, title III, §§301(a)(1), 302(a), June 23, 1972, 86 Stat. 326, 332; renumbered §421A, Pub. L. 93-380, title V, §507(a), Aug. 21, 1974, 88 Stat. 565; renumbered §430 and amended Pub. L. 103-382, title II, §§212(b)(1), 241, Oct. 20, 1994, 108 Stat. 3913, 3921.)

Editorial Notes

PRIOR PROVISIONS

A prior section 430 of Pub. L. 90-247 was renumbered section 436, and is classified to section 1231g of this title.

AMENDMENTS

1994—Pub. L. 103-382, §241, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to administration of education programs, delegations of authority, utilization of services and facilities of other agencies, and consolidation of programs.

1972—Subsec. (c). Pub. L. 92-318, §302(a), added subsec. (c).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1972 AMENDMENT; INCONSISTENT PROVISIONS INEFFECTIVE

Pub. L. 92-318, title III, §302(c), June 23, 1972, 86 Stat. 333, provided that: “The provisions of section 421(c) [now 430(c)] of the General Education Provisions Act [subsec. (c) of this section] shall be effective upon the date of enactment of this Act [June 23, 1972]. No provision of any law which is inconsistent with such section 421(c) shall be effective nor shall any such provision control to the extent of such inconsistency, unless such

a law is enacted after the date of enactment of this Act.”

§ 1231a. Collection and dissemination of information

The Secretary shall—

(1) prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs, and cooperate with other Federal officials who administer programs affecting education in disseminating information concerning such programs;

(2) inform the public regarding federally supported education programs; and

(3) collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs.

(Pub. L. 90–247, title IV, § 431, formerly § 412, as added Pub. L. 91–230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 166; renumbered § 422 and amended Pub. L. 92–318, title III, § 301(a)(1), (b)(2)(B), June 23, 1972, 86 Stat. 326, 332; Pub. L. 94–482, title IV, § 409(b), Oct. 12, 1976, 90 Stat. 2233; renumbered § 431, renumbered § 422, and amended Pub. L. 103–382, title II, §§ 212(b)(1), 242, Oct. 20, 1994, 108 Stat. 3913, 3922; renumbered § 431, Pub. L. 107–110, title X, § 1062(1), Jan. 8, 2002, 115 Stat. 2087.)

Editorial Notes

PRIOR PROVISIONS

A prior section 431 of Pub. L. 90–247 was renumbered section 437, and is classified to section 1232 of this title.

Another prior section 431 of Pub. L. 90–247 was renumbered section 441, and was classified to section 1233 of this title prior to repeal by Pub. L. 103–382.

AMENDMENTS

1994—Pub. L. 103–382, § 242, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to duty to collect and disseminate information about applicable programs and to submit an annual report to Congress and authorizing use of contract to carry out this section.

1976—Subsec. (b). Pub. L. 94–482 substituted “June 30” for “March 31”.

1972—Subsec. (a)(4). Pub. L. 92–318, § 301(b)(2)(B), substituted “(as set forth in section 1221c(a) of this title)” for “(as set forth in section 1 of this title)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94–482, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–318, title III, § 301(b)(2)(B), June 23, 1972, 86 Stat. 332, provided that the amendment made by Pub. L. 92–318 is effective July 1, 1972.

EVALUATION PRACTICES AND PROCEDURES AT NATIONAL, STATE, AND LOCAL LEVELS FOR FEDERALLY FUNDED ELEMENTARY AND SECONDARY EDUCATIONAL PROGRAMS; REPORT TO CONGRESS

Pub. L. 95–561, title XV, § 1526, Nov. 1, 1978, 92 Stat. 2379, as amended by Pub. L. 96–46, § 2(a)(9), Aug. 6, 1979,

93 Stat. 340; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, directed Secretary of Education to conduct a study of evaluation practices and procedures at the national, State, and local levels with respect to federally funded elementary and secondary educational programs and include in the first annual report to Congress submitted more than eighteen months after Nov. 1, 1978, proposals and recommendations for the revision or modification of any part or all of such practices and procedures.

§§ 1231b, 1231b–1. Repealed. Pub. L. 103–382, title II, § 212(a)(1), Oct. 20, 1994, 108 Stat. 3913

Section 1231b, Pub. L. 90–247, title IV, § 423, formerly § 413, as added Pub. L. 91–230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 167; renumbered § 423, Pub. L. 92–318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to catalog of Federal education assistance programs.

Section 1231b–1, Pub. L. 90–247, title IV, § 424, as added Pub. L. 93–380, title V, § 508(a), Aug. 21, 1974, 88 Stat. 565; amended Pub. L. 96–88, title III, § 301(a)(1), (b)(2), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 678, 692, related to compilation of assisted innovative projects.

§ 1231b–2. Review of applications

(a) Persons aggrieved; final State educational agency actions; hearing; ruling and reasons for ruling; rescission of final actions

In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Secretary, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law, rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or program in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, (3) ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or (4) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing, the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines governing such applicable program, it shall rescind such final action.

(b) Appeals to Secretary; persons aggrieved; notice; orders prescribing appropriate agency actions; finality of agency fact findings; interim orders pending appeal or review

Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under subsection (a) may appeal such action to the Secretary. An appeal under this subsection may be taken only if notice of such appeal is filed with the Secretary within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If, on such appeal, the Sec-

retary determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Secretary may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Records; availability

Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) Termination of assistance for noncompliance with provisions or orders

If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Secretary under subsection (b), the Secretary shall forthwith terminate all assistance to the State educational agency under the applicable program affected or issue such other orders as the Secretary may deem appropriate to achieve such compliance.

(Pub. L. 90-247, title IV, § 432, formerly § 425, as added Pub. L. 93-380, title V, § 508(a), Aug. 21, 1974, 88 Stat. 566; amended Pub. L. 95-561, title XII, § 1247, Nov. 1, 1978, 92 Stat. 2354; renumbered § 432 and amended Pub. L. 103-382, title II, §§ 212(b)(1), 243, Oct. 20, 1994, 108 Stat. 3913, 3922.)

Editorial Notes

PRIOR PROVISIONS

A prior section 432 of Pub. L. 90-247 was renumbered section 438, and is classified to section 1232a of this title.

Another prior section 432 of Pub. L. 90-247 was renumbered section 442, and was classified to section 1233a of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, § 243(1)(C), (D), inserted comma after “the hearing” in third sentence and substituted “guidelines governing such applicable program, it” for “guidelines, governing such applicable program it” in fourth sentence.

Pub. L. 103-382, § 243(1)(A), (B), substituted “Secretary, any applicant” for “Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant”.

Subsec. (b). Pub. L. 103-382, § 243(2), substituted “Secretary” for “Commissioner” wherever appearing.

Subsec. (d). Pub. L. 103-382, § 243(3), substituted “Secretary under” for “Commissioner under” and “Secretary shall” for “Commissioner shall” and inserted before period at end “or issue such other orders as the Secretary may deem appropriate to achieve such compliance”.

1978—Subsec. (a). Pub. L. 95-561 added cl. (3) relating to the ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, and redesignated former cl. (3) as (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-561 effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95-561, set out as a note under section 1221e-3 of this title.

EFFECTIVE DATE

Pub. L. 93-380, title V, § 508(b), Aug. 21, 1974, 88 Stat. 566, provided that: “The amendments made by subsection (a) [enacting this section and section 1231b-1 of this title] shall be effective on the date of enactment of this Act [Aug. 21, 1974].”

§ 1231c. Advice, counsel, and technical assistance

(a) State educational agencies, institutions of higher education

For the purpose of carrying out more effectively Federal education programs, the Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of, applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) Cost allocation, collection, etc., by local educational agencies

The Secretary shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) Dissemination

In awarding contracts and grants for the development of curricula or instructional materials, the Secretary and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.

(d) Annual report by Secretary

The Secretary's annual report shall contain a statement of the Secretary's activities under this section.

(Pub. L. 90-247, title IV, § 433, formerly § 414, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 167; renumbered § 424, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; renumbered § 426, Pub. L. 93-380, title V, § 508(a), Aug. 21, 1974, 88 Stat. 565; amended Pub. L. 95-561, title XII, § 1248, Nov. 1, 1978, 92 Stat. 2354; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; renumbered § 433, Pub. L. 103-382, title II, § 212(b)(1), Oct. 20, 1994, 108 Stat. 3913.)

Editorial Notes

PRIOR PROVISIONS

A prior section 433 of Pub. L. 90-247 was renumbered section 439, and is classified to section 1232b of this title.

Another prior section 433 of Pub. L. 90-247 was renumbered section 443, and was classified to section 1233b of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1978—Subsecs. (c), (d). Pub. L. 95-561 added subsec. (c) and redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-561 effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95-561, set out as a note under section 1221e-3 of this title.

TRANSFER OF FUNCTIONS

"Secretary" and "Secretary's", meaning the Secretary of Education, substituted for "Commissioner" and "Commissioner's", respectively, in subsecs. (a) to (d) pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

NATIONAL INSTITUTE OF EDUCATION

The National Institute of Education consisting of a National Council on Educational Research and a Director of the Institute was established by section 1221e of this title which, as amended generally by Pub. L. 99-498, title XIV, § 1401(a), Oct. 17, 1986, 100 Stat. 1589, provided objectives and duties for the Office of Educational Research and Improvement and established the National Advisory Council on Educational Research and Improvement, and section 1401(b) of Pub. L. 99-498 transferred the property and records of the National Institute of Education to the Office of Educational Research and Improvement.

§ 1231c-1. Repealed. Pub. L. 103-382, title II, § 212(a)(1), Oct. 20, 1994, 108 Stat. 3913

Section, Pub. L. 90-247, title IV, § 426A, as added Pub. L. 95-561, title XII, § 1202, Nov. 1, 1978, 92 Stat. 2334;

amended Pub. L. 96-88, title III, § 301(a)(1), (b)(2), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 678, 692, related to equalization assistance.

§ 1231d. Parental involvement and dissemination

In the case of any applicable program in which the Secretary determines that parental participation at the State or local level would increase the effectiveness of the program in achieving its purposes, the Secretary shall promulgate regulations with respect to such program setting forth criteria designed to encourage such participation. If the program for which such determination is made provides for payments to local educational agencies, applications for such payments shall—

(1) set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated, in consultation with, and with the involvement of, parents of the children to be served by such programs and projects;

(2) be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

(3) set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public.

(Pub. L. 90-247, title IV, § 434, formerly § 415, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 168; renumbered § 425, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; renumbered § 427, Pub. L. 93-380, title V, § 508(a), Aug. 21, 1974, 88 Stat. 565; renumbered § 434 and amended Pub. L. 103-382, title II, § 212(b)(1), 244, Oct. 20, 1994, 108 Stat. 3913, 3922.)

Editorial Notes

PRIOR PROVISIONS

A prior section 434 of Pub. L. 90-247 was renumbered section 440, and is classified to section 1232c of this title.

Another prior section 434 of Pub. L. 90-247 was renumbered section 444, and was classified to section 1233c of this title prior to repeal by Pub. L. 103-382.

Another prior section 434 of Pub. L. 90-247 was classified to section 1232c of this title prior to repeal by Pub. L. 95-561.

AMENDMENTS

1994—Pub. L. 103-382, § 244, substituted "Secretary determines" for "Commissioner determines" and "the Secretary shall" for "he shall" and inserted "is made" after "such determination".

§ 1231e. Use of funds withheld

(a) At any time that the Secretary makes an allotment or reallocation to any State under any applicable program, the Secretary shall reduce such allotment or reallocation by such amount as the Secretary determines such allotment or reallocation would have been reduced, had the data on which such allotment or reallocation is based excluded all data relating to local educational agencies of the State that, on the date of the Secretary's action, are ineligible to receive the Federal financial assistance involved because of failure to comply with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.],

title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], section 794 of title 29, or the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.].

(b) The Secretary may use any funds withheld under subsection (a)—

(1) to increase the allotments or reallocations of local educational agencies within the State that are not described in subsection (a), or the allotments or reallocation of all States, in accordance with the Federal law governing the program; or

(2) for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964 [42 U.S.C. 2000c-4], or for any other program administered by the Department that is designed to enhance equity in education or redress discrimination on the basis of race, color, national origin, sex, age, or disability.

(Pub. L. 90-247, title IV, §435, formerly §416, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 168; renumbered §426, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; renumbered §428, Pub. L. 93-380, title V, §508(a), Aug. 21, 1974, 88 Stat. 565; renumbered §435 and amended Pub. L. 103-382, title II, §§212(b)(1), 245, Oct. 20, 1994, 108 Stat. 3913, 3922.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Education Amendments of 1972, referred to in subsec. (a), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, which is classified generally to chapter 76 (§6101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 435 of Pub. L. 90-247 was renumbered section 441, and is classified to section 1232d of this title.

Another prior section 435 of Pub. L. 90-247 was renumbered section 423, and is classified to section 1226a-1 of this title.

Another prior section 435 of Pub. L. 90-247 was renumbered section 445, and is classified to section 1233d of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Pub. L. 103-382, §245, amended section generally. Prior to amendment, section consisted of single par. relating to use of funds withheld for failure to comply with title VI of the Civil Rights Act of 1964.

§ 1231f. Repealed. Pub. L. 103-382, title II, § 212(a)(1), Oct. 20, 1994, 108 Stat. 3913

Section, Pub. L. 90-247, title IV, §429, formerly §417, as added Pub. L. 91-230, title IV §401(a)(10), Apr. 13, 1970,

84 Stat. 168; renumbered §427, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; renumbered §429 and amended Pub. L. 93-380, title V, §§501(b)(2), 508(a), Aug. 21, 1974, 88 Stat. 558, 565; Pub. L. 96-88, title III, §301(a)(1), (b)(2), title V, §507, Oct. 17, 1979, 93 Stat. 677, 678, 692, authorized transfer of information.

PART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

§ 1231g. Applications

(a) Submission and amendments of applications

Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Secretary is authorized to provide for the submission of applications for assistance effective for more than one fiscal year under any applicable program with whatever amendments to such applications being required as the Secretary determines essential.

(b) Uniform dates

The Secretary shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

(c) Development of common applications

The Secretary shall, insofar as is practicable, develop and require the use of—

(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable; and

(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Secretary, and such application shall be used as the single application for as many of these programs as is practicable.

(Pub. L. 90-247, title IV, §436, formerly §430, as added Pub. L. 95-561, title XII, §1213, Nov. 1, 1978, 92 Stat. 2342; renumbered §436 and amended Pub. L. 103-382, title II, §§212(b)(1), 246, Oct. 20, 1994, 108 Stat. 3913, 3923.)

Editorial Notes

PRIOR PROVISIONS

A prior section 436 of Pub. L. 90-247 was renumbered section 442, and is classified to section 1232e of this title.

Another prior section 436 of Pub. L. 90-247 was classified to section 1232e of this title prior to repeal by Pub. L. 95-561.

Another prior section 436 of Pub. L. 90-247 was renumbered section 446, and was classified to section 1233e of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Pub. L. 103-382, §246(2), substituted “Secretary” for “Commissioner” wherever appearing.

Subsec. (a). Pub. L. 103-382, §246(1), substituted “for more than one fiscal year” for “for three fiscal years”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95-561, set out as an Effective Date of 1978 Amendment note under section 1221e-3 of this title.

§ 1232. Regulations

(a) “Regulation” defined

For the purpose of this section, the term “regulation” means any generally applicable rule, regulation, guideline, interpretation, or other requirement that—

- (1) is prescribed by the Secretary or the Department; and
- (2) has legally binding effect in connection with, or affecting, the provision of financial assistance under any applicable program.

(b) Citation of authority

Regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority on which such provision is based.

(c) Uniform application

All regulations shall be uniformly applied and enforced throughout the 50 States.

(d) Application of exemption

The exemption for public property, loans, grants and benefits in section 553(a)(2) of title 5 shall apply only to regulations—

- (1) that govern the first grant competition under a new or substantially revised program authority as determined by the Secretary; or
- (2) where the Secretary determines that the requirements of this subsection will cause extreme hardship to the intended beneficiaries of the program affected by such regulations.

(e) Schedule for promulgation of final regulations

Not later than 60 days after the date of enactment of any Act, or any portion of any Act, affecting the administration of any applicable program, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Secretary plans to promulgate final regulations that the Secretary determines are necessary to implement such Act or portion of such Act. Such schedule shall provide that all such final regulations shall be promulgated within 360 days after the date of enactment of such Act or portion of such Act.

(f) Transmittal of final regulations

Concurrently with the publication of any final regulations, the Secretary shall transmit a copy of such final regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate.

(Pub. L. 90-247, title IV, §437, formerly §421, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered §431, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat.

326; amended Pub. L. 93-380, title V, §509(a), Aug. 21, 1974, 88 Stat. 566; Pub. L. 94-142, §7, Nov. 29, 1975, 89 Stat. 796; Pub. L. 94-482, title IV, §405, Oct. 12, 1976, 90 Stat. 2231; Pub. L. 96-374, title XIII, §1302, Oct. 3, 1980, 94 Stat. 1497; Pub. L. 97-35, title V, §533(a)(3), Aug. 13, 1981, 95 Stat. 453; renumbered §437 and amended Pub. L. 103-382, title II, §§212(b)(1), 247, Oct. 20, 1994, 108 Stat. 3913, 3923; Pub. L. 103-437, §7(a)(1), Nov. 2, 1994, 108 Stat. 4587.)

Editorial Notes

PRIOR PROVISIONS

A prior section 437 of Pub. L. 90-247 was renumbered section 443, and is classified to section 1232f of this title.

Another prior section 437 of Pub. L. 90-247 was renumbered section 406A, and was classified to section 1221e-1a of this title prior to repeal by Pub. L. 103-382.

Another prior section 437 of Pub. L. 90-247 was renumbered section 447, and was classified to section 1233f of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Pub. L. 103-437, which directed that section 431(b)(2)(B), (d)(2), and (g) of Pub. L. 90-247 be amended by substituting “Labor and Human Resources” for “Labor and Public Welfare”, could not be executed because this section, which was section 431 of Pub. L. 90-247, was renumbered section 437 and amended generally by Pub. L. 103-382.

Pub. L. 103-382, §247, amended section generally. Prior to amendment, section consisted of subsecs. (a) to (g) relating to promulgation of regulations by Secretary, and their publication, application, disapproval by Congress, and modification subsequent to disapproval.

1981—Subsec. (d)(1). Pub. L. 97-35 substituted “final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to sections 1078(a)(2)(D) and (E) and 1089(a)(1) of this title) as required” for “final regulation as required”.

1980—Subsec. (d)(1). Pub. L. 96-374 inserted “, in whole or in part” after “disapprove such final regulation”.

1976—Subsec. (a). Pub. L. 94-482, §405(a), added par. (1), designated existing provisions which constituted entire subsec. (a) as par. (2) and, as so redesignated, struck out applicability to rules, guidelines, interpretations, or orders.

Subsec. (b)(1). Pub. L. 94-482, §405(b)(1), substituted “proposed regulation” for “standard, rule, regulation, or requirement of general applicability”.

Subsec. (b)(2)(A). Pub. L. 94-482, §405(b)(2), substituted “regulation” for “standard, rule, regulation, or general requirement” in two places.

Subsec. (c). Pub. L. 94-482, §405(c), struck out applicability to rules, guidelines, interpretations, or orders.

Subsec. (d)(1). Pub. L. 94-482, §405(d)(1), (2), struck out applicability to standards, rules, requirements, or requirements of general applicability.

Subsec. (d)(2). Pub. L. 94-482, §405(d)(3), substituted “regulation” for “standard, rule, regulation, or requirement” wherever appearing.

Subsec. (e). Pub. L. 94-482, §405(e), substituted “regulation” for “standard, rule, regulation, or requirement” wherever appearing and “final regulation” for “proposed standard, rule, regulation, or requirement of general applicability”.

Subsec. (g). Pub. L. 94-482, §405(f), substituted “final regulations” for “rules, regulations, and guidelines” wherever appearing.

1975—Subsec. (d)(1). Pub. L. 94-142, §7(a)(1), (b), inserted “final” before “standard” wherever appearing in existing provisions and inserted provisions covering the effect of the failure of Congress to adopt the concurrent

resolution with respect to any final standard, rule, regulation, or requirement.

Subsec. (d)(2). Pub. L. 94-142, §7(a)(2), (3), substituted “objection to the final standard” for “objection to the proposed standard”, “effective date of the final standard” for “effective date of the standard”, and “In no event shall the final standard” for “In no event shall the standard”.

1974—Subsec. (b). Pub. L. 93-380, §509(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsecs. (d) to (g). Pub. L. 93-380, §509(a)(2), added subsecs. (d) to (g).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title V, §540(a), Aug. 13, 1981, 95 Stat. 458, provided that the amendment made by Pub. L. 97-35 is effective Oct. 1, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96-374, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-142, §8, Nov. 29, 1975, 89 Stat. 796, provided that:

“(a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) [amending sections 1411 and 1412 of this title as in effect through Sept. 30, 1977, and amending provisions set out as notes under sections 1411 to 1413 of this title] shall take effect on July 1, 1975.

“(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 [enacting sections 1405 and 1406 of this title, amending this section and sections 1412 and 1453 of this title, enacting provisions set out as a note under section 1411 of this title, and amending provisions set out as a note under section 1401 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1975].

“(c) The amendments made by sections 4 and 5(a) [enacting sections 1415 to 1420 of this title and amending sections 1401, 1411, 1412, 1413, and 1414 of this title] shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act [section 1412 of this title], as amended by this Act, section 617(a)(1)(D) of the Act [section 1417(a)(1)(D) of this title], as amended by this Act, section 617(b) of the Act [section 1417(b) of this title], as amended by this Act, and section 618(a) of the Act [section 1418(a) of this title], as amended by this Act, shall take effect on the date of the enactment of this Act [Nov. 29, 1975].

“(d) The provisions of section 5(b) [amending section 1411 of this title and enacting provisions set out as notes under section 1411 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1975].”

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-380, title V, §509(b), Aug. 21, 1974, 88 Stat. 568, provided that: “The amendment made by para-

graph (2) of subsection (a) [amending this section] shall be effective on the date of enactment of this [Aug. 21, 1974] and shall be effective with respect to the provisions of this Act [see Short Title note set out under section 821 of this title].”

STUDY AND REPORT ON RULES AND REGULATIONS

Pub. L. 92-318, title V, §503, June 23, 1972, 86 Stat. 346, provided for a study by the Commissioner of all rules, regulations, etc., in connection with the administration of any program to which the General Education Provisions Act [this chapter] applies, with a report to be submitted to Congress not later than one year after June 23, 1972. Such section further mandated the publication of all rules, regulations, etc., in the Federal Register not later than 60 days after submission of such report, followed by a public hearing on such matters within the 60 day period following such publication. Such section then required a subsequent report to the relevant Congressional Committees on such hearings, and a republication of all rules and regulations in the Federal Register, such republished rules, etc., to supercede all preceding rules and regulations.

§ 1232-1. Repealed. Pub. L. 98-511, title I, § 109(b), Oct. 19, 1984, 98 Stat. 2369

Section, Pub. L. 90-247, title IV, §431A, as added Pub. L. 94-482, title III, §323(b), Oct. 12, 1976, 90 Stat. 2218; amended Pub. L. 95-561, title XII, §1249, Nov. 1, 1978, 92 Stat. 2355; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, provided for maintenance of effort determinations, providing in subsection: (a) for promulgation of regulations and determination of amount expended, (b) for waiver of requirements, (c) for objective criteria in carrying out waiver authority, and (d) for duration of effectiveness of requirements.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1985, see section 711(b) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 1226c of this title.

§ 1232a. Prohibition against Federal control of education

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(Pub. L. 90-247, title IV, §438, formerly §422, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered §432 and amended Pub. L. 92-318, title III, §301(a)(1), title VII, §717(b), June 23, 1972, 86 Stat. 326, 369; Pub. L. 94-482, title IV, §404(b), Oct. 12, 1976, 90 Stat. 2230; renumbered §438, Pub. L. 103-382, title II, §212(b)(1), Oct. 20, 1994, 108 Stat. 3913.)

Editorial Notes

PRIOR PROVISIONS

A prior section 438 of Pub. L. 90-247 was renumbered section 444, and is classified to section 1232g of this title.

Another prior section 438 of Pub. L. 90-247 was renumbered section 448, and was classified to section 1233g of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1976—Pub. L. 94-482 substituted provisions prohibiting any applicable program from exercising Federal control of education, for provisions prohibiting such specific Federal laws as the Act of Sept. 30, 1950, National Defense Education Act of 1958, Act of Sept. 23, 1950, Higher Education Facilities Act of 1963, Elementary and Secondary Education Act of 1965, Higher Education Act of 1965, International Education Act of 1966, Emergency School Aid Act, and the Vocational Education Act of 1963 from exercising such Federal control.

1972—Pub. L. 92-318, § 717(b), inserted “the Emergency School Aid Act;” after “the International Education Act of 1966;”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482, set out as a note under section 1001 of this title.

Executive Documents

EX. ORD. NO. 13791. ENFORCING STATUTORY PROHIBITIONS ON FEDERAL CONTROL OF EDUCATION

Ex. Ord. No. 13791, Apr. 26, 2017, 82 F.R. 20427, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to restore the proper division of power under the Constitution between the Federal Government and the States and to further the goals of, and to ensure strict compliance with, statutes that prohibit Federal interference with State and local control over education, including section 103 of the Department of Education Organization Act (DEOA) (20 U.S.C. 3403), sections 438 and 447 of the General Education Provisions Act (GEPA), as amended (20 U.S.C. 1232a and 1232j), and sections 8526A, 8527, and 8529 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (20 U.S.C. 7906a, 7907, and 7909), it is hereby ordered as follows:

SECTION 1. Policy. It shall be the policy of the executive branch to protect and preserve State and local control over the curriculum, program of instruction, administration, and personnel of educational institutions, schools, and school systems, consistent with applicable law, including ESEA, as amended by ESSA, and ESEA’s restrictions related to the Common Core State Standards developed under the Common Core State Standards Initiative.

SEC. 2. Review of Regulations and Guidance Documents. (a) The Secretary of Education (Secretary) shall review all Department of Education (Department) regulations and guidance documents relating to DEOA, GEPA, and ESEA, as amended by ESSA.

(b) The Secretary shall examine whether these regulations and guidance documents comply with Federal laws that prohibit the Department from exercising any direction, supervision, or control over areas subject to State and local control, including:

(i) the curriculum or program of instruction of any elementary and secondary school and school system;

(ii) school administration and personnel; and

(iii) selection and content of library resources, textbooks, and instructional materials.

(c) The Secretary shall, as appropriate and consistent with applicable law, rescind or revise any regulations that are identified pursuant to subsection (b) of this

section as inconsistent with statutory prohibitions. The Secretary shall also rescind or revise any guidance documents that are identified pursuant to subsection (b) of this section as inconsistent with statutory prohibitions. The Secretary shall, to the extent consistent with law, publish any proposed regulations and withdraw or modify any guidance documents pursuant to this subsection no later than 300 days after the date of this order.

SEC. 3. Definition. The term “guidance document” means any written statement issued by the Department to the public that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue, including Dear Colleague letters, interpretive memoranda, policy statements, manuals, circulars, memoranda, pamphlets, bulletins, advisories, technical assistance, and grants of applications for waivers.

SEC. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 1232b. Labor standards

All laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(Pub. L. 90-247, title IV, § 439, formerly § 423, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered § 433, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; renumbered § 439 and amended Pub. L. 103-382, title II, §§ 212(b)(1), 261(d), Oct. 20, 1994, 108 Stat. 3913, 3927.)

Editorial Notes

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 439 of Pub. L. 90-247 was renumbered section 445, and is classified to section 1232h of this title.

AMENDMENTS

1994—Pub. L. 103-382, §261(d), substituted “All laborers” for “Except for emergency relief under section 241-1 of this title, all laborers”.

PART 3—ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS BY STATES AND LOCAL EDUCATIONAL AGENCIES

§ 1232c. State agency monitoring and enforcement

(a) State plan

In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Secretary may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Secretary may require such plan to provide—

(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Secretary, relating to the administration of such programs.

(b) State enforcement of Federal requirements

In order to enforce the Federal requirements under any applicable program the State may—

(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure by the local agency to comply with any of such requirements;

(2) suspend payments to any local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing required under paragraph (3) of this subsection;

(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

(c) Withholding of payments

Any withholding of payments under subsection (b)(3) of this subsection¹ shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

(Pub. L. 90-247, title IV, § 440, formerly § 434, as added Pub. L. 95-561, title XII, § 1231(a)(3), Nov. 1, 1978, 92 Stat. 2342; renumbered § 440 and amended Pub. L. 103-382, title II, §§ 212(b)(1), 261(e), Oct. 20, 1994, 108 Stat. 3913, 3927.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1232c, Pub. L. 90-247, title IV, § 434, formerly § 424, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 169; renumbered § 434 and amended Pub. L. 92-318, title III, § 301(a)(1), title V, § 501, June 23, 1972, 86 Stat. 326, 345; Pub. L. 93-380, title V, §§ 510, 511(a), Aug. 21, 1974, 88 Stat. 568, 569; Pub. L. 94-482, title V, § 501(f)(1), Oct. 12, 1976, 90 Stat. 2237, related to administration of education programs and projects, prior to repeal by section 1231(a)(3) of Pub. L. 95-561.

A prior section 440 of Pub. L. 90-247 was renumbered section 446, and is classified to section 1232i of this title.

AMENDMENTS

1994—Pub. L. 103-382, §261(e)(1), struck out “educational” after “State” in section catchline.

Subsec. (a). Pub. L. 103-382, §261(e)(2)(A), substituted “Secretary” for “Commissioner” wherever appearing.

Subsecs. (b), (c). Pub. L. 103-382, §261(e)(2)(B), (C), redesignated provision following par. (3) of subsec. (b) as subsec. (c) and substituted “subsection (b)(3)” for “paragraph (3)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 95-561, title XII, § 1261, Nov. 1, 1978, 92 Stat. 2356, provided that: “The amendments made by section 1231 [enacting this section and sections 1232d, 1232e, and 1232f of this title and amending section 1088f-1 of this title] shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years. The amendments made by section 1232 [enacting sections 1234, 1234a, 1234b, 1234c, 1234d, and 1234e of this title] shall take effect 120 days after the enactment of this Act [Nov. 1, 1978].”

APPLICABILITY OF ADMINISTRATIVE PROCEDURE TO OFFICE OF EDUCATION OR ACTIONS BY COMMISSIONER UNAFFECTED BY SUBSECTIONS (b) TO (e)

Pub. L. 93-380, title V, § 511(b)(2), Aug. 21, 1974, 88 Stat. 571, provided that nothing in the amendment made by subsec. (a) of section 511 of Pub. L. 93-380, which enacted prior subsecs. (b) to (e) and deleted former subsec. (b) of this section, would be construed to affect the applicability of chapter 5 of Title 5, Government Organization and Employees, to the Office of Education or actions by the Commissioner.

§ 1232d. Single State application

(a) Submission of general application; approval by State supervisory authority

In the case of any State which applies, contracts, or submits a plan for participation in any applicable program in which Federal funds are made available for assistance to local edu-

¹ So in original. Probably should be “section”.

cational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject to the provisions of part D of title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7231 et seq.]) to the Secretary a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) Assurances

An application submitted under subsection (a) shall set forth assurances, satisfactory to the Secretary—

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) that the State will adopt and use proper methods of administering each applicable program, including—

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) that the State will make reports to the Secretary (including reports on the results of

evaluations required under paragraph (4)) as may reasonably be necessary to enable the Secretary to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 1232f of this title, and afford access to the records as the Secretary may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Secretary by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) Effective term of general application

Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Secretary shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(Pub. L. 90-247, title IV, §441, formerly §435, as added Pub. L. 95-561, title XII, §1231(a)(3), Nov. 1, 1978, 92 Stat. 2343; amended Pub. L. 98-511, title VII, §706(a), Oct. 19, 1984, 98 Stat. 2406; Pub. L. 100-297, title III, §3501(c), Apr. 28, 1988, 102 Stat. 357; renumbered §441 and amended Pub. L. 103-382, title II, §§212(b)(1), (3)(A), 261(f), Oct. 20, 1994, 108 Stat. 3913, 3928; Pub. L. 107-110, title X, §1062(2), Jan. 8, 2002, 115 Stat. 2087; Pub. L. 114-95, title IX, §9215(mm)(4), Dec. 10, 2015, 129 Stat. 2176.)

Editorial Notes**REFERENCES IN TEXT**

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Part D of title IV of the Act is classified generally to part D (§7231 et seq.) of subchapter IV of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

CODIFICATION

A prior section 1232d was renumbered by Pub. L. 95-561, §1231(a)(1), and was transferred to section 1226a-1 of this title.

PRIOR PROVISIONS

Another prior section 441 of Pub. L. 90-247 was classified to section 1233 of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95 substituted “part D of title IV of the Elementary and Secondary Education Act of 1965) to the Secretary a general application” for “part C of title V of the Elementary and Secondary Education Act of 1965) to the Secretary a general application”.

2002—Subsec. (a). Pub. L. 107-110 made technical correction to directory language of Pub. L. 100-297. See 1988 Amendment note below.

1994—Pub. L. 103-382, §261(f)(1), substituted “Secretary” for “Commissioner” wherever appearing.

Subsec. (a). Pub. L. 103-382, §261(f)(2)(C), substituted “part C of title V of the Elementary and Secondary Education Act of 1965” for “title V of such Act”.

Pub. L. 103-382, §261(f)(2)(B), which directed amendment of first sentence of subsec. (a) by striking “, in the case of programs under chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965,” was executed by striking “, in the case of programs under chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965,” after “(subject)” to reflect the probable intent of Congress.

Pub. L. 103-382, §261(f)(2)(A), struck out the comma after “submits a plan”.

Subsec. (b)(6). Pub. L. 103-382, §212(b)(3), made technical amendment to reference to section 1232f of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (a). Pub. L. 100-297, as amended by Pub. L. 107-110, substituted “chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965)” for “titles I and IV of the Elementary and Secondary Education Act of 1965”.

1984—Subsec. (b)(8). Pub. L. 98-511 added par. (8).

Statutory Notes and Related Subsidiaries**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.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-110, title X, §1062(2), Jan. 8, 2002, 115 Stat. 2087, provided that the amendment made by section 1062(2) is effective as of the date of enactment of Pub. L. 100-297, which was approved Apr. 28, 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-297 effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100-297, set out as a note under section 1234 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 1226c of this title.

EFFECTIVE DATE

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95-561, set out as a note under section 1232c of this title.

§ 1232e. Single local educational agency application**(a) General application to State agency or board**

Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local educational agency in all such programs.

(b) Assurances

The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program, and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) that the local educational agency will make reports to the State agency or board and to the Secretary as may reasonably be necessary to enable the State agency or board and the Secretary to perform their duties and that the local educational agency will maintain such records, including the records required under section 1232f of this title, and provide access to those records, as the State agency or board or the Secretary deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence

of architecture and design and to compliance with standards prescribed by the Secretary under section 794 of title 29 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by individuals with disabilities;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

(9) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) Effective term of general application

A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

(Pub. L. 90-247, title IV, §442, formerly §436, as added Pub. L. 95-561, title XII, §1231(a)(3), Nov. 1, 1978, 92 Stat. 2345; amended Pub. L. 98-511, title VII, §706(b), Oct. 19, 1984, 98 Stat. 2407; renumbered §442 and amended Pub. L. 103-382, title II, §§212(b)(1), (3)(B), 261(g), Oct. 20, 1994, 108 Stat. 3913, 3928.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1232e, Pub. L. 90-247, title IV, §436, formerly §426, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 170; renumbered §436, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326, related to authority of Commissioner to vest title in equipment, prior to repeal by section 1231(a)(3) of Pub. L. 95-561.

A prior section 442 of Pub. L. 90-247 was classified to section 1233a of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, §261(g)(1), substituted “that local educational agency” for “that local education agency”.

Subsec. (b)(2). Pub. L. 103-382, §261(g)(2)(A), inserted comma after “program”.

Subsec. (b)(4). Pub. L. 103-382, §261(g)(2)(B), substituted “Secretary” for “Commissioner” wherever appearing.

Pub. L. 103-382, §212(b)(3)(B), made technical amendment to reference to section 1232f of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(7)(B). Pub. L. 103-382, §261(g)(2)(C), substituted “individuals with disabilities” for “handicapped individuals”.

1984—Subsec. (b)(9). Pub. L. 98-511 added par. (9).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 1226c of this title.

EFFECTIVE DATE

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95-561, set out as a note under section 1232c of this title.

PART 4—RECORDS; PRIVACY; LIMITATION ON WITHHOLDING FEDERAL FUNDS

§ 1232f. Records

(a) Records kept by recipient; full disclosure; maintenance period

Each recipient of Federal funds under any applicable program through any grant, subgrant, cooperative agreement, loan, or other arrangement shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective financial or programmatic audit. The recipient shall maintain such records for three years after the completion of the activity for which the funds are used.

(b) Audit examination

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.

(Pub. L. 90-247, title IV, §443, formerly §437, as added Pub. L. 95-561, title XII, §1231(c), Nov. 1, 1978, 92 Stat. 2346; renumbered §443 and amended Pub. L. 103-382, title II, §§212(b)(1), 248, Oct. 20, 1994, 108 Stat. 3913, 3924.)

Editorial Notes

PRIOR PROVISIONS

A prior section 443 of Pub. L. 90-247 was classified to section 1233b of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, §248(1), substituted “grant, subgrant, cooperative agreement, loan, or other arrangement” for “grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency)”, inserted “financial or programmatic” before “audit.”, and substituted “three years” for “five years”.

Subsec. (b). Pub. L. 103-382, §248(2), substituted “to any records maintained by a recipient that may be related, or pertinent to, grants, subgrants, cooperative agreements, loans, or other arrangements” for “to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub. L. 95-561, set out as a note under section 1232c of this title.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

- (i) financial records of the parents of the student or any information contained therein;
- (ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;
- (iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—
 - (I) respecting admission to any educational agency or institution,
 - (II) respecting an application for employment, and
 - (III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

- (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
- (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his profes-

sional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C)(i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in

paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.¹

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose

¹ So in original. The period probably should be a semicolon.

to any person the existence or contents of the subpoena or any information furnished in response to the subpoena;

(K) the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational and other agencies and institutions receiving funding or providing benefits of 1 or more programs authorized under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that—

(i) any data collected under this subparagraph shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and

(ii) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; and

(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 5304 of title 25), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that

parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal re-

quirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071² of title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of

and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this Act or the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that

² See References in Text note below.

prohibits an institution of higher education from making the disclosure described in subsection (a).

(j) Investigation and prosecution of terrorism
(1) In general

Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) IN GENERAL.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

Subsection (b)(4) does not apply to education records subject to a court order under this subsection.

(Pub. L. 90-247, title IV, §444, formerly §438, as added Pub. L. 93-380, title V, §513(a), Aug. 21, 1974, 88 Stat. 571; amended Pub. L. 93-568, §2(a), Dec. 31, 1974, 88 Stat. 1858; Pub. L. 96-46, §4(c), Aug. 6, 1979, 93 Stat. 342; Pub. L. 101-542, title II, §203, Nov. 8, 1990, 104 Stat. 2385; Pub. L. 102-325, title XV, §1555(a), July 23, 1992, 106 Stat. 840; renumbered §444 and amended Pub. L. 103-382, title II, §§212(b)(1), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; Pub. L. 105-244, title IX, §§951, 952, Oct. 7, 1998, 112 Stat. 1835, 1836; Pub. L. 106-386, div. B, title VI, §1601(d), Oct. 28, 2000, 114 Stat. 1538; Pub. L. 107-56, title V, §507, Oct. 26, 2001, 115 Stat. 367; Pub. L. 107-110, title X, §1062(3), Jan. 8, 2002, 115 Stat. 2088; Pub. L. 111-296, title I, §103(d), Dec. 13, 2010, 124 Stat.

3192; Pub. L. 112-278, §2, Jan. 14, 2013, 126 Stat. 2480.)

Editorial Notes

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(1)(K), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (b)(1)(K), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

Section 3 of the Child Abuse Prevention and Treatment Act, referred to in subsec. (b)(2)(B), is section 3 of Pub. L. 93-247, which is set out as a note under section 5101 of Title 42, The Public Health and Welfare.

Section 14071 of title 42, referred to in subsec. (b)(7)(A), was repealed by Pub. L. 109-248, title I, §129(a), July 27, 2006, 120 Stat. 600.

This Act, referred to in subsec. (i)(1), is Pub. L. 90-247, Jan. 2, 1968, 80 Stat. 783, known as the Elementary and Secondary Education Amendments of 1967. Title IV of the Act, known as the General Education Provisions Act, is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 6301 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (i)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

A prior section 444 of Pub. L. 90-247 was classified to section 1233c of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

2013—Subsec. (b)(1)(L). Pub. L. 112-278, §2(1), added subpar. (L).

Subsec. (b)(2)(B). Pub. L. 112-278, §2(2), inserted “, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required” after “educational institution or agency”.

2010—Subsec. (b)(1)(K). Pub. L. 111-296, which directed that par. (1) be amended by adding subpar. (K) “at the end”, was executed by adding subpar. (K) after subpar. (J), to reflect the probable intent of Congress.

2002—Subsec. (a)(1)(B). Pub. L. 107-110, §1062(3)(A), realigned margins.

Subsec. (b)(1). Pub. L. 107-110, §1062(3)(C), substituted “subparagraph (E)” for “clause (E)” in concluding provisions.

Subsec. (b)(1)(J). Pub. L. 107-110, §1062(3)(B), realigned margins.

Subsec. (b)(7). Pub. L. 107-110, §1062(3)(D), realigned margins.

2001—Subsec. (j). Pub. L. 107-56 added subsec. (j).

2000—Subsec. (b)(7). Pub. L. 106-386 added par. (7).

1998—Subsec. (b)(1)(C). Pub. L. 105-244, §951(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities, under

the conditions set forth in paragraph (3) of this subsection.”

Subsec. (b)(6). Pub. L. 105-244, §951(2), designated existing provisions as subpar. (A), substituted “or a non-forcible sex offense, the final results” for “the results”, substituted “such crime or offense” for “such crime” in two places, and added subpars. (B) and (C).

Subsec. (i). Pub. L. 105-244, §952, added subsec. (i). 1994—Subsec. (a)(1)(B). Pub. L. 103-382, §249(1)(A)(ii), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(1)(C). Pub. L. 103-382, §249(1)(A)(i), (iii), redesignated subpar. (B) as (C) and substituted “subparagraph (D)” for “subparagraph (C)” in cl. (iii). Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 103-382, §249(1)(A)(i), (iv), redesignated subpar. (C) as (D) and substituted “subparagraph (C)” for “subparagraph (B)”.

Subsec. (a)(2). Pub. L. 103-382, §249(1)(B), substituted “privacy rights” for “privacy or other rights”.

Subsec. (a)(4)(B)(ii). Pub. L. 103-382, §261(h)(1), substituted semicolon for period at end.

Subsec. (b)(1)(A). Pub. L. 103-382, §249(2)(A)(i), inserted before semicolon “, including the educational interests of the child for whom consent would otherwise be required”.

Subsec. (b)(1)(C). Pub. L. 103-382, §261(h)(2)(A), substituted “or (iii)” for “(iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv)”.

Subsec. (b)(1)(E). Pub. L. 103-382, §249(2)(A)(ii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974.”

Subsec. (b)(1)(H). Pub. L. 103-382, §261(h)(2)(B), substituted “the Internal Revenue Code of 1986” for “the Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (b)(1)(J). Pub. L. 103-382, §249(2)(A)(iii)-(v), added subpar. (J).

Subsec. (b)(2). Pub. L. 103-382, §249(2)(B)(i), which directed amendment of matter preceding subpar. (A) by substituting “, unless—” for the period, was executed by substituting a comma for the period before “unless—” to reflect the probable intent of Congress.

Subsec. (b)(2)(B). Pub. L. 103-382, §249(2)(B)(ii), inserted “except as provided in paragraph (1)(J),” before “such information”.

Subsec. (b)(3). Pub. L. 103-382, §261(h)(2)(C), substituted “or (C)” for “(C) an administrative head of an education agency or (D)” and “education programs” for “education program”.

Subsec. (b)(4). Pub. L. 103-382, §249(2)(C), inserted at end “If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.”

Subsec. (c). Pub. L. 103-382, §249(3), substituted “Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which” for “The Secretary shall adopt appropriate regulations to”.

Subsec. (d). Pub. L. 103-382, §261(h)(3), inserted a comma after “education”.

Subsec. (e). Pub. L. 103-382, §249(4), inserted “effectively” before “informs”.

Subsec. (f). Pub. L. 103-382, §261(h)(4), struck out “, or an administrative head of an education agency,” after “The Secretary” and substituted “enforce this section” for “enforce provisions of this section”, “in accordance with” for “according to the provisions of”, and “comply with this section” for “comply with the provisions of this section”.

Subsec. (g). Pub. L. 103-382, §261(h)(5), struck out “of Health, Education, and Welfare” after “the Depart-

ment” and “the provisions of” after “adjudicating violations of”.

Subsec. (h). Pub. L. 103-382, §249(5), added subsec. (h).

1992—Subsec. (a)(4)(B)(ii). Pub. L. 102-325 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;”.

1990—Subsec. (b)(6). Pub. L. 101-542 added par. (6).

1979—Subsec. (b)(5). Pub. L. 96-46 added par. (5).

1974—Subsec. (a)(1). Pub. L. 93-568, §2(a)(1)(A)-(C), (2)(A)-(C), (3), designated existing par. (1) as subpar. (A), substituted reference to educational agencies and institutions for reference to state or local educational agencies, institutions of higher education, community colleges, schools, agencies offering preschool programs, and other educational institutions, substituted the generic term education records for the enumeration of such records, and extended the right to inspect and review such records to parents of children who have been in attendance, and added subpars. (B) and (C).

Subsec. (a)(2). Pub. L. 93-568, §2(a)(4), substituted provisions making the availability of funds to educational agencies and institutions conditional on the granting of an opportunity for a hearing to parents of students who are or have been in attendance at such institution or agency to challenge the contents of the student's education records for provisions granting the parents an opportunity for such hearing, and inserted provisions authorizing insertion into the records a written explanation of the parents respecting the content of such records.

Subsec. (a)(3) to (6). Pub. L. 93-568, §2(a)(1)(G), (2)(F), (5), added pars. (3) to (6).

Subsec. (b)(1). Pub. L. 93-568, §2(a)(1)(D), (2)(D), (6), (8)(A)-(C), (10)(A), in provisions preceding subpar. (A), substituted “educational agency or institution which has a policy of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a))” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of permitting the release of personally identifiable records or files (or personal information contained therein)”, in subpar. (A), substituted “educational agency, who have been determined by such agency or institution to have” for “educational agency who have”, in subpar. (B), substituted “the student seeks or intends to” for “the student intends to”, in subpar. (C), substituted reference to “section 408(c)” for reference to “section 409 of this Act” which for purposes of codification has been translated as “section 1221e-3(c) of this title”, and added subpars. (E) to (I).

Subsec. (b)(2). Pub. L. 93-568, §2(a)(1)(E), (2)(E), substituted “educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) of this section”.

Subsec. (b)(3). Pub. L. 93-568, §2(a)(8)(D), substituted “information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than

those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements” for “data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected”.

Subsec. (b)(4). Pub. L. 93-568, §2(a)(9), substituted provisions that each educational agency or institution maintain a record, kept with the education records of each student, indicating individuals, agencies, or organizations who obtained access to the student's record and the legitimate interest in obtaining such information, that such record of access shall be available only to parents, school officials, and their assistants having responsibility for the custody of such records, and as a means of auditing the operation of the system, for provisions that with respect to subsecs. (c)(1), (c)(2), and (c)(3) of this section, all persons, agencies, or organizations desiring access to the records of a student shall be required to sign forms to be kept with the records of the student, but only for inspection by the parents or the student, indicating specifically the legitimate educational or other interest of the person seeking such information, and that the form shall be available to parents and school officials having responsibility for record maintenance as a means of auditing the operation of the system.

Subsec. (e). Pub. L. 93-568, §2(a)(1)(F), substituted “to any educational agency or institution unless such agency or institution” for “unless the recipient of such funds”.

Subsec. (g). Pub. L. 93-568, §2(a)(7), (10)(B), struck out reference to sections 1232c and 1232f of this title and inserted provisions that except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-325, title XV, §1555(b), July 23, 1992, 106 Stat. 840, provided that: “The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [July 23, 1992].”

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-46 effective Oct. 1, 1978, see section 8 of Pub. L. 96-46, set out as a note under section 930 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-568, §2(b), Dec. 31, 1974, 88 Stat. 1862, provided that: “The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974.”

EFFECTIVE DATE

Pub. L. 93-380, title V, §513(b)(1), Aug. 21, 1974, 88 Stat. 574, provided that: “The provisions of this section [enacting this section and provisions set out as a note under section 1221 of this title] shall become effective ninety days after the date of enactment [Aug. 21, 1974] of section 438 [now 444] of the General Education Provisions Act [this section].”

§ 1232h. Protection of pupil rights

(a) Inspection of instructional materials by parents or guardians

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

(b) Limits on survey, analysis, or evaluations

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

- (1) political affiliations or beliefs of the student or the student's parent;
- (2) mental or psychological problems of the student or the student's family;
- (3) sex behavior or attitudes;
- (4) illegal, anti-social, self-incriminating, or demeaning behavior;
- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- (7) religious practices, affiliations, or beliefs of the student or student's parent; or
- (8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

(c) Development of local policies concerning student privacy, parental access to information, and administration of certain physical examinations to minors

(1) Development and adoption of local policies

Except as provided in subsections (a) and (b), a local educational agency that receives funds under any applicable program shall develop and adopt policies, in consultation with parents, regarding the following:

- (A)(i) The right of a parent of a student to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student; and
- (ii) any applicable procedures for granting a request by a parent for reasonable access to such survey within a reasonable period of time after the request is received.
- (B) Arrangements to protect student privacy that are provided by the agency in the event of the administration or distribution

of a survey to a student containing one or more of the following items (including the right of a parent of a student to inspect, upon the request of the parent, any survey containing one or more of such items):

- (i) Political affiliations or beliefs of the student or the student's parent.
- (ii) Mental or psychological problems of the student or the student's family.
- (iii) Sex behavior or attitudes.
- (iv) Illegal, anti-social, self-incriminating, or demeaning behavior.
- (v) Critical appraisals of other individuals with whom respondents have close family relationships.
- (vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
- (vii) Religious practices, affiliations, or beliefs of the student or the student's parent.
- (viii) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

(C)(i) The right of a parent of a student to inspect, upon the request of the parent, any instructional material used as part of the educational curriculum for the student; and

(ii) any applicable procedures for granting a request by a parent for reasonable access to instructional material within a reasonable period of time after the request is received.

(D) The administration of physical examinations or screenings that the school or agency may administer to a student.

(E) The collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), including arrangements to protect student privacy that are provided by the agency in the event of such collection, disclosure, or use.

(F)(i) The right of a parent of a student to inspect, upon the request of the parent, any instrument used in the collection of personal information under subparagraph (E) before the instrument is administered or distributed to a student; and

(ii) any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

(2) Parental notification

(A) Notification of policies

The policies developed by a local educational agency under paragraph (1) shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of students enrolled in schools served by that agency. At a minimum, the agency shall—

- (i) provide such notice at least annually, at the beginning of the school year, and within a reasonable period of time after any substantive change in such policies; and

- (ii) offer an opportunity for the parent (and for purposes of an activity described in subparagraph (C)(i), in the case of a student of an appropriate age, the student) to opt the student out of participation in an activity described in subparagraph (C).

(B) Notification of specific events

The local educational agency shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities described in subparagraph (C) are scheduled, or expected to be scheduled.

(C) Activities requiring notification

The following activities require notification under this paragraph:

- (i) Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose).
- (ii) The administration of any survey containing one or more items described in clauses (i) through (viii) of paragraph (1)(B).
- (iii) Any nonemergency, invasive physical examination or screening that is—
 - (I) required as a condition of attendance;
 - (II) administered by the school and scheduled by the school in advance; and
 - (III) not necessary to protect the immediate health and safety of the student, or of other students.

(3) Existing policies

A local educational agency need not develop and adopt new policies if the State educational agency or local educational agency has in place, on January 8, 2002, policies covering the requirements of paragraph (1). The agency shall provide reasonable notice of such existing policies to parents and guardians of students, in accordance with paragraph (2).

(4) Exceptions

(A) Educational products or services

Paragraph (1)(E) does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:

- (i) College or other postsecondary education recruitment, or military recruitment.
- (ii) Book clubs, magazines, and programs providing access to low-cost literary products.
- (iii) Curriculum and instructional materials used by elementary schools and secondary schools.
- (iv) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other

statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.

(v) The sale by students of products or services to raise funds for school-related or education-related activities.

(vi) Student recognition programs.

(B) State law exception

The provisions of this subsection—

(i) shall not be construed to preempt applicable provisions of State law that require parental notification; and

(ii) do not apply to any physical examination or screening that is permitted or required by an applicable State law, including physical examinations or screenings that are permitted without parental notification.

(5) General provisions

(A) Rules of construction

(i) This section does not supersede section 1232g of this title.

(ii) Paragraph (1)(D) does not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(B) Student rights

The rights provided to parents under this section transfer to the student when the student turns 18 years old, or is an emancipated minor (under an applicable State law) at any age.

(C) Information activities

The Secretary shall annually inform each State educational agency and each local educational agency of the educational agency's obligations under this section and section 1232g of this title.

(D) Funding

A State educational agency or local educational agency may use funds provided under part A of title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7101 et seq.] to enhance parental involvement in areas affecting the in-school privacy of students.

(6) Definitions

As used in this subsection:

(A) Instructional material

The term “instructional material” means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

(B) Invasive physical examination

The term “invasive physical examination” means any medical examination that involves the exposure of private body parts, or any act during such examination that in-

cludes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

(C) Local educational agency

The term “local educational agency” means an elementary school, secondary school, school district, or local board of education that is the recipient of funds under an applicable program, but does not include a postsecondary institution.

(D) Parent

The term “parent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

(E) Personal information

The term “personal information” means individually identifiable information including—

(i) a student or parent's first and last name;

(ii) a home or other physical address (including street name and the name of the city or town);

(iii) a telephone number; or

(iv) a Social Security identification number.

(F) Student

The term “student” means any elementary school or secondary school student.

(G) Survey

The term “survey” includes an evaluation.

(d) Notice

Educational agencies and institutions shall give parents and students effective notice of their rights under this section.

(e) Enforcement

The Secretary shall take such action as the Secretary determines appropriate to enforce this section, except that action to terminate assistance provided under an applicable program shall be taken only if the Secretary determines that—

(1) there has been a failure to comply with such section; and

(2) compliance with such section cannot be secured by voluntary means.

(f) Office and review board

The Secretary shall establish or designate an office and review board within the Department of Education to investigate, process, review, and adjudicate violations of the rights established under this section.

(Pub. L. 90-247, title IV, § 445, formerly § 439, as added Pub. L. 93-380, title V, § 514(a), Aug. 21, 1974, 88 Stat. 574; amended Pub. L. 95-561, title XII, § 1250, Nov. 1, 1978, 92 Stat. 2355; Pub. L. 103-227, title X, § 1017, Mar. 31, 1994, 108 Stat. 268; renumbered § 445, Pub. L. 103-382, title II, § 212(b)(1), Oct. 20, 1994, 108 Stat. 3913; amended Pub. L. 107-110, title X, § 1061, Jan. 8, 2002, 115 Stat. 2083; Pub. L. 114-95, title IX, § 9215(mm)(5), Dec. 10, 2015, 129 Stat. 2176.)

Editorial Notes**REFERENCES IN TEXT**

The Individuals with Disabilities Education Act, referred to in subsec. (c)(5)(A)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(5)(D), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Part A of title IV of the Act is classified generally to part A (§7101 et seq.) of subchapter IV of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

PRIOR PROVISIONS

A prior section 445 of Pub. L. 90-247 was classified to section 1233d of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

2015—Subsec. (c)(5)(D). Pub. L. 114-95 substituted “part A of title IV” for “part A of title V”.

2002—Subsec. (b)(1) to (8). Pub. L. 107-110, §1061(1), added pars. (1) to (8) and struck out former pars. (1) to (7) which read as follows:

- “(1) political affiliations;
- “(2) mental and psychological problems potentially embarrassing to the student or his family;
- “(3) sex behavior and attitudes;
- “(4) illegal, anti-social, self-incriminating and demeaning behavior;
- “(5) critical appraisals of other individuals with whom respondents have close family relationships;
- “(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
- “(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).”

Subsec. (c) to (f). Pub. L. 107-110, §1061(2), (3), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1994—Pub. L. 103-227 amended section generally, substituting in subsec. (a), provisions relating to inspection of instructional materials by parents or guardians for similar provisions, in subsec. (b), provisions relating to limits on survey, analysis, or evaluations for provisions relating to psychiatric or psychological examinations, testing, or treatment, and adding subsecs. (c) to (e).

1978—Pub. L. 95-561 designated existing provisions as subsec. (a) and added subsec. (b).

Statutory Notes and Related Subsidiaries**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.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-561 effective Oct. 1, 1978, see section 1530(a) of Pub. L. 95-561, set out as a note under section 1221e-3 of this title.

EFFECTIVE DATE

Pub. L. 93-380, title V, §514(b), Aug. 21, 1974, 88 Stat. 574, provided that: “The amendment made by sub-

section (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].”

§ 1232i. Limitations on withholding of Federal assistance**(a) Refusal to supply personal data on students or families**

Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) Noncompliance with nondiscrimination provisions of Federal law

The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of

sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) Failure to comply with imposition of quotas

It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(Pub. L. 90-247, title IV, §446, formerly §440, as added Pub. L. 93-380, title V, §515(a), Aug. 21, 1974, 88 Stat. 574; amended Pub. L. 94-482, title IV, §§407, 408, Oct. 12, 1976, 90 Stat. 2232, 2233; renumbered §446 and amended Pub. L. 103-382, title II, §212(b)(1), (3)(C), Oct. 20, 1994, 108 Stat. 3913.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 446 of Pub. L. 90-247 was classified to section 1233e of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382, §212(b)(3)(C), made technical amendment to reference to section 1232g(b)(1)(D) of this title to reflect renumbering of corresponding section of original act.

1976—Pub. L. 94-482 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Pub. L. 93-380, title V, §515(b), Aug. 21, 1974, 88 Stat. 574, provided that: "The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974]."

§ 1232j. Prohibition on federally sponsored testing

(a) General prohibition

Notwithstanding any other provision of Federal law and except as provided in subsection (b), no funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

(b) Exceptions

Subsection (a) shall not apply to the Third International Mathematics and Science Study or other international comparative assessments developed under the authority of section 9543(a)(6) of this title and administered to only a representative sample of pupils in the United States and in foreign nations.

(Pub. L. 90-247, title IV, §447, as added Pub. L. 105-277, div. A, §101(f) [title III, §305(a)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-374; amended Pub. L. 107-110, title X, §1062(4), Jan. 8, 2002, 115 Stat. 2088; Pub. L. 107-279, title IV, §404(c), Nov. 5, 2002, 116 Stat. 1985.)

Editorial Notes

PRIOR PROVISIONS

A prior section 447 of Pub. L. 90-247 was classified to section 1233f of this title prior to repeal by Pub. L. 103-382.

Prior sections 1233 to 1233h comprising a former subchapter IV of this chapter were repealed by Pub. L. 103-382, title II, §212(a)(2), Oct. 20, 1994, 108 Stat. 3913.

Section 1233, Pub. L. 90-247, title IV, §441, formerly §431, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 170; renumbered §441, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, defined terms for purposes of former subchapter IV of this chapter.

Section 1233a, Pub. L. 90-247, title IV, §442, formerly §432, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §442, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), (b)(2), title V, §507, Oct. 17, 1979, 93 Stat. 677, 678, 692, authorized Secretary to establish necessary advisory councils.

Section 1233b, Pub. L. 90-247, title IV, §443, formerly §433, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §443, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §516(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 94-482, title IV, §411, title V, §501(a)(10), Oct. 12, 1976, 90 Stat. 2234, 2235; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to statutory advisory councils.

Section 1233c, Pub. L. 90-247, title IV, §444, formerly §434, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §444, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to compensation and travel expenses of members of advisory councils.

Section 1233d, Pub. L. 90-247, title IV, §445, formerly §435, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered §445, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §517(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to professional, technical, and clerical staff of advisory councils.

Section 1233e, Pub. L. 90-247, title IV, §446, formerly §436, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered §446, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to advisory council meetings.

Section 1233f, Pub. L. 90-247, title IV, §447, formerly §437, as added Pub. L. 91-230, title IV, §401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered §447, Pub. L. 92-318, title III, §301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, §517(b), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692, related to auditing and review of advisory council activities.

Section 1233g, Pub. L. 90-247, title IV, § 448, formerly § 438, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered § 448, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended S. Res. 4, Feb. 4, 1977; Pub. L. 95-43, § 1(d), June 15, 1977, 91 Stat. 219; S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103-437, § 7(a)(1), Nov. 2, 1994, 108 Stat. 4587, related to reports by Secretary.

Section 1233h, Pub. L. 90-247, title IV, § 449, as added Pub. L. 93-380, title V, § 518(a), Aug. 21, 1974, 88 Stat. 575, related to application of other laws to advisory councils under former subchapter IV of this chapter.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-279 substituted “section 9543(a)(6) of this title” for “section 9003(a)(6) of this title”.

Pub. L. 107-110 made technical amendment to reference in original act which appears in text as reference to section 9003(a)(6) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

SUBCHAPTER IV—ENFORCEMENT

Editorial Notes

CODIFICATION

Pub. L. 103-382, title II, § 212(b)(2), Oct. 20, 1994, 108 Stat. 3913, redesignated subchapter V of this chapter as this subchapter.

PRIOR PROVISIONS

A prior subchapter IV, consisting of sections 1233 to 1233h, was repealed by Pub. L. 103-382, title II, § 212(a)(2), Oct. 20, 1994, 108 Stat. 3913. See note set out under section 1232j of this title.

§ 1234. Office of Administrative Law Judges

(a) Establishment; duties

The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the “Office”) which shall conduct—

- (1) recovery of funds hearings pursuant to section 1234a of this title,
- (2) withholding hearings pursuant to section 1234d of this title,
- (3) cease and desist hearings pursuant to section 1234e of this title, and
- (4) other proceedings designated by the Secretary.

(b) Appointment

The administrative law judges (hereinafter “judges”) of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

(c) Employment requirements; chief judge

The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates’ experience in

State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

(d) Assignment of judges

For the purposes of conducting hearings described in subsection (a), the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party’s attorney as to make it improper for the judge to be assigned to the case.

(e) Review and evidentiary functions

The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 1234a of this title.

(f) Conduct of proceedings; costs and fees of parties

(1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, sections 554, 556, and 557.

(2) The provisions of title 5, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

(g) Discovery; scope, time, etc.; issue and enforcement of subpoenas

(1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

- (A) produce relevant documents;
- (B) answer written interrogatories that inquire into relevant matters; and
- (C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1), the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

(h) Mediation of disputes

The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 1234b of this title. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements