

**DEPARTMENT OF EDUCATION****34 CFR Parts 200 and 299**

[Docket ID ED-2018-OESE-0106]

RIN 1810-AB47, 1810-AB55

**Title I—Improving the Academic Achievement of the Disadvantaged and General Provisions; Technical Amendments****AGENCY:** Office of Elementary and Secondary Education, Department of Education.**ACTION:** Final rule with request for comments.**SUMMARY:** The Secretary is issuing this rule to align the regulations with the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).**DATES:***Effective date:* These regulations are effective July 1, 2019.*Comment due date:* We must receive your comments on or before August 1, 2019.*Approval of information collection requests:* As of July 1, 2019, the information collection requests associated with §§ 200.83, 200.85, and 200.89 have been approved by OMB (OMB Control Numbers 1810-0662, 1810-0683, and 1810-0662, respectively).**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “How to use *Regulations.gov*.<sup>1</sup>”

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these final regulations, address them to Melissa Siry, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W104, Washington, DC 20202-5900.

*Privacy Note:* The Department’s policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal

eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Siry, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W104, Washington, DC 20202-5900. Telephone: (202) 260-0926. Email: [Melissa.Siry@ed.gov](mailto:Melissa.Siry@ed.gov).

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* These regulations do not establish substantive policy changes, but instead make technical changes to existing regulations. However, we are interested in whether any additional technical changes are necessary to align these regulations with the ESEA, as amended by the ESSA, and thus we are inviting your comments. We will consider these comments in determining whether to make further technical changes to the regulations or engage in additional rulemaking. To ensure that your comments have maximum effect, we urge you to identify clearly the specific section or sections of the regulations that each of your comments addresses and to arrange your comments in the same order as the regulations. See **ADDRESSES** for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirements of reducing regulatory burden that might result from these regulations. Please let us know of any additional ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities.

During and after the comment period, you may inspect all public comments about these regulations by accessing *Regulations.gov*. You may also inspect the comments in person in Room 3W104, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:*

On request, we will

provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Significant Regulations****Executive Summary**

**Purpose of This Regulatory Action:** The Secretary is issuing this final rule to align the regulations in 34 CFR part 200 relating to Title I of the ESEA and part 299 relating to general provisions of the ESEA with changes made to the ESEA by the ESSA. These regulations make only technical changes to existing regulations to align them with statutory changes in the amended ESEA, along with one additional change to align § 200.64(b)(3)(ii)(A) with the U.S. Constitution in light of the Supreme Court’s decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

**Summary of the Major Provisions of This Regulatory Action:** As described fully in the Background section below, for each change, we summarize the current regulation, describe the change in these final regulations, and explain the reasons for the change.

**Costs and Benefits:** Through this final rule, we make only technical changes to align Department regulations with current law; we do not establish any substantive requirements or policies beyond those in the authorizing statute. Accordingly, the regulations do not impose any costs, nor generally confer any benefits, that are not attributable to statute. The technical amendments in this document serve in some cases to revise existing regulations to conform with minor language updates in statute, and in others to add to the regulations substantially new statutory provisions, albeit verbatim and without interpretation. The Department expects that States and local educational agencies (LEAs) will use ESEA program funds, including funds reserved for administration, to cover the estimated costs, and that any costs that cannot be met with Federal resources will generally be minimal. Moreover, we believe that the costs of these technical amendments are outweighed by their anticipated benefits, which include, among other things, consistency between the authorizing statute and implementing regulations; increased transparency in State and local implementation of Title I and other

ESEA programs; greater flexibility in the use of Federal program funds to address local educational needs and improve educational outcomes; improved services for students, including for eligible students in private schools; and better student preparedness for college and the workforce.

We discuss the technical amendments under the sections of the regulations to which they pertain. We do not discuss changes to correct cross-references to regulatory provisions and citations that are no longer accurate due to statutory changes in the ESEA. We also do not discuss renumbered paragraphs that are necessary to reflect other technical changes.

## I. Title I—Improving the Academic Achievement of the Disadvantaged

**Background:** The regulations in 34 CFR part 200 establish the regulatory requirements for Title I of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB). In December 2015, Congress reauthorized the ESEA through the ESSA. As a result of the amendments to the statute through the reauthorization, some of the part 200 regulatory requirements were superseded and were, therefore, rescinded by a rule published in the **Federal Register** on August 22, 2018 (Outdated or Superseded Regulations: Title I, Parts A through C; Christa McAuliffe Fellowship Program; and Empowerment Zone or Enterprise Community-Priority, 83 FR 42438). Other requirements in part 200 need minor modification to remain aligned with the statute; we are making those minor modifications through these technical amendments.

## 34 CFR Part 200

### Cross-Cutting

**Current Regulations:** Multiple provisions in part 200 establish requirements related to a State's "challenging academic content standards" and "student academic achievement standards" or, collectively, its "challenging academic content and student academic achievement standards."

**Final Regulations and Reasons:** In multiple provisions in part 200, we are revising references to a State's "challenging academic content standards" and "student academic achievement standards," or to its "challenging academic content and student academic achievement standards" to refer to a State's "challenging academic content standards and aligned academic achievement standards" or "challenging

State academic standards." The ESEA, as amended by the ESSA, requires that a State adopt "challenging academic content standards and aligned academic achievement standards" (ESEA section 1111(b)(1)(A)). For provisions that follow § 200.2 and that establish requirements for challenging academic content standards and aligned academic achievement standards, collectively, we use "challenging State academic standards." Per § 200.2(b)(3)(i)(A) and consistent with ESEA section 1111(b)(1)(A), "challenging State academic standards" is the regulatory shorthand (for all regulatory provisions after § 200.2(b)(3)(i)(A)) for "challenging academic content standards and aligned academic achievement standards." We are making this change in the following sections:

- § 200.25(a)(1);
- § 200.26(a)(1)(i) introductory text;
- § 200.26(a)(1)(i)(B);
- § 200.26(b);
- § 200.26(c)(2);
- § 200.61(c)(2)(ii)(C);
- § 200.79(b)(1)(ii);
- § 200.79(b)(1)(iii); and
- § 200.79(b)(2)(i).

### Standards and Assessments

#### § 200.1 State responsibilities for developing challenging academic standards.

**Current Regulations:** Current § 200.1 establishes a State's responsibilities with respect to the development of academic content and academic achievement standards.

**Final Regulations and Reasons:** We make the following changes to § 200.1:

(1) Revise the language in § 200.1(a)(2) establishing the requirement that, except as provided in § 200.1(d), a State's academic achievement standards include the same knowledge and skills expected of all students and the same levels of achievement expected of all students. We are revising this language to use the precise statutory language in ESEA section 1111(b)(1)(B)(ii), which requires a State's academic achievement standards to "include the same knowledge, skills, and levels of achievement expected of all public school students in the State."

(2) Delete the language in § 200.1(a)(3) indicating that a State's academic standards must include science "beginning in the 2005–2006 school year," and in § 200.1(b)(3) that a State's academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in science "beginning in the 2005–2006 school year." These references are outdated; the amended

ESEA does not include a reference to the 2005–2006 school year with respect to academic standards for science.

(3) Using the statutory language in ESEA section 1111(b)(1)(D)(i), add language to § 200.1(c)(1)(i) to clarify that a State's challenging academic achievement standards must be aligned "with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards."

(4) Add language to § 200.1(c)(1)(ii)(A) to clarify that a State's academic achievement standards must include, for each content area, "[n]ot less than three" achievement levels. ESEA section 1111(b)(1)(A) requires each State to adopt challenging academic content standards and aligned academic achievement standards, "which achievement standards shall include not less than 3 levels of achievement."

(5) Delete § 200.1(c)(3), which was related to the adoption of achievement levels in science by the 2005–2006 school year and the establishment of cut scores for science assessments no later than the 2007–2008 school year. These references are outdated; the amended ESEA does not contain references to the 2005–2006 or 2007–2008 school year in relation to standards or assessments in science.

(6) Revise § 200.1(d)(2), using the statutory language in ESEA section 1111(b)(1)(E)(i)(II), to clarify that a State's alternate academic achievement standards must promote access to the general curriculum "consistent with the IDEA" (Individuals with Disabilities Education Act).

(7) Revise the language in § 200.1(d)(3) to use the precise statutory language in ESEA section 1111(b)(1)(E)(i)(III), which requires alternate academic achievement standards to reflect professional judgment as to the "highest possible standards achievable by such students."

(8) Add § 200.1(d)(4) and (5) to incorporate the requirements in ESEA section 1111(b)(1)(E)(i)(IV) and 1111(b)(1)(E)(i)(V), respectively. ESEA section 1111(b)(1)(E)(i)(IV) requires that a State's alternate academic achievement standards be designated in the individualized education program developed under section 614(d)(3) of the IDEA for each such student as the academic achievement standards that will be used for the student. ESEA section 1111(b)(1)(E)(i)(V) requires that a State's alternate academic achievement standards be aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue

postsecondary education or employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014. We also clarify that this requirement is consistent with § 200.2(b)(3)(ii)(B)(2), which also incorporates the requirement of ESEA section 1111(b)(1)(E)(i)(V).

(9) Revise the reference to “students with disabilities” in § 200.1(e) to refer to “children with disabilities.” ESEA section 1111(b)(1)(E)(ii), which prohibits the development and implementation of alternate or modified academic achievement standards that do not meet the requirements in section 1111(b)(1)(E)(i), refers to “children with disabilities.”

(10) Clarify in § 200.1(e) that a State may not define “or implement for use under subpart A of this part any alternate or” modified academic achievement standards for children with disabilities “that are not alternate academic achievement standards that meet the requirements of” § 200.1(d). The updates parallel the requirement in ESEA section 1111(b)(1)(E)(ii) that a State shall not develop, or implement for use under this part, any alternate academic achievement standards for children with disabilities that are not alternate academic achievement standards that meet the requirements of ESEA section 1111(b)(1)(E)(i).

(11) Replace current § 200.1(f) with a provision that incorporates the requirements of ESEA section 1111(b)(1)(F) regarding English language proficiency standards. ESEA section 1111(b)(1)(F) requires that a State adopt English language proficiency standards that “are derived from the 4 recognized domains of speaking, listening, reading, and writing”; “address the different proficiency levels of English learners”; and “are aligned with the challenging State academic standards.” The current § 200.1(f), which establishes requirements for State guidelines for alternate academic achievement standards, is no longer necessary because those requirements have been updated and incorporated into § 200.6(d), which was revised in December 2016.

(12) Revise § 200.1(a) introductory text, (a)(1), (c)(1), and (d)(1) with minor conforming edits to be consistent with the amended ESEA.

#### *Participation in National Assessment of Educational Progress (NAEP)*

##### **§ 200.11 Participation in NAEP.**

*Current Regulations:* Current § 200.11 establishes requirements related to a

State’s and an LEA’s responsibilities with respect to participation in NAEP and with respect to reporting results on NAEP.

*Final Regulations and Reasons:* We make the following changes to § 200.11:

(1) Delete the language in § 200.11(a) indicating that a State must participate in NAEP “[b]eginning in the 2002–2003 school year.” This language is outdated; the amended ESEA does not contain a reference to the 2002–2003 school year in relation to a State’s obligation to participate in NAEP.

(2) Revise § 200.11(b) to update the statutory reference that authorizes NAEP.

(3) Revise § 200.11(c) to incorporate the statutory language in ESEA section 1111(h)(1)(C)(xii) clarifying that a State and an LEA, respectively, must report on its report card the most recent available academic achievement results on the State’s NAEP “compared to the national average of such results.”

(4) Revise the reference in § 200.11(c)(1) to reporting NAEP results in the aggregate and disaggregated for each subgroup described in § 200.13(b)(7)(ii) to instead refer to reporting disaggregated NAEP results for each subgroup described in ESEA section 1111(c)(2). Section 200.13 was rescinded on August 22, 2018; ESEA section 1111(c)(2) is the equivalent statutory reference.

(5) Revise § 200.11(c)(2) to require that a State and an LEA report the NAEP participation rates for “children with disabilities” and “English learners.” Current § 200.11(c)(2) requires reporting the participation rates of “students with disabilities” and “limited English proficient students.” The amended ESEA uses the terms “children with disabilities” and “English learners” to refer to these subgroups of students (ESEA section 1111(c)(2)).

#### *Schoolwide Programs*

##### **§ 200.25 Schoolwide programs in general.**

*Current Regulations:* Current § 200.25 establishes general requirements for schoolwide programs, including the purpose of a schoolwide program and the requirements for a school to be eligible to operate a schoolwide program.

*Final Regulations and Reasons:* We make the following changes to § 200.25 (in addition to the change previously described in the Cross-Cutting section):

(1) Add § 200.25(b)(1)(iii), and a reference to § 200.25(b)(1)(iii) in § 200.25(b)(1)(ii), to incorporate the flexibility provided in ESEA section 1114(a)(1)(B) for a school that does not

meet the 40 percent poverty threshold established in ESEA section 1114(a)(1)(A) and set forth in § 200.25(b)(1)(ii) to operate a schoolwide program if the school receives a waiver from the State to do so. ESEA section 1114(a)(1)(B) provides that a school that does not meet the 40 percent poverty threshold may operate a schoolwide program if the school receives a waiver from the State educational agency to do so, after taking into account how a schoolwide program will best serve the needs of the students in the school served under the part in improving academic achievement and other factors.

(2) Revise § 200.25(c) to align with the language of ESEA section 1114(a)(2)(A), which provides that no school participating in a schoolwide program shall be required to identify “(i) particular children under this part as eligible to participate in a schoolwide program; or (ii) individual services as supplementary.”

(3) Revise § 200.25(d) to add the statutory language in ESEA section 1114(a)(2)(B), which provides that a school operating a schoolwide program must use funds available to carry out ESEA section 1114 to supplement non-Federal funds “[i]n accordance with the method of determination described in section 1118(b)(2).”

(4) Revise the reference in § 200.25(d) to “children with limited English proficiency” to refer, instead, to “English learners.” ESEA section 1114(a)(2)(B) uses the term “English learners.”

(5) Delete, in § 200.25(f), the language referring to the “Even Start” and “Early Reading First” programs. These programs are no longer authorized under the ESEA.

#### **200.26 Core elements of a schoolwide program.**

*Current Regulations:* Current § 200.26 establishes the requirements for the core elements of a schoolwide program, including a comprehensive needs assessment of the entire school, a comprehensive plan based on data from the comprehensive needs assessment, and an annual evaluation of the schoolwide program.

*Final Regulations and Reasons:* We make the following changes to § 200.26 (in addition to the changes described in the Cross-Cutting section):

(1) Revise the language in § 200.26(a)(1)(i) to align with ESEA section 1114(b)(6), which provides that a schoolwide program plan must be based on a comprehensive needs assessment of the school “that takes into account information on the academic

achievement" of students in the school "in relation to the challenging State academic standards" and "any other factors as determined by the [LEA]."

(2) Revise the language in § 200.26(a)(1)(i)(B) to align with, and incorporate the language from, ESEA section 1114(b)(6), which provides, in pertinent part, that a schoolwide program plan must be based on a comprehensive needs assessment that takes into account information on the academic achievement of students, particularly the needs of those students "who are failing, or are at-risk [sic] of failing, to meet the challenging State academic standards and any other factors as determined by the local educational agency."

(3) Replace the reference to § 200.28 in § 200.26(a)(1)(ii) with a reference to section 1114(b)(7) of the ESEA. Section 200.28 was rescinded on August 22, 2018; section 1114(b)(7) of the ESEA includes the equivalent plan requirements.

(4) Revise the language in § 200.26(b) regarding a comprehensive schoolwide plan that describes how the school will improve academic achievement of "students furthest away from demonstrating proficiency" to refer, instead, to "all students in the school, but particularly the needs of those students at risk of failing to meet the challenging State academic standards," to align with the language in ESEA section 1114(b)(6) and § 200.26(a)(1)(i)(B).

(5) Revise the language in § 200.26(c)(1) and (3) requiring that a school operating a schoolwide program "[a]nnually evaluate" the schoolwide program and revise the plan, as necessary, based on the results of the "evaluation" to align with the statutory language in ESEA section 1114(b)(3). ESEA section 1114(b)(3) provides that a schoolwide program plan must be "regularly monitored and revised as necessary."

#### § 200.29 Consolidation of funds in a schoolwide program.

*Current Regulations:* Current § 200.29 establishes requirements related to the consolidation of funds in a schoolwide program.

*Final Regulations and Reasons:* We make the following changes to § 200.29:

(1) Add to § 200.29(c)(2) the statutory requirements in ESEA section 6115(c). ESEA section 6115(c) provides that a school may consolidate funds received under subpart 1 of part A of title VI of the ESEA if (1) the parent committee established by the LEA under ESEA section 6114(c)(4) approves the inclusion of these funds; (2) the

schoolwide program is consistent with the purpose described in section 6111; and (3) the LEA identifies in its application how the use of such funds in a schoolwide program will produce benefits to Indian students that would not be achieved if the funds were not used in a schoolwide program.

(2) Delete § 200.29(e)(1), which requires a State to encourage schools to consolidate funds from other Federal, State, and local sources in their schoolwide programs. This is no longer a requirement in the ESEA.

(3) Add to § 200.29(e) the statutory language from ESEA section 1111(g)(2)(E), which provides that a State must modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources "to improve educational opportunities and reduce unnecessary fiscal and accounting requirements."

#### § 200.61 Parents' right to know.

*Current Regulations:* Current § 200.61 establishes requirements regarding certain information to which parents are entitled, including information regarding the professional qualifications of their child's classroom teachers as well as information regarding their child's level of achievement on the State academic assessments.

*Final Regulations and Reasons:* We make the following changes to § 200.61:

(1) Revise § 200.61(a)(1), as redesignated, by providing that, in notifying parents of their right to request certain information, an LEA must inform parents that it will provide the information "in a timely manner." ESEA section 1112(e)(1)(A) provides that, at the beginning of each school year, an LEA that receives funds under subpart A of this part must notify parents of each student attending a Title I school that the parents may request certain information regarding the professional qualifications of their student's classroom teachers, and the agency will provide the information on request "and in a timely manner."

(2) Revise § 200.61(a)(1)(iii), as redesignated, to align with the statutory language in ESEA section 1112(e)(1)(A)(i)(III), which provides that among the information parents may request and that an LEA must provide upon such request is information regarding whether a student's teacher "is teaching in the field of discipline of the certification of the teacher."

(3) Revise § 200.61(a)(2)(i), as redesignated, to clarify that, in addition to providing information on a student's level of achievement on the State academic assessments, a school that

participates under subpart A of this part must also provide information on academic growth, if applicable and available. ESEA section 1112(e)(1)(B)(i) provides that, in addition to the information parents may request, a school that participates under subpart A of this part must provide to each parent "information on the level of achievement and academic growth of the student, if applicable and available," on the State academic assessments.

(4) Revise § 200.61(a)(2)(ii), as redesignated, to delete the reference to a teacher "who is not highly qualified" and to align that provision with ESEA section 1112(e)(1)(B)(ii). The ESEA no longer uses the term "highly qualified teacher." ESEA section 1112(e)(1)(B)(ii) provides that, in addition to the information parents may request, a school that participates under subpart A of this part must provide to each parent timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher "who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned."

(5) Remove current § 200.61(c), which is related to the format in which notice must be provided to parents. The information in current paragraph (c) is contained in new paragraph (d), which applies to current paragraph (a) and new paragraphs (b) and (c).

(6) Add a new paragraph (b) to align with section 1112(e)(2) of the ESEA, which sets out notice requirements for parents regarding testing transparency.

(7) Add a new paragraph (c) to align with section 1112(e)(3) of the ESEA, which sets out requirements regarding notice to parents of English learners who are identified for participation or participating in a language instruction educational program supported with funds under title I, part A or title III of the ESEA; and requirements for outreach to parents of English learners, including regular parent meetings.

(8) Add a new paragraph (d) to align with ESEA section 1112(e)(4) and 34 CFR 200.2(e). Those provisions ensure that notice and information to parents is provided in an understandable and uniform format and, to the extent practicable, in a language that the parents can understand.

#### Participation of Eligible Children in Private Schools

#### § 200.62 Responsibilities for providing services to private school children.

*Current Regulations:* Current § 200.62 establishes an LEA's responsibilities for

providing services to eligible private school children and establishes which children constitute “eligible private school children.”

*Final Regulations and Reasons:* We make the following changes to § 200.62:

(1) Add clarifying language to § 200.62(a)(1) to incorporate the statutory language in ESEA section 1117(a)(1)(A), which provides that an LEA must, after timely and meaningful consultation with appropriate private school officials, provide individually or in combination, as requested by the private school officials to best meet the needs of eligible children, special educational services, instructional services (including evaluations to determine the progress being made in meeting such students’ academic needs), counseling, mentoring, one-on-one tutoring, or other benefits under subpart A of the part (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs on an equitable basis.

(2) Revise § 200.62(a)(2) to align with the statutory language in ESEA section 1117(a)(1)(B), which provides that an LEA must ensure that teachers and families of participating private school children participate, “on an equitable basis, in services and activities developed pursuant to section 1116” of the ESEA.

#### § 200.63 Consultation.

*Current Regulations:* Current § 200.63 establishes requirements for consultation with private school officials regarding equitable services for eligible children who are enrolled in private schools, including the topics on which an LEA must consult and the timing of the consultation.

*Final Regulations and Reasons:* We make the following changes to § 200.63:

(1) Add to § 200.63(a) language clarifying the goal of consultation and implementing the requirement that the results of the agreement reached between the LEA and private school officials must be transmitted to the ombudsman, as newly added in ESEA section 1117(b)(1). ESEA section 1117(b)(1) provides that an LEA and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman. We incorporate the statutory requirement for the ombudsman in § 200.68, and discuss that change in

greater detail under the heading for that section.

(2) Add to § 200.63(b)(6) the requirement that, among other topics, an LEA must consult on how it determines the proportion of funds that it will allocate for equitable services for eligible private school children. This language is added to align with ESEA section 1117(b)(1)(E), which provides that an LEA must consult on the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated for such services, and how that proportion of funds is determined.

(3) Add § 200.63(b)(8) to incorporate the statutory requirement in ESEA section 1117(b)(1)(I). Section 1117(b)(1)(I) provides that an LEA must consult on “whether the agency shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor.”

(4) Move current § 200.64(a)(2)(ii) to new § 200.63(b)(9) to reflect its placement within the consultation requirements in the statute and revise to incorporate the new statutory language in ESEA section 1117(b)(1)(J). Section 1117(b)(1)(J) provides that an LEA must consult on whether to provide equitable services to eligible private school children: (i) By creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools; or (ii) in the agency’s participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools.

(5) Add § 200.63(b)(10) to incorporate the statutory requirement in ESEA section 1117(b)(1)(K). Section 1117(b)(1)(K) provides that an LEA must consult on “when, including the approximate time of day, services will be provided.”

(6) Add § 200.63(b)(11) to incorporate the statutory requirement in ESEA section 1117(b)(1)(L). Section 1117(b)(1)(L) provides that an LEA must consult on whether to consolidate and use funds provided under subsection (a)(4) in coordination with eligible funds available for services to private school children under applicable programs, as defined in section 8501(b)(1) to provide services to eligible private school children participating in programs.

(7) Add § 200.63(e)(1)(ii) to incorporate the requirement in ESEA section 1117(b)(5) that an LEA’s written

affirmation that the required consultation has occurred must provide the option for private school officials to indicate such officials’ belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

(8) Add § 200.63(f)(1)(iii) to incorporate the statutory language in ESEA section 1117(b)(6)(A), providing that an official of a private school has the right to complain to the State educational agency (SEA) that an LEA did not “make a decision that treats the private school students equitably” among the other topics about which a private school official may file a complaint.

(9) Add § 200.63(f)(2) to incorporate the requirements in ESEA section 1117(b)(6)(B) related to the procedure for a private school official to file a complaint with an SEA. ESEA section 1117(b)(6)(B) provides that, if the private school official wishes to file a complaint, the official shall provide the basis of the noncompliance by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

(10) Add § 200.63(f)(3) to incorporate the requirements in ESEA section 1117(b)(6)(C) related to SEAs and the provision of equitable services. ESEA section 1117(b)(6)(C) provides that an SEA shall provide equitable services directly or through contracts with public or private agencies, organizations, or institutions, if the appropriate private school officials have: (i) Requested that the State educational agency provide such services directly; and (ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

#### § 200.64 Factors for determining equitable participation of private school children.

*Current Regulations:* Current § 200.64 sets forth the factors for determining equitable participation of private school children, including requirements for equal expenditures and equitable services.

*Final Regulations and Reasons:* We make the following changes to § 200.64:

(1) Revise § 200.64(a)(1) to align with ESEA section 1117(a)(4)(A)(i), which requires that funds expended by an LEA for equitable services be equal to the “proportion” of funds allocated to

participating school attendance areas based on the number of children from low-income families who attend private schools. The current regulations do not align precisely with the statute—neither the ESEA as amended by the ESSA nor the ESEA as amended by NCLB.

Although “amount” of funds generated by private school children from low-income families is not incorrect, we revise the regulations to be more precise, given the new proportional share requirement in ESEA section 1117(a)(4)(A)(ii).

(2) Revise § 200.64(a)(1) to clarify that the private school children who generate funds for equitable services are those “who reside in participating public school attendance areas” consistent with the statutory language in ESEA section 1117(a)(4)(A)(i) that speaks to “funds allocated to participating [public] school attendance areas based on the number of children from low-income families who attend private schools.”

(3) Replace current § 200.64(a)(2)(i) with new § 200.64(a)(2) to align with the new proportional share requirement in ESEA section 1117(a)(4)(A)(ii), which states that the proportional share of funds available for equitable services shall be determined based on the total amount of funds received by the local educational agency under title I, part A prior to any allowable expenditures or transfers by the local educational agency.

(4) Move current § 200.78(a)(2)(ii) to § 200.64(a)(3) because it now more appropriately fits in § 200.64, which governs factors for determining equitable participation of private school children. Section 200.78 governs within-district allocations to public school attendance areas and schools, which under NCLB included funds based on the number of private school children from low-income families who resided in participating school attendance areas. Those same private school children are now counted to determine the new proportional share for equitable services prior to an LEA’s making within-district allocations to public school attendance areas and schools. Section 200.64(a)(3) does not include current § 200.78(a)(2)(i) because it is no longer needed given the new proportional share requirement.

(5) Add § 200.64(a)(4) to incorporate ESEA section 1117(a)(4)(C), which requires each SEA to provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under title I, part A, that the local educational

agencies have determined are available for eligible private school children.

(6) Add § 200.64(a)(5) to incorporate ESEA section 1117(a)(4)(B), which states that funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

(7) Move current § 200.64(a)(2)(ii) to § 200.63(b)(9) regarding consultation on pooling of funds to provide equitable services consistent with ESEA section 1117(b)(1)(J) and revise, as noted in the discussion under § 200.63, to reflect the new statutory language.

(8) Delete the phrase “and of any religious organization” in § 200.64(b)(3)(ii)(A). The Department, in consultation with the U.S. Department of Justice, has determined that the statutory provision in ESEA section 1117(d)(2)(B) and a similar provision in ESEA section 8501(d)(2)(B) requiring an equitable services provider be “independent of . . . any religious organization” are unconstitutional because they categorically exclude religious organizations (or affiliated persons) based solely on their religious identity from providing equitable services. These provisions therefore run afoul of the principles set forth in the Supreme Court’s decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), which held that, under the Free Exercise Clause of the First Amendment of the U.S. Constitution, otherwise eligible recipients cannot be disqualified from a public benefit solely because of their religious character. As a result, pursuant to 28 U.S.C. 530D, the Department has notified Congress by letter (available at [www.ed.gov/policy/elsec/guid/secletter/190311.html](http://www.ed.gov/policy/elsec/guid/secletter/190311.html)) that it is no longer implementing these provisions. That means an LEA may enter into a contract with a religious organization to provide equitable services on the same basis as any other entity. Those services still must be secular, neutral, and non-ideological under ESEA section 1117(a)(2).

#### § 200.65 Determining equitable participation of teachers and families of participating private school children.

*Current Regulations:* Section 200.65 contains provisions related to determining the equitable participation of teachers and families of participating private school children.

*Final Regulations and Reasons:* We make the following changes to § 200.65:

(1) Revise § 200.65(a) to clarify that funds for equitable services for teachers and families of participating private

school children come from the proportional share of funds calculated consistent with ESEA section 1117(a)(4)(A)(ii), the requirements of which are included in § 200.64(a). Under NCLB, funds for such equitable services came from required reservations for those purposes at the LEA level and were determined in proportion to the number of private school children from low-income families residing in participating private school attendance areas.

(2) Revise § 200.65(a) and (b) to align with the statutory language in ESEA section 1117(a)(1)(B), which requires an LEA to “ensure that teachers and families of the children participate, on an equitable basis, in services and activities” developed under title I, part A.

(3) Delete § 200.65(c) because it is no longer necessary to clarify that private school teachers are not subject to highly qualified teacher requirements. Public school teachers are also no longer subject to those requirements under the amended ESEA.

#### § 200.68 Ombudsman.

*Current Regulations:* None.

*Final Regulations and Reasons:* We add § 200.68 to incorporate the new requirement in ESEA section 1117(a)(3)(B) that to help ensure such equity for such private school children, teachers, and other educational personnel, the State educational agency involved shall designate an ombudsman to monitor and enforce the requirements of title I, part A. Given the importance of this new requirement, we incorporate it in the regulations on equitable services for private school children.

#### Allocations to LEAs

#### § 200.73 Applicable hold-harmless provisions.

*Current Regulations:* Section 200.73 contains applicable hold-harmless provisions that affect the allocation of title I, part A funds to LEAs.

*Final Regulations and Reasons:* We make the following changes to § 200.73:

(1) In § 200.73(a)(4) regarding the variable hold harmless based on percentages of poverty, add a citation to the hold-harmless provision for Education Finance Incentive Grants in ESEA section 1125A(f)(3), which is not new but was inadvertently omitted in the current regulations.

(2) Add § 200.73(e) to incorporate new ESEA section 4306(c), which provides that, for purposes of implementing the hold harmless protections in sections 1122(c) and 1125A(g)(3) for a newly opened or significantly expanded

charter school under title IV, part C, a State educational agency shall calculate a hold-harmless base for the prior year that, as applicable, reflects the new or significantly expanded enrollment of the charter school.

**§ 200.77 Reservation of funds by an LEA.**

*Current Regulations:* Section 200.77 contains both mandatory and permissible reservations off the top of an LEA's title I, part A allocation.

*Final Regulations and Reasons:* We make the following changes to § 200.77:

(1) Revise § 200.77(a)(1) regarding homeless children and youths to delete the phrase "who do not attend participating schools" to align with ESEA section 1113(c)(3)(A)(i), which does not include that phrase.

(2) Add paragraph § 200.77(a)(1)(ii) to incorporate new ESEA section 1113(c)(3)(C), which specifies allowable uses of title I, part A funds to serve homeless children and youths.

(3) Add paragraph § 200.77(a)(4) to incorporate ESEA section 1113(c)(3)(B), which requires an LEA to determine the share of funds reserved for homeless children and youths, children in local institutions for neglected children, and, if appropriate, children in local institutions for delinquent children and neglected or delinquent children in community day programs "based on the total allocation received by the local educational agency; and . . . prior to any allowable expenditures or transfers by the local educational agency."

(4) Revise § 200.77(b) to incorporate ESEA section 1113(c)(4), which authorizes the use of title I, part A funds for incentives and rewards for teachers in title I schools identified for comprehensive or targeted support and improvement activities.

(5) Delete current paragraphs (c) and (d), which deal with required reservations for choice-related transportation and supplemental educational services and professional development, because those reservations are no longer required under the amended ESEA.

(6) Add a new § 200.77(d) to require a reservation for the provision and administration of equitable services for private school children, their teachers, and their families given the new proportional share requirement in ESEA section 1117(a)(4)(A)(ii) and § 200.64(a).

(7) Revise § 200.77(e), as redesignated, to clarify that a reservation for administrative expenses now pertains to programs for public school children because funds for administration for equitable services for private school children come from the reservation

under § 200.77(d). We also revise § 200.77(e), as redesignated, to delete special capital expenses incurred in providing equitable services. The list of expenses came from ESEA section 5595, as amended by NCLB, which was part of a special grant program that is no longer authorized under the amended ESEA. To the extent capital expenses are needed to provide equitable services to eligible private school children, they remain allowable absent the specific list in the regulations.

(8) Revise § 200.77(f), as redesignated, to add "early childhood education" to align with ESEA section 1113(c)(5), which authorizes an LEA to reserve funds "to provide early childhood education programs for eligible children."

**§ 200.78 Allocation of funds to school attendance areas and schools.**

*Current Regulations:* Section 200.78 sets forth regulations governing the allocation of title I, part A funds to school attendance areas and schools within an LEA.

*Final Regulations and Reasons:* We make the following changes to § 200.78:

(1) Consistent with ESEA sections 1113(c)(1) and 1117(a)(4)(A)(ii), revise § 200.78(a)(1) to clarify that allocations to school attendance areas and schools take place after an LEA makes the appropriate reservations, including reserving the proportional share for equitable services for private school children, their teachers, and their families. Because the proportional share for equitable services is already reserved, allocations to school attendance areas and schools under ESEA section 1113(c)(1) are then made on the "basis of the total number of public school children from low-income families in each area or school."

(2) Delete § 200.78(a)(2). Paragraph (a)(2), which addresses various ways to obtain a poverty count of private school children, has been moved to § 200.64(a)(2) where it more appropriately belongs in light of the new proportional share requirement.

(3) Add a new § 200.78(a)(2) to incorporate the provisions in ESEA section 1113(a)(5)(B) and (C) regarding feeder patterns for determining the poverty percentages in secondary schools.

*Subpart C—Migrant Education Program*  
**§ 200.81 Program definitions.**

*Current Regulations:* Current § 200.81 sets forth the definitions that apply to programs and projects operated under title I, part C.

*Final Regulations and Reasons:* We make the following changes to § 200.81:

(1) Revise § 200.81(a) to add "or employment" to the defined term "Agricultural work" to align with the definition of "migratory agricultural worker" in ESEA section 1309(2), which refers to "temporary or seasonal employment." We also add specific reference to "raw agricultural products" to align with the definition of "Migratory agricultural worker" in ESEA section 1309(2), which refers to "initial processing of raw agricultural products" as an example of temporary or seasonal employment in agriculture. We remove specific reference to "cultivation" and "harvesting" of trees, as such activities are considered production or initial processing of trees, and trees are listed as one example of raw agricultural products.

(2) Revise § 200.81(c) to add "or employment" to the defined term "Fishing work" to align with the definition of "Migratory fisher" in ESEA section 1309(4), which refers to "temporary or seasonal employment."

(3) Revise § 200.81(f) to add the definition of "Migratory agricultural worker" in ESEA section 1309(2). The definition of "Migratory agricultural worker" in current § 200.81(f) was superseded by the amendments to the ESEA and therefore rescinded on August 22, 2018.

(4) Revise § 200.81(g) to add the definition of "Migratory child" in ESEA section 1309(3). The definition of "Migratory child" in current § 200.81(g) was superseded by the amendments to the ESEA and therefore rescinded on August 22, 2018.

(5) Revise § 200.81(h) to add the definition of "Migratory fisher" in ESEA section 1309(4). The definition of "Migratory fisher" in current § 200.81(h) was superseded by the amendments to the ESEA and therefore rescinded on August 22, 2018.

(6) Revise § 200.81(k) to change the defined term from "MSIX Interconnection Agreement" to "MSIX Memorandum of Understanding (MOU)" to be consistent with current practice.

(7) Revise § 200.81(l) to modify the reference to "MSIX Interconnection Agreement" to refer to "MSIX MOU."

**§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.**

*Current Regulations:* Current § 200.83 sets forth regulations governing the comprehensive needs assessment and comprehensive State plan for service delivery that SEA recipients of title I,

part C funding must conduct and develop.

**Final Regulations and Reasons:** We revise § 200.83 to add “for service delivery” after “comprehensive State plan” in paragraphs (a), (b), and (c). As drafted, the regulatory language does not match the title of the section. These additions make the regulatory language consistent with the title and consistent with ESEA section 1306.

**§ 200.85 Responsibilities of SEAs for the electronic exchange through MSIX of specified educational and health information of migratory children.**

**Current Regulations:** Current § 200.85 sets forth the responsibilities of SEAs for the electronic exchange of specified educational and health information of migratory children through the Migrant Student Information Exchange (MSIX).

**Final Regulations and Reasons:** To be consistent with current practice, we modify the reference to “MSIX Interconnection Agreement” in § 200.85(f)(1) and (2) to refer to “MSIX MOU.”

**§ 200.89 Re-interviewing; Eligibility documentation; and Quality control.**

**Current Regulations:** Section 200.89 sets forth the responsibilities of SEAs for re-interviewing to ensure eligibility of children under the Migrant Education Program (MEP), the responsibilities of SEAs to document the eligibility of migratory children, and the responsibilities of SEAs to establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children.

**Final Regulations and Reasons:** We make the following changes to § 200.89:

(1) Revise § 200.89(b)(1)(i) to remove the requirements for SEAs based on timelines associated with the initial passage of the regulation. The language is no longer applicable.

(2) Revise § 200.89(b)(1)(iii)(C) to remove the reference to § 200.89(a), which was rescinded on August 22, 2018.

(3) Revise § 200.89(c)(2) to include a reference to the eligibility definitions in ESEA section 1309 in addition to the regulatory eligibility definitions in § 200.81.

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

**§ 200.90 Program definitions.**

**Current Regulations:** Current § 200.90 sets forth the definitions that apply to programs and projects operated under title I, part D.

**Final Regulations and Reasons:** We make the following changes to § 200.90:

(1) Revise § 200.90(b) to change the reference to “vocationally oriented subjects” in the definition of “Regular program of instruction” to “career and technical education.” The amended ESEA uses the term “career and technical education” rather than “vocational” education (see, e.g., ESEA section 1414(a)(1)(E)(ii)).

(2) Revise § 200.90(c) to remove the definitions of “Immigrant children and youth and limited English proficiency” and “Migrant youth.” Part D, subpart 1 of the amended ESEA does not use these or related terms. Thus, these definitions are no longer necessary.

#### *Subpart E—General Provisions*

**§ 200.100 Reservation of funds for school improvement, State administration, and direct student services.**

**Current Regulations:** Current § 200.100 sets out regulations governing the required State reservation for school improvement in ESEA section 1003 and permissive reservations for State administration in ESEA section 1004 and for State academic achievement awards in ESEA section 1117(c)(2), as amended by NCLB.

**Final Regulations and Reasons:** We make the following changes to § 200.100:

(1) Revise the section heading and the introductory language to delete “State academic achievement awards program” because it is no longer authorized in the amended ESEA and add “direct student services” because it is a new permissible reservation in amended ESEA section 1003A.

(2) Revise § 200.100(a)(1) to incorporate statutory language in ESEA section 1003(a). Section 1003(a) states that, to carry out the State’s school improvement activities and the State’s “statewide system of technical assistance and support for local educational agencies,” a State must reserve the greater of (1) seven percent of the amount the State receives under subpart 2 of part A of title I; or (2) the sum of the amount the State reserved for fiscal year 2016 under ESEA section 1003(a), as amended by NCLB, and the amount the State received for fiscal year 2016 under ESEA section 1003(g), as amended by NCLB.

(3) Revise § 200.100(a)(2) to make clear that, in reserving funds for school improvement activities under § 200.100(a)(1), the special rule in ESEA section 1003(h) applies beginning in fiscal year 2018 and subsequent years.

(4) Remove the language in current § 200.100(c) regarding the State

academic achievement awards program, because it is no longer authorized under the amended ESEA.

(5) Revise § 200.100(c) to incorporate the authority for direct student services in ESEA section 1003A. ESEA section 1003A provides that a State, after meaningful consultation with geographically diverse local educational agencies, may reserve not more than 3 percent of the amount the State educational agency receives under subpart 2 of part A for each fiscal year to carry out direct student services.

#### **§ 200.103 Definitions.**

**Current Regulations:** Current § 200.103 contains definitions that apply to programs operated under part 200.

**Final Regulations and Reasons:** We revise § 200.103(c) to change “Student with a disability” to “Child with a disability” to align with the definitions in ESEA section 8101(4) and section 602(3) of the IDEA.

## **II. General Provisions**

**Background:** The regulations in 34 CFR part 299 establish regulatory requirements that apply to programs in the ESEA in general. As noted earlier in this document, in December 2015, Congress reauthorized the ESEA through the ESSA. As a result of the amendments to the statute through the reauthorization, some of the regulations in part 299 need minor modification to remain aligned with the statute; we are making those minor modifications through these technical amendments.

## **34 CFR Part 299**

### *Subpart A—Purpose and Applicability*

**§ 299.2 What general administrative regulations apply to ESEA programs?**

**Current Regulations:** Current § 299.2 clarifies the applicability of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) in 2 CFR part 200 to ESEA programs.

**Final Regulations and Reasons:** We make the following changes to § 299.2:

(1) Revise the introductory text in § 299.2 to clarify that 2 CFR part 200 applies to all ESEA programs except for Impact Aid in title VIII of the ESEA.

(2) Delete paragraph (a), which is no longer needed because grantees under direct grant programs are covered in the change to the introductory text.

(3) Delete paragraph (b) and the corresponding note to remove language exempting, under certain circumstances, grantees from the requirements of the Uniform Guidance. This flexibility is no longer applicable following the

Department's repeal of 34 CFR part 80 and adoption of the Uniform Guidance.

*Subpart D—Fiscal Requirements*

**§ 299.5** What maintenance of effort requirements apply to ESEA programs?

*Current Regulations:* Current § 299.5 describes the maintenance of effort requirement that applies to certain ESEA programs and identifies the programs to which the requirement applies.

*Final Regulations and Reasons:* We revise § 299.5(b) to align with changes to the covered programs as defined in ESEA section 8101(11). We also add the formula grant program under title VI, because the amended ESEA made the maintenance of effort requirement in ESEA section 8521 applicable to that program. For title III, part A, we exclude section 3112 from coverage, because under that section the Department provides grants on a competitive basis directly to Indian Tribes and certain other eligible entities. Only the formula grants to States, which are described in the remainder of part A, subpart 1 of title III, are covered by the maintenance of effort requirement in ESEA section 8521, which requires SEAs to reduce payments to LEAs if they fail to maintain effort. We also revise the example in paragraph (c) to update the referenced years.

*Subpart E—Services to Private School Students and Teachers*

**§ 299.6** What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?

*Current Regulations:* Current § 299.6 establishes an agency's, consortium's, or entity's responsibilities for providing services to eligible private school children, their teachers, and other educational personnel. It also identifies the programs to which this subpart applies.

*Final Regulations and Reasons:* We make the following changes to § 299.6:

(1) Revise § 299.6(a) to replace the phrase “agency or consortium of agencies” with “agency, consortium, or entity,” in accordance with ESEA section 8501(a)(1), which, in addition to agencies and consortia of agencies, refers to other entities receiving funds under applicable programs. We make conforming changes, as applicable, in §§ 299.6 through 299.9.

(2) Revise § 299.6(a) to include the phrase “served by such agency, consortium, or entity,” in accordance with ESEA section 8501(a)(1), which states that equitable services must be provided in areas served by an

applicable agency, consortium, or entity.

(3) Revise § 299.6(b) to align with changes to the applicable programs under ESEA section 8501(b)(1).

**§ 299.7** What are the factors for determining equitable participation of children and teachers in private schools?

*Current Regulations:* Current § 299.7 sets forth the factors for determining equitable participation of private school children and teachers, including requirements for equal expenditures and equitable services.

*Final Regulations and Reasons:* We make the following changes to § 299.7:

(1) Add § 299.7(a)(3) to incorporate the language of ESEA section 8501(a)(4)(B), which requires that funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

(2) Add § 299.7(a)(4) to incorporate the language of ESEA section 8501(a)(4)(C), which requires each SEA to provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under title VIII, part F, that the local educational agencies have determined are available for eligible private school children.

(3) Delete § 299.7(b)(2)(iv)(B) to align with the requirements in ESEA section 8506. Under the statutory requirements, private school children are not subject to challenging State academic standards.

**§ 299.9** What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

*Current Regulations:* Current § 299.9 sets forth the requirements regarding property, equipment, and supplies an agency, consortium, or other entity acquires in providing equitable services under applicable ESEA programs.

*Final Regulations and Reasons:* We make the following changes to § 299.9:

(1) Revise § 299.9(a) through (d) to replace the phrase “public agency” with “agency, consortium, or entity,” in accordance with ESEA section 8501(a)(1) and to maintain consistency with §§ 299.6 through 299.8.

(2) Remove § 299.9(f) because it is no longer necessary to define “public agency” in light of the change described above.

**§ 299.10** What are the requirements for a State ombudsman?

*Current Regulations:* None.

*Final Regulations and Reasons:* We add § 299.10 to incorporate the new requirement in ESEA section 8501(a)(3)(B) that to help ensure equitable services are provided to private school children, teachers, and other educational personnel under this section, the State educational agency involved shall direct the ombudsman designated by the agency under section 1117 to monitor and enforce the requirements of this section. Given the importance of this new requirement, we incorporate it in the regulations on equitable services for private school students and teachers.

*Subpart F—Complaint Procedures*

**§ 299.11** What complaint procedures shall an SEA adopt?

*Current Regulations:* Current § 299.10 requires an SEA to adopt written procedures for the receipt, resolution, appeal, and investigation of complaints regarding the administration of certain ESEA programs. It also establishes the programs to which such procedures apply.

*Final Regulations and Reasons:* We redesignate current § 299.10 as § 299.11 and revise § 299.11(b), as redesignated, to reflect changes to the applicable programs under ESEA section 8304(a)(3)(C), which requires an SEA to assure it will adopt written procedures for the receipt and resolution of complaints for each program included in its consolidated State plan. For title III, part A, we exclude section 3112 from coverage because under that section the Department provides grants on a competitive basis directly to Indian Tribes and certain other eligible entities. For title III, only the formula grants to States, which are described in the remainder of part A, subpart 1 of title III, are covered by the statutory requirements in ESEA section 8304.

**§ 299.12** What items are included in the complaint procedures?

*Current Regulations:* Current § 299.11 establishes what must be included in an SEA's complaint procedures.

*Final Regulations and Reasons:* We redesignate current § 299.11 as § 299.12 and add § 299.12(a)(2), as redesignated, to incorporate the requirement in ESEA section 8503(a) that for complaints involving the participation of private school children an SEA must provide a written resolution within 45 days.

## Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). There is good cause here for waiving rulemaking because these regulations make technical changes only to align with current law and do not establish substantive policy. However, the Department is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. The Department will consider the comments received and may conduct additional rulemaking based on the comments.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because these final regulations are merely technical, there is good cause to make them effective on the day they are published.

## Executive Orders 12866, 13563, and 13771

### Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President’s priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly

interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

### Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. As discussed elsewhere in this document, through this action we make only technical changes to align Department regulations with current law; we do not establish any substantive requirements or policies beyond those in the authorizing statute. Accordingly, the regulations do not impose any costs, nor generally confer any benefits, that are not attributable to statute.

The technical amendments in this document serve in some cases to revise existing regulations to conform with minor language updates in statute, and in others to add to the regulations substantially new statutory provisions, albeit verbatim and without interpretation. With respect to the latter group of technical amendments, OMB Circular A-4 (available at [www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf)) requires the use of a pre-statutory baseline in assessing costs and benefits—that is, it requires for these amendments the estimation of costs and benefits that are attributable to statute. We provide estimates of statute-attributable costs of these amendments in the following paragraphs. The Department expects that States and LEAs will use ESEA program funds, including funds reserved for administration, to cover these estimated costs, and that any costs that cannot be met with Federal resources will generally be minimal. Moreover, we believe that the costs of these amendments are outweighed by their anticipated benefits, which include, among other things, consistency between the authorizing statute and implementing regulations; increased transparency in State and local implementation of title I and other

ESEA programs; greater flexibility in the use of Federal program funds to address local educational needs and improve educational outcomes; improved services for students, including for eligible students in private schools; and better student preparedness for college and the workforce.

### Standards and Assessments

The amendments to § 200.1 include two substantially new statutory provisions regarding the alignment of State standards with expectations for college- and career-readiness. Specifically, § 200.1(c)(1)(i) implements the requirement in ESEA section 1111(b)(1)(D)(i) that a State's academic achievement standards be aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards. Section 200.1(d)(5) similarly implements the requirement in ESEA section 1111(b)(1)(E)(i)(V) that a State's alternate academic achievement standards for students with the most significant cognitive disabilities be aligned to ensure that a student who meets the standards is on track to pursue postsecondary education or employment.

Based on results of the Department's Assessment Peer Review and other available information, we estimate that 37 of 52 States (including the District of Columbia and Puerto Rico) can already demonstrate alignment of their academic achievement standards with entrance requirements for public higher education consistent with the requirement in § 200.1(c)(1)(i). For the remaining 15 States, we estimate that each will need \$250,000 to contract with a third party to perform the requisite standards analysis and validation, for a total estimated one-time cost of \$3,750,000. We further anticipate that all 52 States will need to engage a contractor to analyze and validate their alternate academic achievement standards for students with the most significant cognitive disabilities in order to meet the requirement in § 200.1(d)(5). We estimate that States will need on average \$50,000 for this purpose, a total estimated one-time cost of \$2,600,000.

### Participation of Eligible Children in Private Schools; Services to Private School Students and Teachers

This action includes several regulations, in §§ 200.63, 200.64, 200.68, 299.7, and 299.10, that implement substantially new statutory provisions regarding the provision of equitable services to students and teachers in private schools. Notable

among these regulations is § 200.63(f)(3), which implements the requirement in ESEA section 1117(b)(6)(C) that a State establish a process to consider requests from private school officials that the State provide for equitable services if the officials demonstrate that an LEA has not carried out its equitable services responsibilities. A State should need an average of 40 hours to establish such a process; assuming an average cost of \$40 an hour for State staff, we accordingly estimate a one-time cost per State of \$1,600 and a total estimated one-time cost of \$83,230. The Department further estimates that 17 States will need to implement their established State provision of equitable services request process in a given year and that such States will need 56 hours for implementation, resulting in an estimated annual cost of \$2,240 per State and \$38,080 in total.

In addition, §§ 200.64(a)(4) and 299.7(a)(4) implement new statutory requirements for each State to provide notice to private school officials of each LEA's allocation of funds for equitable services under title I, part A and other applicable programs. We estimate that a State will need an average of 8 hours to provide such notice, resulting in an estimated annual cost of \$320 per State and \$16,640 across States.

The regulations also implement, in §§ 200.68 and 299.10, statutory requirements for States to designate an ombudsman to monitor and enforce equitable services requirements under title I, part A and other applicable programs. Insofar as States were required to monitor and enforce equitable services requirements under the previous authorization of the ESEA, the Department does not believe this requirement imposes any new costs apart from the minimal costs associated with designating an ombudsman.

Lastly, the regulations implement several new statutory equitable services requirements for LEAs. We estimate the total burden associated with these regulations to be at most 8 hours and, at \$35 per hour for LEA staff, \$280 per LEA, a total maximum cost across an estimated 17,000 LEAs of \$4,760,000. These regulations include—

(1) Section 200.63(a), which implements the requirement in ESEA section 1117(b)(1) that an LEA transmit to the State ombudsman results of whether it reaches agreement through consultation with private school officials on the provision of equitable services;

(2) Section 200.63(b)(8) through (11), which add to the regulations new statutorily required issues on which an

LEA consults with private school officials;

(3) Section 200.63(e)(1)(ii), which implements the requirement in ESEA section 1117(b)(5) that an LEA include, in its written affirmation to the State that consultation has occurred, the option for private school officials to indicate their belief that timely and meaningful consultation did not occur or that proposed services are not equitable; and

(4) Section 200.64(a)(2), which implements the requirement in ESEA section 1117(a)(4)(A)(ii) that an LEA calculate the proportional share of funds available for equitable services based on the LEA's total amount of title I, part A funds.

### Other Provisions

This regulatory action includes several other amendments implementing substantially new statutory requirements. These include § 200.11(c), which implements the requirement in ESEA section 1111(h)(1)(C)(xii) for States and LEAs to include in annual report cards a comparison of their NAEP scores with national average scores. This requirement adds minimal burden over prior law, which required that States and LEAs provide NAEP scores with no national average comparison. Also adding minimal burden is § 200.29(c)(2), which implements a new provision in ESEA section 6115(c) requiring an LEA consolidating Indian Education funds in a title I schoolwide program to identify in its application how the use of such funds in a schoolwide program will produce benefits for Indian students that are not achievable outside of a schoolwide program. In addition, § 200.73(e) implements the requirement in ESEA section 4306(c) that in allocating title I, part A funds to LEAs a State use a hold-harmless base for newly opened or significantly expanded charter schools that are LEAs that reflects the new or significantly expanded enrollment of the charter school. This regulation should not impose any new burden, insofar as States already had to use a hold-harmless base for all LEAs, including charter school LEAs, in carrying out their allocation responsibilities under the previous authorization of the ESEA.

### Conformance with *Trinity Lutheran*

As discussed elsewhere in this document, the Department, in consultation with the U.S. Department of Justice, determined that the statutory provision in ESEA sections 1117(d)(2)(B) and 8501(d)(2)(B) requiring an equitable services provider

be “independent of . . . any religious organization” is unconstitutional because it categorically excludes religious organizations (or affiliated persons) based solely on their religious identity from providing equitable services and thus runs afoul of the Supreme Court’s decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*. Accordingly, the Department is deleting the phrase “and of any religious organization” from § 200.64(b)(3)(ii)(A). That means an LEA may enter into a contract with a religious organization to provide equitable services on the same basis as any other entity. This change should not impose any new costs or burdens on an LEA; it merely expands the entities with which an LEA, at its discretion, may contract to provide equitable services.

### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 200.1.)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

To send any comments that concern how the Department could make these regulations easier to understand, see the instructions under **FOR FURTHER INFORMATION CONTACT**.

### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

### Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to a collection of information in final regulations at the end of the affected section of the regulations.

### Intergovernmental Review

The programs covered by the final regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

### List of Subjects

#### 34 CFR Part 200

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

#### 34 CFR Part 299

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: June 6, 2019.

**Betsy DeVos,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends parts 200 and 299 of title 34 of the Code of Federal Regulations as follows:

### PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

- 1. The authority citation for part 200 is revised to read as follows:

**Authority:** 20 U.S.C. 6301 through 6576, unless otherwise noted.

Section 200.1 also issued under 20 U.S.C. 6311(b)(1).

Section 200.11 also issued under 20 U.S.C. 6311(c)(2), (g)(2)(D), (h)(1)(C)(xii), (h)(2)(C), 6312(c)(3), 9622(d)(1).

Section 200.25 also issued under 20 U.S.C. 6314.

Section 200.26 also issued under 20 U.S.C. 6314.

Section 200.29 also issued under 20 U.S.C. 1413(a)(2)(D), 6311(g)(2)(E), 6314, 6396(b)(4), 7425(c), 7703(d).

Section 200.61 also issued under 20 U.S.C. 6312(e).

Section 200.62 also issued under 20 U.S.C. 6320(a).

Section 200.63 also issued under 20 U.S.C. 6320(b).

Section 200.64 also issued under 20 U.S.C. 6320.

Section 200.65 also issued under 20 U.S.C. 6320(a)(1)(B).

Section 200.68 also issued under 20 U.S.C. 6320(a)(3)(B).

Section 200.73 also issued under 20 U.S.C. 6332(c), 6336(f)(3), 7221e(c).

Section 200.77 also issued under 20 U.S.C. 6313(c)(3)–(5), 6318(a)(3), 6320; 42 U.S.C. 11432(g)(1)(J)(ii)–(iii), 11433(b)(1).

Section 200.78 also issued under 20 U.S.C. 6313(a)(5)(B), (c), 6333(c)(2).

Section 200.79 also issued under 20 U.S.C. 6313(b)(1)(D), (c)(2)(B), 6321(d).

Section 200.81 also issued under 20 U.S.C. 6391–6399.

Section 200.83 also issued under 20 U.S.C. 6396.

Section 200.85 also issued under 20 U.S.C. 6398.

Section 200.87 also issued under 20 U.S.C. 7881(b)(1)(A).

Section 200.88 also issued under 20 U.S.C. 6321(d).

Section 200.90 also issued under 20 U.S.C. 6432, 6454, 6472.

Section 200.100 also issued under 20 U.S.C. 6303, 6303b, 6304.

Section 200.103 also issued under 20 U.S.C. 6315(c)(1)(A)(ii), 6571(a), 8101(4).

- 2. Section 200.1 is amended by:
  - a. Revising paragraphs (a), (b)(3), (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii)(A) introductory text;
  - b. Removing paragraph (c)(3);
  - c. In paragraph (d), adding “(IDEA)” after “Individuals with Disabilities Education Act”;

- d. Revising paragraphs (d)(1) through (3);
- e. Adding paragraphs (d)(4) and (5);
- f. Revising paragraphs (e) and (f); and
- g. Removing the parenthetical authority citation.

The revisions and additions read as follows:

**§ 200.1 State responsibilities for developing challenging academic standards.**

(a) *Academic standards in general.* A State must adopt challenging academic content standards and aligned academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out this subpart. These academic standards must—

(1) Be the same academic content standards and aligned academic achievement standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under this subpart, except as provided in paragraph (d) of this section, which applies only to the State's academic achievement standards;

(2) With respect to the academic achievement standards, include the same knowledge, skills, and levels of achievement expected of all public school students in the State, except as provided in paragraph (d) of this section; and

(3) Include at least mathematics, reading/language arts, and science, and may include other subjects determined by the State.

(b) \* \* \*

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and science, irrespective of course titles or years completed.

(c) *Academic achievement standards.*

(1) The challenging academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's challenging academic content standards and with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards; and

(ii) \* \* \*

(A) Not less than three achievement levels that describe at least—

\* \* \* \* \*

(d) \* \* \*

(1) Are aligned with the State's challenging academic content standards;

(2) Promote access to the general curriculum, consistent with the IDEA;

(3) Reflect professional judgment as to the highest possible standards achievable by such students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of the IDEA for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014, and § 200.2(b)(3)(ii)(B)(2).

(e) *Modified academic achievement standards.* A State may not define or implement for use under this subpart any alternate or modified academic achievement standards for children with disabilities under section 602(3) of the IDEA that are not alternate academic achievement standards that meet the requirements of paragraph (d) of this section.

(f) *English language proficiency standards.* A State must adopt English language proficiency standards that—

(1) Are derived from the four recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the State's challenging academic content standards and aligned academic achievement standards.

■ 3. Section 200.11 is revised to read as follows:

**§ 200.11 Participation in NAEP.**

(a) *State participation.* Each State that receives funds under this subpart must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.

(b) *Local participation.* In accordance with section 1112(c)(3) of the ESEA, and notwithstanding section 303(d)(1) of the National Assessment of Educational Progress Authorization Act, an LEA that receives funds under this subpart must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section.

(c) *Report cards.* Each State and LEA must report on its annual State and LEA report card, respectively, the most recent available academic achievement

results in grades four and eight on the State's NAEP reading and mathematics assessments under paragraph (a) of this section, compared to the national average of such results. The report cards must include—

(1) The percentage of students at each achievement level reported on the NAEP in the aggregate and, for State report cards, disaggregated for each subgroup described in section 1111(c)(2) of the ESEA; and

(2) The participation rates for children with disabilities and for English learners.

- 4. Section 200.25 is amended by:
- a. Revising paragraphs (a)(1) and (b)(1)(ii) introductory text;
- b. Adding paragraph (b)(1)(iii);
- c. Revising paragraphs (b)(2), (c), (d), and (f); and
- d. Removing the parenthetical authority citation.

The revisions and addition read as follows:

**§ 200.25 Schoolwide programs in general.**

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest-achieving students, demonstrate proficiency related to the challenging State academic standards under § 200.1.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Except as provided under paragraph (b)(1)(iii) of this section, for the initial year of the schoolwide program—

\* \* \* \* \*

(iii) A school that does not meet the poverty percentage in paragraph (b)(1)(ii) of this section may operate a schoolwide program if the school receives a waiver from the State to do so, after taking into account how a schoolwide program will best serve the needs of the students in the school in improving academic achievement and other factors.

(2) In determining the percentage of children from low-income families under paragraph (b)(1) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under this subpart.

(c) *Participating students and services.* A school operating a schoolwide program is not required to identify—

(1) Particular children as eligible to participate; or

(2) Individual services as supplementary.

(d) *Supplemental funds*. In accordance with the method of determination described in section 1118(b)(2) of the ESEA, a school participating in a schoolwide program must use funds available under this subpart and under any other Federal program included under paragraph (e) of this section and § 200.29 only to supplement the total amount of funds that would, in the absence of the funds under this subpart, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and English learners.

\* \* \* \* \*

(f) *Prekindergarten program*. A school operating a schoolwide program may use funds made available under this subpart to establish or enhance prekindergarten programs for children below the age of 6.

■ 5. Section 200.26 is amended by revising paragraphs (a)(1)(i) introductory text, (a)(1)(i)(B), (a)(1)(ii), (b), and (c)(1) through (3) and removing the parenthetical authority citation to read as follows:

#### § 200.26 Core elements of a schoolwide program.

(a) \* \* \*  
(1) \* \* \*

(i) Takes into account information on the academic achievement of all students in the school, including all subgroups of students under section 1111(c)(2) of the ESEA and migratory children as defined in section 1309(3) of the ESEA, relative to the challenging State academic standards under § 200.1 and any other factors as determined by the LEA to—

\* \* \* \* \*

(B) Identify the specific academic needs of students and subgroups of students who are failing, or are at risk of failing, to meet the challenging State academic standards; and

(ii) Assesses the needs of the school relative to each of the components of the schoolwide program under section 1114(b)(7) of the ESEA.

\* \* \* \* \*

(b) *Comprehensive plan*. Using data from the comprehensive needs assessment under paragraph (a) of this section, a school that wishes to operate a schoolwide program must develop a comprehensive plan, in accordance with section 1114(b) of the ESEA, that describes how the school will improve academic achievement for all students in the school, but particularly the needs

of those students who are failing, or are at risk of failing, to meet the challenging State academic standards and any other factors as determined by the LEA.

(c) \* \* \*

(1) Regularly monitor the implementation of, and results achieved by, the schoolwide program, using data from the State's annual assessments and other indicators of academic achievement;

(2) Determine whether the schoolwide program has been effective in increasing the achievement of students in meeting the challenging State academic standards, particularly for those students who had been furthest from achieving the standards; and

(3) Revise the plan, as necessary, based on the results of the regular monitoring, to ensure continuous improvement of students in the schoolwide program.

■ 6. Section 200.29 is amended by revising paragraphs (c)(2), (c)(3)(iii) and (iv), and (e) and removing the parenthetical authority citation to read as follows:

#### § 200.29 Consolidation of funds in a schoolwide program.

\* \* \* \* \*

(c) \* \* \*

(2) *Indian education*. The school may consolidate funds received under subpart 1 of part A of title VI of the ESEA if—

(i) The parent committee established by the LEA under section 6114(c)(4) of the ESEA approves the inclusion of these funds;

(ii) The schoolwide program is consistent with the purpose described in section 6111 of the ESEA; and

(iii) The LEA identifies in its application how the use of such funds in a schoolwide program will produce benefits to Indian students that would not be achieved if the funds are not used in a schoolwide program.

(3) \* \* \*

(iii) The school may also consolidate funds received under section 7003(d) of the ESEA (Impact Aid) for children with disabilities in a schoolwide program.

(iv) A school that consolidates funds under part B of IDEA or section 7003(d) of the ESEA may use those funds for any activities under its schoolwide program plan but must comply with all other requirements of part B of IDEA, to the same extent it would if it did not consolidate funds under part B of IDEA or section 7003(d) of the ESEA in the schoolwide program.

\* \* \* \* \*

(e) Each State must modify or eliminate State fiscal and accounting barriers so that schools can easily

consolidate funds from other Federal, State, and local sources in their schoolwide programs to improve educational opportunities and reduce unnecessary fiscal and accounting requirements.

■ 7. Section 200.61 is revised to read as follows:

#### § 200.61 Parents' right to know.

(a) *Information for parents*. (1) At the beginning of each school year, an LEA that receives funds under this subpart must notify the parents of each student attending a title I school that the parents may request, and the LEA will provide the parents on request and in a timely manner, information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

(i) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(ii) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(iii) Whether the teacher is teaching in the field of discipline of the certification of the teacher.

(iv) Whether the parent's child is provided services by paraprofessionals and, if so, their qualifications.

(2) A school that participates under this subpart must provide to each parent—

(i) Information on the level of achievement and academic growth, if applicable and available, of the parent's child on each of the State academic assessments required under section 1111(b)(2) of the ESEA; and

(ii) Timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.

(b) *Testing transparency*. (1) At the beginning of each school year, an LEA that receives funds under this subpart must notify the parents of each student attending a title I school that the parents may request, and the LEA will provide the parents on request in a timely manner, information regarding any State or LEA policy regarding student participation in any assessments mandated by section 1111(b)(2) of the ESEA and by the State or LEA, which must include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.

(2) Each LEA that receives funds under this subpart must make widely

available through public means (including by posting in a clear and easily accessible manner on the LEA's website and, where practicable, on the website of each school served by the LEA) for each grade served by the LEA, information on each assessment required by the State to comply with section 1111 of the ESEA, other assessments required by the State, and, where such information is available and feasible to report, assessments required districtwide by the LEA, consistent with section 1112(e)(2)(B)–(C) of the ESEA.

(c) *Language Instruction for English learners*—(1) *Notice.* (i) An LEA using funds under this subpart or title III of the ESEA to provide a language instruction educational program as determined under title III must, not later than 30 days after the beginning of the school year unless paragraph (c)(1)(ii) of this section applies, inform parents of an English learner identified for participation or participating in such a program of the information in section 1112(e)(3)(A) of the ESEA.

(ii) For a child who has not been identified as an English learner prior to the beginning of the school year but is identified as an English learner during such school year, an LEA must notify the child's parents during the first two weeks of the child being placed in a language instruction educational program consistent with paragraph (c)(1)(i) of this section.

(2) *Parental participation.* An LEA receiving funds under this subpart must implement an effective means of outreach, consistent with paragraph (c)(3) of this section, to parents of English learners to inform parents how the parents can—

(i) Be involved in the education of their children; and

(ii) Be active participants in assisting their children to—

(A) Attain English proficiency;

(B) Achieve at high levels within a well-rounded education; and

(C) Meet the challenging State academic standards expected of all students.

(3) *Parent meetings.* Implementing an effective means of outreach under paragraph (c)(2) of this section must include holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of English learners assisted under this subpart or title III.

(4) *Basis for admission or exclusion.* A student may not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

(d) *Notice and format.* The notice and information provided to parents under this section must meet the requirements in § 200.2(e).

■ 8. Section 200.62 is amended by revising paragraphs (a)(1) and (2) and (b)(1)(ii) to read as follows:

**§ 200.62 Responsibilities for providing services to private school children.**

(a) \* \* \*

(1) In accordance with §§ 200.62 through 200.67 and section 1117 of the ESEA, provide, individually or in combination, as requested by private school officials to best meet the needs of eligible children, special educational services, instructional services (including evaluations to determine the progress being made in meeting such students' academic needs), counseling, mentoring, one-on-one tutoring, or other benefits under this subpart (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of participating private school children participate, on an equitable basis, in accordance with § 200.65 in services and activities developed pursuant to section 1116 of the ESEA.

(b) \* \* \*

(1) \* \* \*

(ii) Meet the criteria in section 1115(c) of the ESEA.

\* \* \* \* \*

■ 9. Section 200.63 is amended by: ■ a. Revising paragraphs (a) and (b)(6) and (7); ■ b. Redesignating paragraph (b)(8) as paragraph (b)(12); ■ c. Adding new paragraphs (b)(8) through (11); ■ d. Revising paragraphs (e)(1) and (f); ■ e. Removing the parenthetical authority citation.

The revisions and additions read as follows:

**§ 200.63 Consultation.**

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children, as well as their teachers and families under § 200.65. The goal of consultation is reaching agreement on how to provide equitable and effective programs for eligible private school children, and the results of that agreement must be

transmitted to the ombudsman designated under § 200.68.

(b) \* \* \*

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64(a), the proportion of funds that the LEA will allocate for these services, and how the LEA determines that proportion of funds.

(7) The method or sources of data that the LEA will use under § 200.64(a) to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.

(8) Whether the LEA will provide services directly or through a separate government agency, consortium, entity, or third-party contractor.

(9) Whether to provide equitable services to eligible private school children—

(i) By creating a pool or pools of funds with all of the funds allocated under § 200.64(a)(2) based on all the children from low-income families in a participating school attendance area who attend private schools; or

(ii) In a participating school attendance area who attend private schools with the proportion of funds allocated under § 200.64(a)(2) based on the number of children from low-income families who attend private schools.

(10) When, including the approximate time of day, the LEA will provide services.

(11) Whether the LEA will consolidate and use funds under subpart A of this part with eligible funds available for services to private school children under applicable programs, as defined in section 8501(b)(1) of the ESEA, to provide services to eligible private school children.

\* \* \* \* \*

(e)(1)(i) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(ii) The LEA's written affirmation must provide the option for private school officials to indicate their belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

\* \* \* \* \*

(f)(1) An official of a private school has the right to complain to the SEA that the LEA did not—

- (i) Engage in timely and meaningful consultation;
- (ii) Consider the views of the official of the private school; or
- (iii) Make a decision that treats the private school students equitably.

(2) If a private school official wishes to file a complaint, the official must provide the basis of the noncompliance by the LEA to the SEA and the LEA must forward the appropriate documentation to the SEA.

(3) An SEA must provide equitable services directly or through contracts with public or private agencies, organizations, or institutions if the appropriate private school officials have—

- (i) Requested that the SEA provide such services directly; and
- (ii) Demonstrated that the LEA has not met the requirements of §§ 200.62 through 200.67 in accordance with the SEA's procedures for making such a request.

- 10. Section 200.64 is amended by:
  - a. Revising paragraphs (a) and (b)(2)(ii);
  - b. In paragraph (b)(3)(ii)(A), removing the words “and of any religious organization”; and
  - c. Removing the parenthetical authority citation.

The revisions read as follows:

#### **§ 200.64 Factors for determining equitable participation of private school children.**

(a) *Equal expenditures.* (1) Funds expended by an LEA under this subpart for services for eligible private school children in the aggregate must be equal to the proportion of funds generated by private school children from low-income families who reside in participating public school attendance areas under paragraph (a)(2) of this section.

(2) An LEA must determine the proportional share of funds available for services for eligible private school children based on the total amount of funds received by the LEA under subpart 2 of part A of title I of the ESEA prior to any allowable expenditures or transfers by the LEA.

(3)(i) To obtain a count of private school children from low-income families who reside in participating public school attendance areas, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(1) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and

(2) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Use comparable poverty data from a different source, such as scholarship applications;

(D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

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

(ii) An LEA may count private school children from low-income families every year or every two years.

(iii) After timely and meaningful consultation in accordance with § 200.63, the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families.

(4) An SEA must provide notice in a timely manner to appropriate private school officials in the State of the allocation of funds for educational services and other benefits that LEAs have determined are available for eligible private school children.

(5) An LEA must obligate funds generated to provide equitable services for eligible private school children in the fiscal year for which the funds are received by the LEA.

(b) \* \* \*

(2) \* \* \*

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

\* \* \* \* \*

- 11. Section 200.65 is revised to read as follows:

#### **§ 200.65 Determining equitable participation of teachers and families of participating private school children.**

(a) From the proportional share reserved for equitable services under § 200.77(d), an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in services and activities under this subpart.

(b) After consultation with appropriate private school officials, the LEA must provide services and activities under paragraph (a) of this section either—

(1) In conjunction with the LEA's services and activities for teachers and families; or

(2) Independently.

- 12. Section 200.68 is added to read as follows:

#### **§ 200.68 Ombudsman.**

To help ensure equity for eligible private school children, teachers, and other educational personnel, an SEA must designate an ombudsman to monitor and enforce the requirements in §§ 200.62 through 200.67.

- 13. Section 200.73 is amended by:
  - a. In paragraph (a)(4), removing the citation “section 1122(c)” and adding in its place “sections 1122(c) and 1125A(f)(3)”;
  - b. Adding paragraph (e); and
  - c. Removing the parenthetical authority citation.

The addition reads as follows:

#### **§ 200.73 Applicable hold-harmless provisions.**

\* \* \* \* \*

(e) *Hold-harmless protection for a newly opened or significantly expanded charter school LEA.* An SEA must calculate a hold-harmless base for the prior year for a newly opened or significantly expanded enrollment of the charter school LEA.

- 14. Section 200.77 is amended by:
  - a. Revising paragraph (a)(1);
  - b. Adding paragraph (a)(4);
  - c. Revising paragraph (b);
  - d. Removing paragraphs (c) and (d);
  - e. Redesignating paragraph (e) as paragraph (c) and revising newly redesignated paragraph (c);
  - f. Adding a new paragraph (d);
  - g. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f) and revising newly redesignated paragraphs (e) and (f); and
  - h. Removing the parenthetical authority citation.

The revisions and additions read as follows:

#### **§ 200.77 Reservation of funds by an LEA.**

\* \* \* \* \*

(a) \* \* \*

(1)(i) Homeless children and youths, including providing educationally related support services to children in shelters and other locations where homeless children may live.

(ii) Funds reserved under paragraph (a)(1)(i) of this section may be—

(A) Determined based on a needs assessment of homeless children and youths in the LEA, taking into consideration the number and needs of those children, which may be the same needs assessment as conducted under section 723(b)(1) of the McKinney-Vento Homeless Assistance Act; and

(B) Used to provide homeless children and youths with services not ordinarily provided to other students under this subpart, including providing—

(1) Funding for the liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act; and

(2) Transportation pursuant to section 722(g)(1)(J)(iii) of that Act;

\* \* \* \* \*

(4) An LEA must determine the amount of funds reserved under paragraphs (a)(1)(i) and (a)(2) and (3) of this section based on the total allocation received by the LEA under subpart 2 of part A of title I of the ESEA prior to any allowable expenditures or transfers by the LEA;

(b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in title I schools identified for comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA for the purpose of attracting and retaining qualified and effective teachers;

(c) Meet the requirements for parental involvement in section 1116(a)(3) of the ESEA;

(d) Provide and administer equitable services in accordance with § 200.64(a);

(e) Administer programs for public school children under this subpart; and

(f) Conduct other authorized activities, such as early childhood education, school improvement and coordinated services.

■ 15. Section 200.78 is amended by revising paragraphs (a)(1) and (2) to read as follows:

**§ 200.78 Allocation of funds to school attendance areas and schools.**

(a)(1) After reserving funds, as applicable, under § 200.77, including funds for equitable services for private school students, their teachers, and their families, an LEA must allocate funds under this subpart to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of public school children from low-income families in each area or school.

(2) To determine the number of children from low-income families in a secondary school, an LEA must use—

(i) The same measure of poverty it uses for elementary schools; or

(ii) An accurate estimate of the number of students from low-income families by applying the average percentage of students from low-income families in the elementary school attendance areas that feed into the secondary school to the number of students enrolled in the secondary school if—

(A) The LEA conducts outreach to secondary schools within the LEA to inform the schools of the option to use this measure; and

(B) A majority of the secondary schools approve the use of this measure.

\* \* \* \* \*

■ 16. Section 200.79 is amended by revising paragraphs (a), (b)(1)(ii) and (iii), and (b)(2)(i) and removing the parenthetical authority citation to read as follows:

**§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.**

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1118(b) and the comparability requirement in section 1118(c) of the ESEA, a grantee or subgrantee under this subpart may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of title I of the ESEA.

(b) \* \* \*

(1) \* \* \*

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the challenging State academic standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or are most at risk of failing, to meet the challenging State academic standards; and

\* \* \* \* \*

(2)(i) Serves only students who are failing, or are most at risk of failing, to meet the challenging State academic standards;

\* \* \* \* \*

■ 17. Section 200.81 is amended by:

- a. Revising the introductory text and paragraphs (a) and (c);
- b. Adding paragraphs (f), (g), and (h);
- c. Revising paragraphs (k) and (l); and
- d. Removing the parenthetical authority citation.

The revisions read as follows:

**§ 200.81 Program definitions.**

The following definitions apply to programs and projects operated under this subpart:

(a) *Agricultural work or employment* means the production or initial processing of raw agricultural products such as crops, trees, dairy products, poultry, or livestock. It consists of work performed for wages or personal subsistence.

\* \* \* \* \*

(c) *Fishing work or employment* means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed for wages or personal subsistence.

\* \* \* \* \*

(f) *Migratory agricultural worker* means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in agriculture, which may be dairy work or the initial processing of raw agricultural products. If an individual did not engage in such new employment soon after a qualifying move, such individual may be considered a migratory agricultural worker if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal agricultural employment.

(g) *Migratory child* means a child or youth who made a qualifying move in the preceding 36 months as a migratory agricultural worker or a migratory fisher; or with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

(h) *Migratory fisher* means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in fishing. If the individual did not engage in such new employment soon after a qualifying move, the individual may be considered a migratory fisher if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal fishing employment.

\* \* \* \* \*

(k) *MSIX Memorandum of Understanding (MOU)* means the agreement between the Department and an SEA that governs the interconnection of the State migrant student records system(s) and MSIX, including the terms under which the agency will abide by the agreement based upon its review of all relevant technical, security, and administrative issues.

(l) *MSIX Interconnection Security Agreement* means the agreement between the Department and an SEA that specifies the technical and security requirements for establishing, maintaining, and operating the interconnection between the State migrant student records system and MSIX. The MSIX Interconnection Security Agreement supports the MSIX MOU and documents the requirements for connecting the two information technology systems, describes the

security controls to be used to protect the systems and data, and contains a topological drawing of the interconnection.

\* \* \* \* \*

- 18. Section 200.83 is amended by:
  - a. Revising paragraphs (a) introductory text, (b), and (c); and
  - b. Removing the parenthetical authority citation.

The revisions read as follows:

**§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.**

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan for service delivery based on a current statewide needs assessment that, at a minimum, has the following components:

\* \* \* \* \*

(b) The SEA must develop its comprehensive State plan for service delivery in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children. This consultation must be in a format and language that the parents understand.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan for service delivery.

\* \* \* \* \*

- 19. Section 200.85 is amended by revising paragraphs (f)(1) and (2) and removing the parenthetical authority citation to read as follows:

**§ 200.85 Responsibilities of SEAs for the electronic exchange through MSIX of specified educational and health information of migratory children.**

\* \* \* \* \*

(f) Enter into and carry out its responsibilities in accordance with an MSIX MOU, an MSIX Interconnection Security Agreement, and other information technology agreements required by the Secretary in accordance with applicable Federal requirements;

(2) Establish and implement written procedures to protect the integrity, security, and confidentiality of Consolidated Student Records, whether in electronic or print format, through appropriate administrative, technical, and physical safeguards established in accordance with the MSIX MOU and MSIX Interconnection Security Agreement. An SEA's written procedures must include, at a

minimum, reasonable methods to ensure that—

\* \* \* \* \*

**§ 200.87 [Amended]**

- 20. Section 200.87 is amended by:
  - a. Removing the words "subpart C of this part" and adding in their place "this subpart";
  - b. Removing the citation "section 9501" and adding in its place the citation "section 8501"; and
  - c. Removing the parenthetical authority citation.
- 21. Section 200.88 is amended by revising paragraphs (a) and (c)(1) and removing the parenthetical authority citation to read as follows:

**§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.**

(a) For purposes of determining compliance with the comparability requirement in section 1118(c) and the supplement, not supplant requirement in section 1118(b) of the ESEA, a grantee or subgrantee under part C of title I of the ESEA may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of title I.

\* \* \* \* \*

(c) \* \* \*

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309(3) of the ESEA.

\* \* \* \* \*

- 22. Section 200.89 is amended by revising paragraphs (b)(1)(i) introductory text, (b)(1)(iii)(C), and (c)(2) to read as follows:

**§ 200.89 Re-interviewing; eligibility documentation; and quality control.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) As a condition for the continued receipt of MEP funds in FY 2006 and subsequent years, an SEA under a corrective action issued by the Secretary under paragraph (b)(2)(vii) or (d)(7) of this section must, as required by the Secretary—

\* \* \* \* \*

(iii) \* \* \*

(C) An acknowledgement that the Secretary may adjust the child counts for 2000–2001 and subsequent years downward based on the defect rate that the Secretary accepts;

\* \* \* \* \*

(c) \* \* \*

(2) In addition to the form required under paragraph (c)(1) of this section,

the SEA and its operating agencies must maintain any additional documentation the SEA requires to confirm that each child found eligible for this program meets all of the eligibility definitions in section 1309 of the ESEA and § 200.81.

\* \* \* \* \*

- 23. Section 200.90 is amended by:

- a. In paragraph (a), removing the words "definitions apply" and adding in their place "definition applies".
- b. In paragraph (b):
  - i. In the definitions for "Institution for delinquent children and youth" and "Institution for neglected children and youth" redesignating paragraphs (1) and (2) as paragraphs (i) and (ii); and
  - ii. Revising the definition of "Regular program of instruction".
- c. In paragraph (c):
  - i. Removing the words "definitions apply" and "Title" and adding in their place "definition applies" and "title", respectively; and
  - ii. Removing the definitions of "Immigrant children and youth and limited English proficiency" and "Migrant youth".
  - c. Removing the parenthetical authority citation.

The revision reads as follows:

**§ 200.90 Program definitions.**

\* \* \* \* \*

(b) \* \* \*

*Regular program of instruction* means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and career and technical education, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

\* \* \* \* \*

- 24. Section 200.100 is amended by:

- a. Revising the section heading, introductory text, paragraphs (a)(1) and (2), (b)(1) introductory text, (c), and (d)(2) and the parenthetical OMB citation; and
- b. Removing the parenthetical authority citation.

The revisions read as follows:

**§ 200.100 Reservation of funds for school improvement, State administration, and direct student services.**

A State must reserve funds for school improvement, and may reserve funds for State administration and direct student services as follows:

- (a) *School improvement.* (1) To carry out school improvement activities and

the State's statewide system of technical assistance and support for LEAs authorized under sections 1003 and 1111(d) of the ESEA, an SEA must reserve the greater of—

- (i) Seven percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA; or
- (ii) The sum of the total amount that the State—

(A) Reserved for fiscal year 2016 under section 1003(a) of the ESEA as in effect on December 9, 2015; and

(B) Received for fiscal year 2016 under section 1003(g) of the ESEA as in effect on December 9, 2015.

(2) For fiscal year 2018 and subsequent years, in reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under subpart 2 of part A of title I of the ESEA below the sum of the allocations the LEA received under subpart 2 for the preceding fiscal year.

\* \* \* \* \*

(b) *State administration.* (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1603 of the ESEA no more than the greater of—

\* \* \* \* \*

(c) *Direct student services.* To carry out direct student services authorized under section 1003A of the ESEA, an SEA may, after meaningful consultation with geographically diverse LEAs, reserve not more than three percent of the amounts allocated to the State under subpart 2 of part A of title I of the ESEA for each fiscal year.

(d) \* \* \*

(2) Proportionately reduce each LEA's total allocation received under subpart 2 of part A of title I of the ESEA even if an LEA's total allocation falls below its hold-harmless percentage under § 200.73(a)(4).

(Approved by the Office of Management and Budget under control number 1810-0622)

- 25. Section 200.103 is amended by:
  - a. Removing paragraph (c);
  - b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c);
  - c. Adding a new paragraph (a); and
  - d. Removing the parenthetical authority citation.

The addition and revision read as follows:

#### **§ 200.103 Definitions.**

\* \* \* \* \*

(a) *Child with a disability* means child with a disability, as defined in section 602(3) of the IDEA.

\* \* \* \* \*

#### **PART 299—GENERAL PROVISIONS**

- 26. The authority citation for part 299 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e-3, unless otherwise noted.

Section 299.1 also issued under 20 U.S.C. 1221e-3.

Section 299.2 also issued under 20 U.S.C. 1221e-3.

Section 299.4 also issued under 20 U.S.C. 7821 and 7823.

Section 299.5 also issued under 20 U.S.C. 7428(c), 7801(11), 7901.

Section 299.6 also issued under 20 U.S.C. 7881.

Section 299.7 also issued under 20 U.S.C. 7881.

Section 299.8 also issued under 20 U.S.C. 7881.

Section 299.9 also issued under 20 U.S.C. 7881.

Section 299.10 also issued under 20 U.S.C. 7881(a)(3)(B).

Section 299.11 also issued under 20 U.S.C. 1221e-3, 7844(a)(3)(C), 7883.

Section 299.12 also issued under 20 U.S.C. 1221e-3, 7844(a)(3)(C), 7883.

Section 299.13 also issued under 20 U.S.C. 1221e-3, 7844(a)(3)(C), 7883.

- 27. Section 299.1 is revised to read as follows:

#### **§ 299.1 What are the purpose and scope of the regulations in this part?**

(a) This part establishes uniform administrative rules for programs in titles I through VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent applicable, title VIII of the ESEA, the General Education Provisions Act, the regulations in this part, EDGAR (34 CFR parts 75 through 99), and 2 CFR parts 180, as adopted at 2 CFR part 3485, and 200, as adopted at 2 CFR part 3474, that are not inconsistent with specific statutory provisions of the ESEA.

- 28. Section 299.2 is revised to read as follows:

#### **§ 299.2 What general administrative regulations apply to ESEA programs?**

Title 2 of the CFR, part 200, as adopted at 2 CFR part 3474, applies to all ESEA programs except for title VII programs (Impact Aid) (in addition to any other specific implementing regulations).

**Note 1 to § 299.2:** 34 CFR 222.19 indicates which EDGAR provisions apply to title VII programs (Impact Aid).

- 29. Section 299.4 is revised to read as follows:

#### **§ 299.4 What requirements apply to the consolidation of State and local administrative funds?**

An SEA may adopt and use its own reasonable standards in determining whether—

(a) The majority of its resources for administrative purposes comes from non-Federal sources to permit the consolidation of State administrative funds in accordance with section 8201 of the ESEA; and

(b) To approve an LEA's consolidation of its administrative funds in accordance with section 8203 of the ESEA.

- 30. Section 299.5 is amended by:

- a. Revising paragraph (b);
- b. Designating the “Example” following paragraph (c) as paragraph (c)(1) and revising newly designated paragraph (c)(1);

- c. Adding reserved paragraph (c)(2); and

- d. Removing the parenthetical authority citation.

The revision reads as follows:

#### **§ 299.5 What maintenance of effort requirements apply to ESEA programs?**

\* \* \* \* \*

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part A of title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Part D of title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk).

(3) Part A of title II (Supporting Effective Instruction).

(4) Part A, subpart 1 of title III (English Language Acquisition, Language Enhancement, and Academic Achievement), except for section 3112.

(5) Part A of title IV (Student Support and Academic Enrichment Grants).

(6) Part B of title IV (21st Century Community Learning Centers).

(7) Part B, subpart 2 of title V (Rural and Low-Income School Program).

(8) Part A, subpart 1 of title VI (Indian Education Formula Grants to Local Educational Agencies).

(c) \* \* \*

(1) *Example.* For fiscal year 2018 funds that are first made available on July 1, 2018, if a State is using the Federal fiscal year, the “preceding fiscal year” is Federal fiscal year 2017 (which began on October 1, 2016 and ended September 30, 2017) and the “second preceding fiscal year” is Federal fiscal year 2016 (which began on October 1, 2015). If a State is using a fiscal year that begins on July 1, 2018, the “preceding fiscal year” is the 12-month period ending on June 30, 2017, and the

“second preceding fiscal year” is the period ending on June 30, 2016.

- \* \* \* \* \*
- 31. Section 299.6 is amended by:
  - a. In paragraph (a), removing the words “agency or consortium of agencies” and add in their place the words “agency, consortium, or entity”;
  - b. Revising (b)(2) through (6); and
  - c. Removing the parenthetical authority citation.

The revision reads as follows:

**§ 299.6 What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?**

\* \* \* \* \*

- (b) \* \* \*
- (2) Part A of title II (Supporting Effective Instruction).
- (3) Part A of title III (English Acquisition, Language Enhancement, and Academic Achievement).
- (4) Part A of title IV (Student Support and Academic Enrichment Grants).
- (5) Part B of title IV (21st Century Community Learning Centers).
- (6) Section 4631 (Project SERV).

\* \* \* \* \*

- 32. Section 299.7 is amended by:
  - a. Removing the words “agency or consortium of agencies” everywhere they appear and adding in their place the words “agency, consortium, or entity”;
  - b. In paragraph (a)(2), removing the words “agency’s or consortium of agencies” and adding in their place the words “agency’s, consortium’s, or entity’s”;
  - c. Adding paragraphs (a)(3) and (4);
  - d. Revising paragraph (b)(2)(iv); and
  - e. Removing the parenthetical authority citation.

The additions and revision read as follows:

**§ 299.7 What are the factors for determining equitable participation of children and teachers in private schools?**

(a) \* \* \*

- (3) An agency, consortium, or entity must obligate funds allocated for educational services and other benefits for eligible private school children in the fiscal year for which the funds are received by the agency, consortium, or entity.

(4) An SEA must provide notice in a timely manner to appropriate private school officials in the State of the allocation of funds for educational services and other benefits that an agency, consortium, or entity has determined are available for eligible private school children and their teachers and other educational personnel.

(b) \* \* \*

- (2) \* \* \*
- (iv) Provides private school children and their teachers and other educational personnel with an opportunity to participate that is equitable to the opportunity and benefits provided to public school children and their teachers and other educational personnel.

\* \* \* \* \*

**§ 299.8 [Amended]**

- 33. Section 299.8 is amended by:
  - a. Removing the words “agency or consortium of agencies” everywhere they appear and adding in their place the words “agency, consortium, or entity”;
  - b. Removing the parenthetical authority citation.

**§ 299.9 [Amended]**

- 34. Section 299.9 is amended by:
  - a. Removing the words “public agency” everywhere they appear and adding in their place the words “agency, consortium, or entity”;
  - b. Removing paragraph (f) and the parenthetical authority citation.

**§ 299.10 through 299.12 [Redesignated as §§ 299.11 through 299.13]**

- 35. Redesignate §§ 299.10 through 299.12 as §§ 299.11 through 299.13.
- 36. Section 299.10 is added to read as follows:

**§ 299.10 Ombudsman.**

To help ensure equity for eligible private school children, teachers, and other educational personnel, an SEA must direct the ombudsman designated under section 1117 of the ESEA and § 200.68 to monitor and enforce the requirements in §§ 299.5 through 299.9.

- 37. Newly redesignated § 299.11 is amended by revising paragraph (b) and removing the parenthetical authority citation to read as follows:

**§ 299.11 What complaint procedures shall an SEA adopt?**

\* \* \* \* \*

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part A of title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Part C of title I (Education of Migratory Children).

(3) Part D of title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk).

(4) Part A of title II (Supporting Effective Instruction).

(5) Part A, subpart 1 of title III (English Language Acquisition, Language Enhancement, and Academic Achievement), except for section 3112.

(6) Part A of title IV (Student Support and Academic Enrichment Grants).

(7) Part B of title IV (21st Century Community Learning Centers).

(8) Part B, subpart 2 of title V (Rural and Low-Income School Program).

(9) Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, Education for Homeless Children and Youth Program.

\* \* \* \* \*

■ 38. Newly redesignated § 299.12 is amended by:

- a. Revising paragraphs (a), (b), and (c);
- b. Removing the parenthetical OMB citation following paragraph (c);
- c. Removing the parenthetical authority citation; and
- d. Adding a parenthetical OMB citation at the end of the section.

The revisions read as follows:

**§ 299.12 What items are included in the complaint procedures?**

\* \* \* \* \*

(a)(1) Except as provided in paragraph (a)(2) of this section, a reasonable time limit after the SEA receives a complaint for resolving the complaint in writing, including a provision for carrying out an independent on-site investigation, if necessary.

(2) In matters involving violations of section 1117 or 8501 of the ESEA (participation of private school children), an SEA must resolve, in writing, a complaint within 45 days after receiving the complaint.

(b) An extension of the time limit under paragraph (a)(1) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c)(1) The right for the complainant to request the Secretary to review the final decision of the SEA, at the Secretary’s discretion.

(2) In matters involving violations of section 1117 or 8501 of the ESEA (participation of private school children), the Secretary will follow the procedures in section 8503(b) of the ESEA.

\* \* \* \* \*

(Approved by the Office of Management and Budget under OMB control number 1810-0591)

**§ 299.13 [Amended]**

- 39. Newly redesignated § 299.13 is amended by removing the parenthetical authority citation.

[FR Doc. 2019-12286 Filed 7-1-19; 8:45 am]

**BILLING CODE 4000-01-P**