

Section 7874, Pub. L. 89-10, title IX, §9154, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to minimum grant criteria.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

PART F—UNIFORM PROVISIONS

Editorial Notes

CODIFICATION

Pub. L. 114-95, title VIII, §8001(b)(1), Dec. 10, 2015, 129 Stat. 2089, redesignated part E (§7881 et seq.) of subchapter IX of this chapter as part F of this subchapter.

SUBPART 1—PRIVATE SCHOOLS

§ 7881. Participation by private school children and teachers

(a) Private school participation

(1) In general

Except as otherwise provided in this chapter, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

(2) Secular, neutral, and nonideological services or benefits

Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

(3) Special rule

(A) In general

Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(B) Ombudsman

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 des-

ignated by the agency under section 6320 of this title to monitor and enforce the requirements of this section.

(4) Expenditures

(A) In general

Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(B) Obligation of funds

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

(C) Notice of allocation

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

(5) Provision of services

An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

(b) Applicability

(1) In general

This section applies to programs under—

- (A) part C of subchapter I;
- (B) part A of subchapter II;
- (C) part A of subchapter III;
- (D) part A of subchapter IV;
- (E) part B of subchapter IV; and
- (F) section 7281 of this title, with regard to Project SERV.

(2) Definition

For the purpose of this section, the term “eligible children” means children eligible for services under a program described in paragraph (1).

(c) Consultation

(1) In general

To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, on issues such as—

- (A) how the children’s needs will be identified;
- (B) what services will be offered;

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

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

(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel, the amount of funds available for those services, and how that amount is determined;

(F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through potential third-party providers; and

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

(H) 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)(C) 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)(C) based on the number of children from low-income families who attend private schools.

(2) Disagreement

If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) Timing

The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this chapter, and shall continue throughout the implementation and assessment of activities under this section.

(4) Discussion required

The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(5) Documentation

Each local educational agency shall maintain in the agency's records, and provide to the State educational agency involved, a written affirmation signed by officials of each par-

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

(6) Compliance

(A) In general

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

(B) Procedure

If the private school official wishes to file a complaint, the private school official shall provide the basis of the noncompliance and all parties shall provide the appropriate documentation to the appropriate officials.

(C) Services

A State educational agency shall provide services under this section directly or through contracts with public and private agencies, organizations, and 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.

(d) Public control of funds

(1) In general

The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(2) Provision of services

(A) In general

The provision of services under this section shall be provided—

(i) by employees of a public agency; or

(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

(B) Independence; public agency

In the provision of those services, the employee, person, association, agency, organi-

zation, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) Commingling of funds prohibited

Funds used to provide services under this section shall not be commingled with non-Federal funds.

(Pub. L. 89–10, title VIII, § 8501, formerly title IX, § 9501, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1975; renumbered title VIII, § 8501, and amended Pub. L. 114–95, title VIII, § 8001(a)(5), 8015, Dec. 10, 2015, 129 Stat. 2088, 2089, 2109; Pub. L. 115–64, § 3, Sept. 29, 2017, 131 Stat. 1189.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7881, Pub. L. 89–10, title IX, § 9161, as added Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3793; amended Pub. L. 105–220, title II, § 251(b)(2)(E), Aug. 7, 1998, 112 Stat. 1080, defined terms, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107–110.

AMENDMENTS

2017—Subsec. (b)(1)(F). Pub. L. 115–64 added subpar. (F).

2015—Subsec. (a)(3). Pub. L. 114–95, § 8015(1)(A), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.”

Subsec. (a)(4). Pub. L. 114–95, § 8015(1)(B), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.”

Subsec. (b)(1). Pub. L. 114–95, § 8015(2)(A), added subpars. (A) to (E) and struck out former subpars. (A) to (H) which read as follows:

“(A) subparts 1 and 3 of part B of subchapter I of this chapter;

“(B) part C of subchapter I of this chapter;

“(C) part A of subchapter II of this chapter, to the extent provided in paragraph (3);

“(D) part B of subchapter II of this chapter;

“(E) part D of subchapter II of this chapter;

“(F) part A of subchapter III of this chapter;

“(G) part A of subchapter IV of this chapter; and

“(H) part B of subchapter IV of this chapter.”

Subsec. (b)(3). Pub. L. 114–95, § 8015(2)(B), struck out par. (3) which related to application of this subpart to funds awarded to a local educational agency under part A of former subchapter II of this chapter.

Subsec. (c)(1). Pub. L. 114–95, § 8015(3)(A), in introductory provisions, substituted “To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, on issues such as” for “To ensure timely and meaningful consultation, a State educational agency, local edu-

cational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this chapter, on issues such as”.

Subsec. (c)(1)(E). Pub. L. 114–95, § 8015(3)(B)(i), substituted “, the amount” for “and the amount” and “services, and how that amount is determined;” for “services; and”.

Subsec. (c)(1)(F). Pub. L. 114–95, § 8015(3)(B)(ii), struck out “contract” after “provision of” and substituted “; and” for period at end.

Subsec. (c)(1)(G), (H). Pub. L. 114–95, § 8015(3)(B)(iii), added subpars. (G) and (H).

Subsec. (c)(5), (6). Pub. L. 114–95, § 8015(4), which directed amendment of this section by adding pars. (5) and (6) at the end, was executed by adding pars. (5) and (6) at the end of subsec. (c), to reflect the probable intent of Congress.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

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

§ 7882. Standards for by-pass

(a) In general

If, by reason of any provision of law, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or other entity is prohibited from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary schools and secondary schools, on an equitable basis, or if the Secretary determines that the agency, consortium, or entity has substantially failed or is unwilling to provide for that participation, as required by section 7881 of this title, the Secretary shall—

(1) waive the requirements of that section for the agency, consortium, or entity; and

(2) arrange for the provision of equitable services to those children, teachers, or other educational personnel through arrangements that shall be subject to the requirements of this section and of sections 7881, 7883, and 7884 of this title.

(b) Determination

In making the determination under subsection (a), the Secretary shall consider one or more factors, including the quality, size, scope, and location of the program, and the opportunity of private school children, teachers, and other educational personnel to participate in the program.

(Pub. L. 89–10, title VIII, § 8502, formerly title IX, § 9502, as added Pub. L. 107–110, title IX, § 901, Jan. 8, 2002, 115 Stat. 1977; renumbered title VIII, § 8502, and amended Pub. L. 114–95, title VIII, §§ 8001(a)(5), (b)(4), 8016, Dec. 10, 2015, 129 Stat. 2088, 2089, 2111.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7882, Pub. L. 89–10, title IX, § 9162, as added Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat.