

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.

3794, authorized appropriations, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107-110.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95, §8001(b)(4), made technical amendment to reference in original act which appears in two places in text as reference to section 7881 of this title.

Subsec. (a)(2). Pub. L. 114-95, §8016, made technical amendment to reference in original act which appears in text as reference to sections 7883 and 7884 of this title.

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.

§ 7883. Complaint process for participation of private school children

(a) Procedures for complaints

The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 7881 of this title by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within 45 days.

(b) Appeals to Secretary

The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within the 45-day time limit. The appeal shall be accompanied by a copy of the State educational agency's resolution, and, if there is one, a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal.

(Pub. L. 89-10, title VIII, §8503, formerly title IX, §9503, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1977; renumbered title VIII, §8503, and amended Pub. L. 114-95, title VIII, §8001(a)(5), 8017, Dec. 10, 2015, 129 Stat. 2088, 2089, 2111.)

Editorial Notes

AMENDMENTS

2015—Pub. L. 114-95, §8017, added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to procedures for complaints and appeals to Secretary, respectively.

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.

§ 7884. By-pass determination process

(a) Review

(1) In general

(A) Written objections

The Secretary shall not take any final action under section 7882 of this title until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

(B) Prior to reduction

Pending final resolution of any investigation or complaint that could result in a determination under this section, the Secretary may withhold from the allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

(2) Petition for review

(A) Petition

If the affected agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), the agency, consortium, or entity may, within 60 days after notice of that action, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action.

(B) Transmission

A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

(C) Filing

The Secretary, upon receipt of the copy of the petition, shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(3) Findings of fact

(A) In general

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may then make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings.

(B) New or modified findings

Any new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Jurisdiction

(A) In general

Upon the filing of a petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part.