

covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency), if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years.

**(2) Special rule**

No such lesser amount shall be used for computing the effort required under subsection (a) of this section for subsequent years.

**(c) Waiver**

The Secretary may waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

(1) exceptional or uncontrollable circumstances, such as a natural disaster or a change in the organizational structure of the local educational agency; or

(2) a precipitous decline in the financial resources of the local educational agency.

(Pub. L. 89–10, title VIII, §8521, formerly title IX, §9521, as added Pub. L. 107–110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, §8521, and amended Pub. L. 114–95, title VIII, §§8001(a)(6), 8019, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 7901, Pub. L. 89–10, title IX, §9201, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3794, set forth short title of the Native Hawaiian Education Act, 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, §8019(1), inserted “, subject to the requirements of subsection (b)” after “for the second preceding fiscal year”.

Subsec. (b)(1). Pub. L. 114–95, §8019(2), inserted before period at end “, if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years”.

Subsec. (c)(1). Pub. L. 114–95, §8019(3), inserted “or a change in the organizational structure of the local educational agency” after “such as a natural disaster”.

**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.

**§ 7902. Prohibition regarding State aid**

A State shall not take into consideration payments under this chapter (other than under subchapter VII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

(Pub. L. 89–10, title VIII, §8522, formerly title IX, §9522, as added Pub. L. 107–110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, §8522, and amended Pub. L. 114–95, title VIII, §§8001(a)(6), 8020, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 7902, Pub. L. 89–10, title IX, §9202, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3794, set forth findings, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107–110.

**AMENDMENTS**

2015—Pub. L. 114–95, §8020, substituted “subchapter VII” for “subchapter VIII”.

**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.

**§ 7903. Privacy of assessment results**

Any results from an individual assessment referred to in this chapter of a student that become part of the education records of the student shall have the protections provided in section 1232g of this title.

(Pub. L. 89–10, title VIII, §8523, formerly title IX, §9523, as added Pub. L. 107–110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, §8523, Pub. L. 114–95, title VIII, §8001(a)(6), Dec. 10, 2015, 129 Stat. 2088, 2089.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 7903, Pub. L. 89–10, title IX, §9203, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3798, set forth purpose of provisions relating to Native Hawaiian educational programs, prior to the general amendment of former subchapter IX of this chapter by Pub. L. 107–110.

**§ 7904. School prayer**

**(a) Guidance**

The Secretary shall provide and revise guidance, not later than September 1, 2002, and of every second year thereafter, to State educational agencies, local educational agencies, and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available by electronic means, including by posting the guidance on the Department’s website in a clear and easily accessible manner. The guidance shall be reviewed, prior to distribution, by the Office of Legal Counsel of the Department of Justice for verification that the guidance represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

**(b) Certification**

As a condition of receiving funds under this chapter, a local educational agency shall certify

in writing to the State educational agency involved that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, as detailed in the guidance required under subsection (a). The certification shall be provided by October 1 of each year. The State educational agency shall report to the Secretary by November 1 of each year a list of those local educational agencies that have not filed the certification or against which complaints have been made to the State educational agency that the local educational agencies are not in compliance with this section.

**(c) Enforcement**

The Secretary is authorized and directed to effectuate subsection (b) by issuing, and securing compliance with, rules or orders with respect to a local educational agency that fails to certify, or is found to have certified in bad faith, that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools.

(Pub. L. 89–10, title VIII, §8524, formerly title IX, §9524, as added Pub. L. 107–110, title IX, §901, Jan. 8, 2002, 115 Stat. 1980; renumbered title VIII, §8524, and amended Pub. L. 114–95, title VIII, §8001(a)(6), 8021, Dec. 10, 2015, 129 Stat. 2088, 2089, 2112.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 7904, Pub. L. 89–10, title IX, §9204, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3798, established the Native Hawaiian Education Council and island councils, 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, §8021, substituted “by electronic means, including by posting the guidance on the Department’s website in a clear and easily accessible manner” for “on the Internet”.

**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.

**§ 7905. Equal access to public school facilities**

**(a) Short title**

This section may be cited as the “Boy Scouts of America Equal Access Act”.

**(b) In general**

**(1) Equal access**

Notwithstanding any other provision of law, no public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the Department shall deny equal access or a fair opportunity to meet to, or discriminate against,

any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 (as a patriotic society).

**(2) Voluntary sponsorship**

Nothing in this section shall be construed to require any school, agency, or a school served by an agency to sponsor any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 (as a patriotic society).

**(c) Termination of assistance and other action**

**(1) Departmental action**

The Secretary is authorized and directed to effectuate subsection (b) by issuing and securing compliance with rules or orders with respect to a public elementary school, public secondary school, local educational agency, or State educational agency that receives funds made available through the Department and that denies equal access, or a fair opportunity to meet, or discriminates, as described in subsection (b).

**(2) Procedure**

The Secretary shall issue and secure compliance with the rules or orders, under paragraph (1), through the Office for Civil Rights and in a manner consistent with the procedure used by a Federal department or agency under section 2000d–1 of title 42. If the public school or agency does not comply with the rules or orders, then notwithstanding any other provision of law, no funds made available through the Department shall be provided to a school that fails to comply with such rules or orders or to any agency or school served by an agency that fails to comply with such rules or orders.

**(3) Judicial review**

Any action taken by the Secretary under paragraph (1) shall be subject to the judicial review described in section 2000d–2 of title 42. Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 2000d–2 of title 42.

**(d) Definition and rule**

**(1) Definition**

In this section, the term “youth group” means any group or organization intended to serve young people under the age of 21.

**(2) Rule**

For the purpose of this section, an elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facili-