

TITLE IX—GENERAL PROVISIONS

SEC. 901. GENERAL PROVISIONS.

Title IX (20 U.S.C. 7801 et seq.) is amended to read as follows:

“TITLE IX—GENERAL PROVISIONS

“PART A—DEFINITIONS

“SEC. 9101. DEFINITIONS.

“Except as otherwise provided, in this Act:

“(1) AVERAGE DAILY ATTENDANCE.—

“(A) IN GENERAL.—Except as provided otherwise by State law or this paragraph, the term ‘average daily attendance’ means—

“(i) the aggregate number of days of attendance of all students during a school year; divided by “(ii) the number of days school is in session during that year.

“(B) CONVERSION.—The Secretary shall permit the conversion of average daily membership (or other similar data) to average daily attendance for local educational agencies in States that provide State aid to local educational agencies on the basis of average daily membership (or other similar data).

“(C) SPECIAL RULE.—If the local educational agency in which a child resides makes a tuition or other payment for the free public education of the child in a school located in another school district, the Secretary shall, for the purpose of this Act—

“(i) consider the child to be in attendance at a school of the agency making the payment; and “(ii) not consider the child to be in attendance at a school of the agency receiving the payment.

“(D) CHILDREN WITH DISABILITIES.—If a local educational agency makes a tuition payment to a private school or to a public school of another local educational agency for a child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act, the Secretary shall, for the purpose of this Act, consider the child to be in attendance at a school of the agency making the payment.

“(2) AVERAGE PER-PUPIL EXPENDITURE.—The term ‘average per-pupil expenditure’ means, in the case of a State or of the United States—

“(A) without regard to the source of funds—

“(i) the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State or, in the

case of the United States, for all States (which, for the purpose of this paragraph, means the 50 States and the District of Columbia); plus

“(ii) any direct current expenditures by the State for the operation of those agencies; divided by “(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

“(3) BEGINNING TEACHER.—The term ‘beginning teacher’ means a teacher in a public school who has been teaching less than a total of three complete school years.

“(4) CHILD.—The term ‘child’ means any person within the age limits for which the State provides free public education.

“(5) CHILD WITH A DISABILITY.—The term ‘child with a disability’ has the same meaning given that term in section 602 of the Individuals with Disabilities Education Act.

“(6) COMMUNITY-BASED ORGANIZATION.—The term ‘community-based organization’ means a public or private nonprofit organization of demonstrated effectiveness that—

“(A) is representative of a community or significant segments of a community; and “(B) provides educational or related services to individuals in the community.

“(7) CONSOLIDATED LOCAL APPLICATION.—The term ‘consolidated local application’ means an application submitted by a local educational agency pursuant to section 9305.

“(8) CONSOLIDATED LOCAL PLAN.—The term ‘consolidated local plan’ means a plan submitted by a local educational agency pursuant to section 9305.

“(9) CONSOLIDATED STATE APPLICATION.—The term ‘consolidated State application’ means an application submitted by a State educational agency pursuant to section 9302.

“(10) CONSOLIDATED STATE PLAN.—The term ‘consolidated State plan’ means a plan submitted by a State educational agency pursuant to section 9302. “(11) CORE ACADEMIC SUBJECTS.—The term ‘core academic subjects’ means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

“(12) COUNTY.—The term ‘county’ means one of the divisions of a State used by the Secretary of Commerce in compiling and reporting data regarding counties.

“(13) COVERED PROGRAM.—The term ‘covered program’ means each of the programs authorized by—

“(A) part A of title I;

“(B) subpart 3 of part B of title I;

“(C) part C of title I;

- “(D) part D of title I;
- “(E) part F of title I;
- “(F) part A of title II;
- “(G) part D of title II;
- “(H) part A of title III;
- “(I) part A of title IV;
- “(J) part B of title IV;
- “(K) part A of title V; and
- “(L) subpart 2 of part B of title VI.

“(14) CURRENT EXPENDITURES.—The term ‘current expenditures’ means expenditures for free public education—

“(A) including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities; but

“(B) not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds received under title I and part A of title V.

“(15) DEPARTMENT.—The term ‘Department’ means the Department of Education.

“(16) DISTANCE LEARNING.—The term ‘distance learning’ means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.

“(17) EDUCATIONAL SERVICE AGENCY.—The term ‘educational service agency’ means a regional public multi-service agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies.

“(18) ELEMENTARY SCHOOL.—The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

“(19) EXEMPLARY TEACHER.—The term ‘exemplary teacher’ means a teacher who—

“(A) is a highly qualified teacher such as a master teacher;

“(B) has been teaching for at least 5 years in a public or private school or institution of higher education;

“(C) is recommended to be an exemplary teacher by administrators and other teachers who are knowledgeable about the individual’s performance;

“(D) is currently teaching and based in a public school; and

“(E) assists other teachers in improving instructional strategies, improves the skills of other teachers, performs teacher mentoring, develops curricula, and offers other professional development.

“(20) FAMILY LITERACY SERVICES.—The term ‘family literacy services’ means services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

“(A) Interactive literacy activities between parents and their children.

“(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

“(C) Parent literacy training that leads to economic self-sufficiency.

“(D) An age-appropriate education to prepare children for success in school and life experiences.

“(21) FREE PUBLIC EDUCATION.—The term ‘free public education’ means education that is provided—

“(A) at public expense, under public supervision and direction, and without tuition charge; and

“(B) as elementary school or secondary school education as determined under applicable State law, except that the term does not include any education provided beyond grade 12.

“(22) GIFTED AND TALENTED.—The term ‘gifted and talented’, when used with respect to students, children, or youth, means students, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

“(23) HIGHLY QUALIFIED.—The term ‘highly qualified’—

“(A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that—

“(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

“(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

“(B) when used with respect to—

“(i) an elementary school teacher who is new to the profession, means that the teacher—

“(I) holds at least a bachelor’s degree; and

“(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing,

mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

“(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

“(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

“(II) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

“(C) when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor’s degree and—

“(i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

“(ii) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that—

“(I) is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

“(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

“(III) provides objective, coherent information about the teacher’s attainment of core content knowledge in the academic subjects in which a teacher teaches;

“(IV) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

“(V) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

“(VI) is made available to the public upon request; and

“(VII) may involve multiple, objective measures of teacher competency.

“(24) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965.

“(25) LIMITED ENGLISH PROFICIENT.—The term ‘limited English proficient’, when used with respect to an individual, means an individual—

“(A) who is aged 3 through 21;

“(B) who is enrolled or preparing to enroll in an elementary school or secondary school;

“(C)(i) who was not born in the United States or whose native language is a language other than English;

“(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

“(II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

“(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

“(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

“(i) the ability to meet the State’s proficient level of achievement on State assessments described in section 1111(b)(3);

“(ii) the ability to successfully achieve in class-rooms where the language of instruction is English; or

“(iii) the opportunity to participate fully in society.

“(26) LOCAL EDUCATIONAL AGENCY.—

“(A) IN GENERAL.—The term ‘local educational agency’ means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

“(B) ADMINISTRATIVE CONTROL AND DIRECTION.—The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

“(C) BIA SCHOOLS.—The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in

another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

“(D) EDUCATIONAL SERVICE AGENCIES.—The term includes educational service agencies and consortia of those agencies.

“(E) STATE EDUCATIONAL AGENCY.—The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

“(27) MENTORING.—The term ‘mentoring’, except when used to refer to teacher mentoring, means a process by which a responsible adult, postsecondary student, or secondary school student works with a child to provide a positive role model for the child, to establish a supportive relationship with the child, and to provide the child with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of the child to become a responsible adult.

“(28) NATIVE AMERICAN AND NATIVE AMERICAN LANGUAGE.—The terms ‘Native American’ and ‘Native American language’ have the same meaning given those terms in section 103 of the Native American Languages Act of 1990.

“(29) OTHER STAFF.—The term ‘other staff’ means pupil services personnel, librarians, career guidance and counseling personnel, education aides, and other instructional and administrative personnel.

“(30) OUTLYING AREA.—The term ‘outlying area’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and for the purpose of section 1121(b) and any other discretionary grant program under this Act, includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau until an agreement for the extension of United States education assistance under the Compact of Free Association for each of the freely associated states becomes effective after the date of enactment of the No Child Left Behind Act of 2001.

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

“(32) PARENTAL INVOLVEMENT.—The term ‘parental involvement’ means the participation of parents in regular, two-way, and meaningful communication involving student academic learning and other school activities, including ensuring—

“(A) that parents play an integral role in assisting their child’s learning;

“(B) that parents are encouraged to be actively involved in their child’s education at school;

“(C) that parents are full partners in their child’s education and are included, as appropriate, in decision-making and on advisory committees to assist in the education of their child;

“(D) the carrying out of other activities, such as those described in section 1118.

“(33) POVERTY LINE.—The term ‘poverty line’ means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved.

“(34) PROFESSIONAL DEVELOPMENT.—The term ‘professional development’—

“(A) includes activities that—

“(i) improve and increase teachers’ knowledge of the academic subjects the teachers teach, and enable teachers to become highly qualified;

“(ii) are an integral part of broad school-wide and district-wide educational improvement plans;

“(iii) give teachers, principals, and administrators the knowledge and skills to provide students with the opportunity to meet challenging State academic content standards and student academic achievement standards;

“(iv) improve classroom management skills;

“(v)(I) are high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher’s performance in the classroom; and

“(II) are not 1-day or short-term workshops or conferences;

“(vi) support the recruiting, hiring, and training of highly qualified teachers, including teachers who became highly qualified through State and local alter-native routes to certification;

“(vii) advance teacher understanding of effective instructional strategies that are—

“(I) based on scientifically based research (except that this subclause shall not apply to activities carried out under part D of title II); and

“(II) strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers; and

“(viii) are aligned with and directly related to—

“(I) State academic content standards, student academic achievement standards, and assessments; and

“(II) the curricula and programs tied to the standards described in subclause (I) except that this subclause shall not apply to activities described in clauses (ii) and (iii) of section 2123(3)(B);

“(ix) are developed with extensive participation of teachers, principals, parents, and administrators of schools to be served under this Act;

“(x) are designed to give teachers of limited English proficient children, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

“(xi) to the extent appropriate, provide training for teachers and principals in the use of technology so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and core academic subjects in which the teachers teach;

“(xii) as a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

“(xiii) provide instruction in methods of teaching children with special needs;

“(xiv) include instruction in the use of data and assessments to inform and instruct classroom practice; and

“(xv) include instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents; and

“(B) may include activities that—

“(i) involve the forming of partnerships with institutions of higher education to establish school-based teacher training programs that provide prospective teachers and beginning teachers with an opportunity to work under the guidance of experienced teachers and college faculty;

“(ii) create programs to enable paraprofessionals (assisting teachers employed by a local educational agency receiving assistance under part A of title I) to obtain the education necessary for those paraprofessionals to become certified and licensed teachers; and

“(iii) provide follow-up training to teachers who have participated in activities described in subparagraph (A) or another clause of this subparagraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the class-room.

“(35) PUBLIC TELECOMMUNICATIONS ENTITY.—The term ‘public telecommunications entity’ has the meaning given that term in section 397(12) of the Communications Act of 1934.

“(36) PUPIL SERVICES PERSONNEL; PUPIL SERVICES.—

“(A) PUPIL SERVICES PERSONNEL.—The term ‘pupil services personnel’ means school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the Individuals with Disabilities Education Act) as part of a comprehensive program to meet student needs.

“(B) PUPIL SERVICES.—The term ‘pupil services’ means the services provided by pupil services personnel.

“(37) SCIENTIFICALLY BASED RESEARCH.—The term ‘scientifically based research’—

“(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

“(B) includes research that—

“(i) employs systematic, empirical methods that draw on observation or experiment;

“(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

“(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

“(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

“(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

“(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

“(38) SECONDARY SCHOOL.—The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as

determined under State law, except that the term does not include any education beyond grade 12.

“(39) SECRETARY.—The term ‘Secretary’ means the Secretary of Education. STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

“(41) STATE EDUCATIONAL AGENCY.—The term ‘State educational agency’ means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

“(42) TEACHER MENTORING.—The term ‘teacher mentoring’ means activities that—

“(A) consist of structured guidance and regular and ongoing support for teachers, especially beginning teachers, that—

“(i) are designed to help the teachers continue to improve their practice of teaching and to develop their instructional skills; and part of an ongoing developmental induction process—

“(I) involve the assistance of an exemplary teacher and other appropriate individuals from a school, local educational agency, or institution of higher education; and

“(II) may include coaching, classroom observation, team teaching, and reduced teaching loads; and

“(B) may include the establishment of a partnership by a local educational agency with an institution of higher education, another local educational agency, a teacher organization, or another organization.

“(43) TECHNOLOGY.—The term ‘technology’ means state-of-the-art technology products and services.

“SEC. 9102. APPLICABILITY OF TITLE.

“Parts B, C, D, and E of this title do not apply to title VIII of this Act.

“SEC. 9103. APPLICABILITY TO BUREAU OF INDIAN AFFAIRS OPERATED SCHOOLS.

“For the purpose of any competitive program under this Act—

“(1) a consortium of schools operated by the Bureau of Indian Affairs;

“(2) a school operated under a contract or grant with the Bureau of Indian Affairs in consortium with another contract or grant school or a tribal or community organization; or

“(3) a Bureau of Indian Affairs school in consortium with an institution of higher education, a contract or grant school, or a tribal or community organization, shall be given the same consideration as a local educational agency.

“PART B—FLEXIBILITY IN THE USE OF ADMINISTRATIVE AND OTHER FUNDS

“SEC. 9201. CONSOLIDATION OF STATE ADMINISTRATIVE FUNDS FOR ELEMENTARY AND SECONDARY EDUCATION PROGRAMS.

“(a) CONSOLIDATION OF ADMINISTRATIVE FUNDS.—

“(1) IN GENERAL.—A State educational agency may consolidate the amounts specifically made available to it for State administration under one or more of the programs under paragraph (2) if the State educational agency can demonstrate that the majority of its resources are derived from non-Federal sources.

“(2) APPLICABILITY.—This section applies to any program under this Act under which funds are authorized to be used for administration, and such other programs as the Secretary may designate.

“(b) USE OF FUNDS.—

“(1) IN GENERAL.—A State educational agency shall use the amount available under this section for the administration of the programs included in the consolidation under subsection (a).

“(2) ADDITIONAL USES.—A State educational agency may also use funds available under this section for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation under subsection (a), such as—

“(A) the coordination of those programs with other Federal and non-Federal programs;

“(B) the establishment and operation of peer-review mechanisms under this Act;

“(C) the administration of this title;

“(D) the dissemination of information regarding model programs and practices;

“(E) technical assistance under any program under this Act;

“(F) State-level activities designed to carry out this title;

“(G) training personnel engaged in audit and other monitoring activities; and

“(H) implementation of the Cooperative Audit Resolution and Oversight Initiative of the Department.

“(c) RECORDS.—A State educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of programs included in the consolidation under subsection (a).

“(d) REVIEW.—To determine the effectiveness of State administration under this section, the Secretary may periodically review the performance of State educational agencies in using consolidated administrative funds under

this section and take such steps as the Secretary finds appropriate to ensure the effectiveness of that administration.

“(e) **UNUSED ADMINISTRATIVE FUNDS.**—If a State educational agency does not use all of the funds available to the agency under this section for administration, the agency may use those funds during the applicable period of availability as funds available under one or more programs included in the consolidation under sub-section (a).

“(f) **CONSOLIDATION OF FUNDS FOR STANDARDS AND ASSESSMENT DEVELOPMENT.**—In order to develop challenging State academic standards and assessments, a State educational agency may consolidate the amounts described in subsection (a) for those purposes under title I.

“SEC. 9202. SINGLE LOCAL EDUCATIONAL AGENCY STATES.

“A State educational agency that also serves as a local educational agency shall, in its applications or plans under this Act, describe how the agency will eliminate duplication in conducting administrative functions.

“SEC. 9203. CONSOLIDATION OF FUNDS FOR LOCAL ADMINISTRATION.

“(a) **GENERAL AUTHORITY.**—In accordance with regulations of the Secretary and for any fiscal year, a local educational agency, with the approval of its State educational agency, may consolidate and use for the administration of one or more programs under this Act (or such other programs as the Secretary shall designate) not more than the percentage, established in each program, of the total available for the local educational agency under those programs.

“(b) **STATE PROCEDURES.**—Within 1 year after the date of enactment of the No Child Left Behind Act of 2001, a State educational agency shall, in collaboration with local educational agencies in the State, establish procedures for responding to requests from local educational agencies to consolidate administrative funds under subsection (a) and for establishing limitations on the amount of funds under those programs that may be used for administration on a consolidated basis.

“(c) **CONDITIONS.**—A local educational agency that consolidates administrative funds under this section for any fiscal year shall not use any other funds under the programs included in the consolidation for administration for that fiscal year.

“(d) **USES OF ADMINISTRATIVE FUNDS.**—A local educational agency that consolidates administrative funds under this section may use the consolidated funds for the administration of the programs and for uses, at the school district and school levels, comparable to those described in section 9201(b)(2).

“(e) **RECORDS.**—A local educational agency that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of the programs included in the consolidation.

“SEC. 9204. CONSOLIDATED SETASIDE FOR DEPARTMENT OF THE INTERIOR FUNDS.

“(a) **GENERAL AUTHORITY.**—

“(1) **TRANSFER.**—The Secretary shall transfer to the Department of the Interior, as a consolidated amount for covered programs, the Indian education programs under part A of title VII, and the education for homeless children and youth program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, the amounts allotted to the Department of the Interior under those programs.

“(2) **AGREEMENT.**—

“(A) **IN GENERAL.**—The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of the programs specified in paragraph (1), for the distribution and use of those program funds under terms that the Secretary determines best meet the purposes of those programs.

“(B) **CONTENTS.**—The agreement shall—

“(i) set forth the plans of the Secretary of the Interior for the use of the amount transferred and the achievement measures to assess program effectiveness, including measurable goals and objectives; and

“(ii) be developed in consultation with Indian tribes.

“(b) **ADMINISTRATION.**—The Department of the Interior may use not more than 1.5 percent of the funds consolidated under this section for its costs related to the administration of the funds transferred under this section.

**“PART C—COORDINATION OF PROGRAMS;
CONSOLIDATED STATE AND LOCAL PLANS AND
APPLICATIONS**

“SEC. 9301. PURPOSES.

“The purposes of this part are—

“(1) to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery;

“(2) to provide greater flexibility to State and local authorities through consolidated plans, applications, and reporting; and

“(3) to enhance the integration of programs under this Act with State and local programs.

“SEC. 9302. OPTIONAL CONSOLIDATED STATE PLANS OR APPLICATIONS.

“(a) GENERAL AUTHORITY.—

“(1) SIMPLIFICATION.—In order to simplify application requirements and reduce the burden for State educational agencies under this Act, the Secretary, in accordance with subsection (b), shall establish procedures and criteria under which, after consultation with the Governor, a State educational agency may submit a consolidated State plan or a consolidated State application meeting the requirements of this section for—

“(A) each of the covered programs in which the State participates; and

“(B) such other programs as the Secretary may designate.

“(2) CONSOLIDATED APPLICATIONS AND PLANS.—After consultation with the Governor, a State educational agency that submits a consolidated State plan or a consolidated State application under this section shall not be required to submit separate State plans or applications under any of the programs to which the consolidated State plan or consolidated State application under this section applies.

“(b) COLLABORATION.—

“(1) IN GENERAL.—In establishing criteria and procedures under this section, the Secretary shall collaborate with State educational agencies and, as appropriate, with other State agencies, local educational agencies, public and private nonprofit agencies, organizations, and institutions, private schools, and representatives of parents, students, and teachers.

“(2) CONTENTS.—Through the collaborative process described in paragraph (1), the Secretary shall establish, for each program under this Act to which this section applies, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

“(3) NECESSARY MATERIALS.—The Secretary shall require only descriptions, information, assurances (including assurances of compliance with applicable provisions regarding participation by private school children and teachers), and other materials that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application.

“SEC. 9303. CONSOLIDATED REPORTING.

“(a) IN GENERAL.—In order to simplify reporting requirements and reduce reporting burdens, the Secretary shall establish procedures and criteria under which a State educational agency, in consultation with the Governor of the State, may submit a consolidated State annual report.

“(b) CONTENTS.—The report shall contain information about the programs included in the report, including the performance of the State under those programs, and other matters as the Secretary determines are necessary, such as monitoring activities.

“(c) REPLACEMENT.—The report shall replace separate individual annual reports for the programs included in the consolidated State annual report.

“SEC. 9304. GENERAL APPLICABILITY OF STATE EDUCATIONAL AGENCY ASSURANCES.

“(a) ASSURANCES.—A State educational agency, in consultation with the Governor of the State, that submits a consolidated State plan or consolidated State application under this Act, whether separately or under section 9302, shall have on file with the Secretary a single set of assurances, applicable to each program for which the plan or application is submitted, that provides that—

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

“(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency, a nonprofit private agency, institution, or organization, or an Indian tribe, if the law authorizing the program provides for assistance to those entities; and

“(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer those funds and property to the extent required by the authorizing law;

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

“(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program;

“(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation; and

“(C) the adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of the programs;

“(4) the State will cooperate in carrying out any evaluation of each such program conducted by or for the Secretary or other Federal officials;

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

“(6) the State will—

“(A) make reports to the Secretary as may be necessary to enable the Secretary to perform the Secretary’s duties under each such program; and

“(B) maintain such records, provide such information to the Secretary, and afford such access to the records as the Secretary may find necessary to carry out the Secretary’s duties; and

“(7) before the plan or application was submitted to the Secretary, the State afforded a reasonable opportunity for public comment on the plan or application and considered such comment.

“(b) GEPA PROVISION.—Section 441 of the General Education Provisions Act shall not apply to programs under this Act.

“SEC. 9305. CONSOLIDATED LOCAL PLANS OR APPLICATIONS.

“(a) GENERAL AUTHORITY.—

“(1) CONSOLIDATED PLAN.—A local educational agency receiving funds under more than one covered program may submit plans or applications to the State educational agency under those programs on a consolidated basis.

“(2) AVAILABILITY TO GOVERNOR.—The State educational agency shall make any consolidated local plans and applications available to the Governor.

“(b) REQUIRED CONSOLIDATED PLANS OR APPLICATIONS.—A State educational agency that has an approved consolidated State plan or application under section 9302 may require local educational agencies in the State receiving funds under more than one program included in the consolidated State plan or consolidated State application to submit consolidated local plans or applications under those programs, but may not require those agencies to submit separate plans.

“(c) COLLABORATION.—A State educational agency, in consultation with the Governor, shall collaborate with local educational agencies in the State in establishing procedures for the submission of the consolidated State plans or consolidated State applications under this section.

“(d) NECESSARY MATERIALS.—The State educational agency shall require only descriptions, information, assurances, and other material that are absolutely necessary for the consideration of the local educational agency plan or application.

“SEC. 9306. OTHER GENERAL ASSURANCES.

“(a) ASSURANCES.—Any applicant, other than a State educational agency that submits a plan or application under this Act, whether separately or pursuant to section 9305, shall have on file with the State educational agency a single set of assurances, applicable to each program for which a plan or application is submitted, that provides that—

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

“(2)(A) the control of funds provided under each such program and title to property acquired with program funds will be in a public agency or in a nonprofit private agency, institution, organization, or Indian tribe, if the law authorizing the program provides for assistance to those entities; and

“(B) the public agency, nonprofit private agency, institution, or organization, or Indian tribe will administer the funds and property to the extent required by the authorizing statutes;

“(3) the applicant will adopt and use proper methods of administering each such program, including—

“(A) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program; and

“(B) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation;

“(4) the applicant will cooperate in carrying out any evaluation of each such program conducted by or for the State educational agency, the Secretary, or other Federal officials;

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

“(6) the applicant will—

“(A) submit such reports to the State educational agency (which shall make the reports available to the Governor) and the Secretary as the State educational agency and Secretary may require to enable the State educational agency and the Secretary to perform their duties under each such program; and

“(B) maintain such records, provide such information, and afford such access to the records as the State educational agency (after consultation with the Governor) or the Secretary may reasonably require to carry out the State educational agency’s or the Secretary’s duties; and

“(7) before the application was submitted, the applicant afforded a reasonable opportunity for public comment on the application and considered such comment.

“(b) GEPA PROVISION.—Section 442 of the General Education Provisions Act shall not apply to programs under this Act.

“PART D—WAIVERS

“SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

“(a) IN GENERAL.—Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

“(1) receives funds under a program authorized by this Act; and

“(2) requests a waiver under subsection (b).

“(b) REQUEST FOR WAIVER.—

“(1) IN GENERAL.—A State educational agency, local educational agency, or Indian tribe that desires a waiver shall submit a waiver request to the Secretary that—

“(A) identifies the Federal programs affected by the requested waiver;

“(B) describes which Federal statutory or regulatory requirements are to be waived and how the waiving of those requirements will—

“(i) increase the quality of instruction for students; and

“(ii) improve the academic achievement of students;

“(C) describes, for each school year, specific, measurable educational goals, in accordance with section 1111(b), for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes .

“(D) explains how the waiver will assist the State educational agency and each affected local educational agency, Indian tribe, or school in reaching those goals; and

“(E) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

“(2) ADDITIONAL INFORMATION.—Such requests—

“(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

“(B) shall be developed and submitted—

“(i) (I) by local educational agencies (on behalf of those agencies and schools) to State educational agencies; and

“(II) by State educational agencies (on behalf of, and based on the requests of, local educational agencies) to the Secretary; or

“(ii) by Indian tribes (on behalf of schools operated by the tribes) to the Secretary.

“(3) GENERAL REQUIREMENTS.—

“(A) STATE EDUCATIONAL AGENCIES.—In the case of a waiver request submitted by a State educational agency acting on its own behalf, the State educational agency shall—

“(i) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

“(ii) submit the comments to the Secretary; and

“(iii) provide notice and information to the public regarding the waiver request in the manner in which the applying agency customarily provides similar notices and information to the public.

“(B) LOCAL EDUCATIONAL AGENCIES.—In the case of a waiver request submitted by a local educational agency that receives funds under this Act—

“(i) the request shall be reviewed by the State educational agency and be accompanied by the comments, if any, of the State educational agency; and

“(ii) notice and information regarding the waiver request shall be provided to the public by the agency requesting the waiver in the manner in which that agency customarily provides similar notices and information to the public.

“(c) RESTRICTIONS.—The Secretary shall not waive under this section any statutory or regulatory requirements relating to—

“(1) the allocation or distribution of funds to States, local educational agencies, or other recipients of funds under this Act;

“(2) maintenance of effort;

“(3) comparability of services;

“(4) use of Federal funds to supplement, not supplant, non-Federal funds;

“(5) equitable participation of private school students and teachers;

“(6) parental participation and involvement;

“(7) applicable civil rights requirements;

“(8) the requirement for a charter school under subpart 1 of part B of title V;

“(9) the prohibitions regarding—

“(A) State aid in section 9522;

“(B) use of funds for religious worship or instruction in section 9505; and

“(C) activities in section 9526; or

“(10) the selection of a school attendance area or school under subsections (a) and (b) of section 1113, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 1113.

“(d) DURATION AND EXTENSION OF WAIVER.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a waiver approved by the Secretary under this section may be for a period not to exceed 4 years.

“(2) EXTENSION.—The Secretary may extend the period described in paragraph (1) if the Secretary determines that—

“(A) the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver was requested and the waiver has contributed to improved student achievement; and

“(B) the extension is in the public interest.

“(e) REPORTS.—

“(1) LOCAL WAIVER.—A local educational agency that receives a waiver under this section shall, at the end of the second year for which a waiver is received under this section and each subsequent year, submit a report to the State educational agency that—

“(A) describes the uses of the waiver by the agency or by schools;

“(B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers were granted; and

“(C) evaluates the progress of the agency and of schools in improving the quality of instruction or the academic achievement of students.

“(2) STATE WAIVER.—A State educational agency that receives reports required under paragraph (1) shall annually submit a report to the Secretary that is based on those reports and contains such information as the Secretary may require.

“(3) INDIAN TRIBE WAIVER.—An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

“(A) describes the uses of the waiver by schools operated by the tribe; and

“(B) evaluates the progress of those schools in improving the quality of instruction or the academic achievement of students.

“(4) REPORT TO CONGRESS.—Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report—

“(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

“(B) describing whether the waivers—

“(i) increased the quality of instruction to students; or

“(ii) improved the academic achievement of students.

“(f) TERMINATION OF WAIVERS.—The Secretary shall terminate a waiver under this section if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purposes.

“(g) PUBLICATION.—A notice of the Secretary’s decision to grant each waiver under subsection (a) shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

“PART E—UNIFORM PROVISIONS

“Subpart 1—Private Schools

“SEC. 9501. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.

“(a) PRIVATE SCHOOL PARTICIPATION.—

“(1) IN GENERAL.—Except as otherwise provided in this Act, 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.—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.

“(4) EXPENDITURES.—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.

“(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) subparts 1 and 3 of part B of title I;

“(B) part C of title I;

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

“(D) part B of title II;

“(E) part D of title II;

“(F) part A of title III;

“(G) part A of title IV; and

“(H) part B of title IV.

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

“(3) APPLICATION.—(A) Except as provided in subparagraph (B), this subpart, including subsection (a)(4), applies to funds awarded to a local educational agency under part A of title II only to the extent that the local educational agency uses funds under that part to provide professional development to teachers and others.

“(B) Subject to subparagraph (A), the share of the local educational agency’s subgrant under part A of title II that is used for professional development and subject to a determination of equitable expenditures under subsection (a)(4) shall not be less than the aggregate share of that agency’s awards that were used for professional development for fiscal year 2001 under section 2203(1)(B) (as such section was in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001) and section 306 of the Department of Education Appropriations Act, 2001.

“(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 during the design and development of the programs under this Act, 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 and the amount of funds available for those services; and

“(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 contract services through potential third-party providers.

“(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 Act, 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.

“(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 Act, 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, organization, 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.

“SEC. 9502. 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 9501, 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 9501, 9503, and 9504.

“(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.

“SEC. 9503. 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 9501 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 a reasonable period of time.

“(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 a reasonable period of time. The appeal shall be accompanied by a copy of the State educational agency’s resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.

“SEC. 9504. BY-PASS DETERMINATION PROCESS.

“(a) REVIEW.—

“(1) IN GENERAL.—

“(A) WRITTEN OBJECTIONS.—The Secretary shall not take any final action under section 9502 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, United States Code.

“(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.

“(B) JUDGMENT.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or

certification as provided in section 1254 of title 28, United States Code.

“(b) DETERMINATION.—Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with that agency, consortium, or entity and representatives of the affected private school children, teachers, or other educational personnel, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the applicable requirements of section 9501 or any other provision of this Act.

“(c) PAYMENT FROM STATE ALLOTMENT.—When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of those services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this Act.

“(d) PRIOR DETERMINATION.—Any by-pass determination by the Secretary under this Act as in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001 shall remain in effect to the extent the Secretary determines that that determination is consistent with the purpose of this section.

“SEC. 9505. PROHIBITION AGAINST FUNDS FOR RELIGIOUS WORSHIP OR INSTRUCTION.

“Nothing contained in this Act shall be construed to authorize the making of any payment under this Act for religious worship or instruction.

“SEC. 9506. PRIVATE, RELIGIOUS, AND HOME SCHOOLS.

“(a) APPLICABILITY TO NONRECIPIENT PRIVATE SCHOOLS.—Nothing in this Act shall be construed to affect any private school that does not receive funds or services under this Act, nor shall any student who attends a private school that does not receive funds or services under this Act be required to participate in any assessment referenced in this Act.

“(b) APPLICABILITY TO HOME SCHOOLS.—Nothing in this Act shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this Act.

“(c) RULE OF CONSTRUCTION ON PROHIBITION OF FEDERAL CONTROL OVER NONPUBLIC SCHOOLS.—Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this Act.

“(d) RULE OF CONSTRUCTION ON STATE AND LOCAL EDUCATIONAL AGENCY MANDATES.—Nothing in this Act shall be construed to require any State educational agency or local educational agency that receives funds under this Act to mandate, direct, or control the curriculum of a private or home school, regardless or whether or not a home school is treated as a private school under state law, nor shall any funds under this Act be used for this purpose.

“Subpart 2—Other Provisions

“SEC. 9521. MAINTENANCE OF EFFORT.

“(a) IN GENERAL.—A local educational agency may receive funds under a covered program for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

“(b) REDUCTION IN CASE OF FAILURE TO MEET.—

“(1) IN GENERAL.—The State educational agency shall reduce the amount of the allocation of funds under a 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).

“(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

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

“SEC. 9522. PROHIBITION REGARDING STATE AID.

“A State shall not take into consideration payments under this Act (other than under title VIII) 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.

“SEC. 9523. PRIVACY OF ASSESSMENT RESULTS.

“Any results from an individual assessment referred to in this Act of a student that become part of the education records of the student shall have the protections provided in section 444 of the General Education Provisions Act.

“SEC. 9524. 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 on the Internet. 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 Act, 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 sub-section (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.

“SEC. 9525. 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 of the United States Code (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 of the United States Code (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 of the United States Code (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 602 of the Civil Rights Act of 1964. 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 603 of the Civil Rights Act of 1964. Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 603 of such Act.

“(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 facilities before or after the hours during which attendance at the school is compulsory.

“SEC. 9526. GENERAL PROHIBITIONS.

“(a) PROHIBITION.—None of the funds authorized under this Act shall be used—

“(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual;

“(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

“(3) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or

“(4) to operate a program of contraceptive distribution in schools.

“(b) LOCAL CONTROL.—Nothing in this section shall be construed to—

“(1) authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or school’s instructional content, curriculum, and related activities;

“(2) limit the application of the General Education Provisions Act;

“(3) require the distribution of scientifically or medically false or inaccurate materials or to prohibit the distribution of scientifically or medically true or accurate materials; or

“(4) create any legally enforceable right.

“SEC. 9527. PROHIBITIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS.

“(a) GENERAL PROHIBITION.—Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

“(b) PROHIBITION ON ENDORSEMENT OF CURRICULUM.—Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

“(c) PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION OF STANDARDS.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI.

“(d) RULE OF CONSTRUCTION ON BUILDING STANDARDS.—Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

“SEC. 9528. ARMED FORCES RECRUITER ACCESS TO STUDENTS AND STUDENT RECRUITING INFORMATION.

“(a) POLICY.—

“(1) ACCESS TO STUDENT RECRUITING INFORMATION.—Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

“(2) CONSENT.—A secondary school student or the parent of the student may request that the student’s name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request.

“(3) SAME ACCESS TO STUDENTS.—Each local educational agency receiving assistance under this Act shall provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

“(b) NOTIFICATION.—The Secretary, in consultation with the Secretary of Defense, shall, not later than 120 days after the date of enactment of the No Child Left Behind Act of 2001, notify principals, school administrators, and other educators about the requirements of this section.

“(c) EXCEPTION.—The requirements of this section do not apply to a private secondary school that maintains a religious objection to service in the Armed Forces if the objection is verifiable through the corporate or other organizational documents or materials of that school.

“(d) SPECIAL RULE.—A local educational agency prohibited by Connecticut State law (either explicitly by statute or through statutory interpretation by the State Supreme Court or State Attorney General) from providing military recruiters with information or access as required by this section shall have until May 31, 2002, to comply with that requirement.

“SEC. 9529. PROHIBITION ON FEDERALLY SPONSORED TESTING.

“(a) GENERAL PROHIBITION.—Notwithstanding any other provision of Federal law and except as provided in subsection (b), no funds provided under this Act to the Secretary or to the recipient of any award may be used to develop, pilot test, field test, implement, administer, or distribute any

federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.

“(b) EXCEPTIONS.—Subsection (a) shall not apply to inter-national comparative assessments developed under the authority of section 404(a)(6) of the National Education Statistics Act of 1994 and administered to only a representative sample of pupils in the United States and in foreign nations.

“SEC. 9530. LIMITATIONS ON NATIONAL TESTING OR CERTIFICATION FOR TEACHERS.

“(a) MANDATORY NATIONAL TESTING OR CERTIFICATION OF TEACHERS.—Notwithstanding any other provision of this Act or any other provision of law, no funds available to the Department or otherwise available under this Act may be used for any purpose relating to a mandatory nationwide test or certification of teachers or education paraprofessionals, including any planning, development, implementation, or administration of such test or certification.

“(b) PROHIBITION ON WITHHOLDING FUNDS.—The Secretary is prohibited from withholding funds from any State educational agency or local educational agency if the State educational agency or local educational agency fails to adopt a specific method of teacher or paraprofessional certification.

“SEC. 9531. PROHIBITION ON NATIONWIDE DATABASE.

“Nothing in this Act (other than section 1308(b)) shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act.

“SEC. 9532. UNSAFE SCHOOL CHOICE OPTION.

“(a) UNSAFE SCHOOL CHOICE POLICY.—Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

“(b) CERTIFICATION.—As a condition of receiving funds under this Act, a State shall certify in writing to the Secretary that the State is in compliance with this section.

“SEC. 9533. PROHIBITION ON DISCRIMINATION.

“Nothing in this Act shall be construed to require, authorize, or permit, the Secretary, or a State educational agency, local educational agency, or school to grant to a student, or deny or impose upon a student, any financial or educational benefit or burden, in violation of the fifth or 14th amendments to the Constitution or other law relating to discrimination in the provision of federally funded programs or activities.

“SEC. 9534. CIVIL RIGHTS.

“(a) IN GENERAL.—Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act.

“(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require the disruption of services to a child or the displacement of a child enrolled in or participating in a program administered by an eligible entity, as defined in section 1116 of title I and part B of title V, at the commencement of the entity’s participation in a grant under section 1116 of title I or part B of title V.

“SEC. 9535. RULEMAKING.

“The Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by this Act.

“SEC. 9536. SEVERABILITY.

“If any provision of this Act is held invalid, the remainder of this Act shall be unaffected thereby.

“PART F—EVALUATIONS

“SEC. 9601. EVALUATIONS.

“(a) RESERVATION OF FUNDS.—Except as provided in subsections (b) and (c), the Secretary may reserve not more than 0.5 percent of the amount appropriated to carry out each categorical program and demonstration project authorized under this Act—

“(1) to conduct—

“(A) comprehensive evaluations of the program or project; and

“(B) studies of the effectiveness of the program or project and its administrative impact on schools and local educational agencies;

“(2) to evaluate the aggregate short- and long-term effects and cost efficiencies across Federal programs assisted or authorized under this Act and related Federal preschool, elementary, and secondary programs under any other Federal law; and

“(3) to increase the usefulness of evaluations of grant recipients in order to ensure the continuous progress of the program or project by improving the quality, timeliness, efficiency, and use of information relating to performance under the program or project.

“(b) TITLES I AND III EXCLUDED.—The Secretary may not reserve under subsection (a) funds appropriated to carry out any program authorized under title I or title III.

“(c) EVALUATION ACTIVITIES AUTHORIZED ELSEWHERE.—If, under any other provision of this Act (other than title I), funds are authorized to be reserved or used for evaluation activities with respect to a program or project, the Secretary may not reserve additional funds under this section for the evaluation of that program or project.”.