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MONTANA ECIA CHAPTER 1 HANDBOOK

Guidelines, Standards and Good Practices Manual

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1984

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TABLE OF CONTENTS

Chapter 1 Instructional Program Operation

Purpose of Chapter 1	1
Sufficient Size, Scope and Quality	2
Annual Needs Assessment.	2-8
Selecting Chapter 1 Students	9-13
Diagnosis.	14-15
Individual Educational Plans (IEPs).	15-16
Direct Instruction	16-17
Samples for Diagnosis and IEPs	17a-17c
Evaluation	18-22
Sustained Effects.	22-23a
Chapter 1 Services in Private Schools.	24-24a
Parent Involvement in Chapter 1.	25
Special Education and Chapter 1.	25-25b
Bilingual Students and Chapter 1	26
Supplement, Not Supplant (Program Design Options).	27-29
Services to Local Neglected or Delinquent Institutions	30-31a

Chapter 1 Program Administration

State Rulemaking	32
Allocation of Funds.	32-33
Maintenance of Effort.	34
Comparability of Services.	35-36a
Selection of Attendance Areas (Targeting).	37-39a

Chapter 1 Fiscal Requirements

Allowable Costs.	40-40f
Limitation of Expenditures	41
Sick Leave	42-43
Vacation Leave	43-44
Record Keeping	45-46
Audits	47-48

Appendix A Chapter 1 Law, Public Law 97-35 (August 13, 1981)
and Technical Amendments to Chapter 1 Law
(December 8, 1983)

Appendix B Chapter 1 Federal Regulations (November 19, 1982)

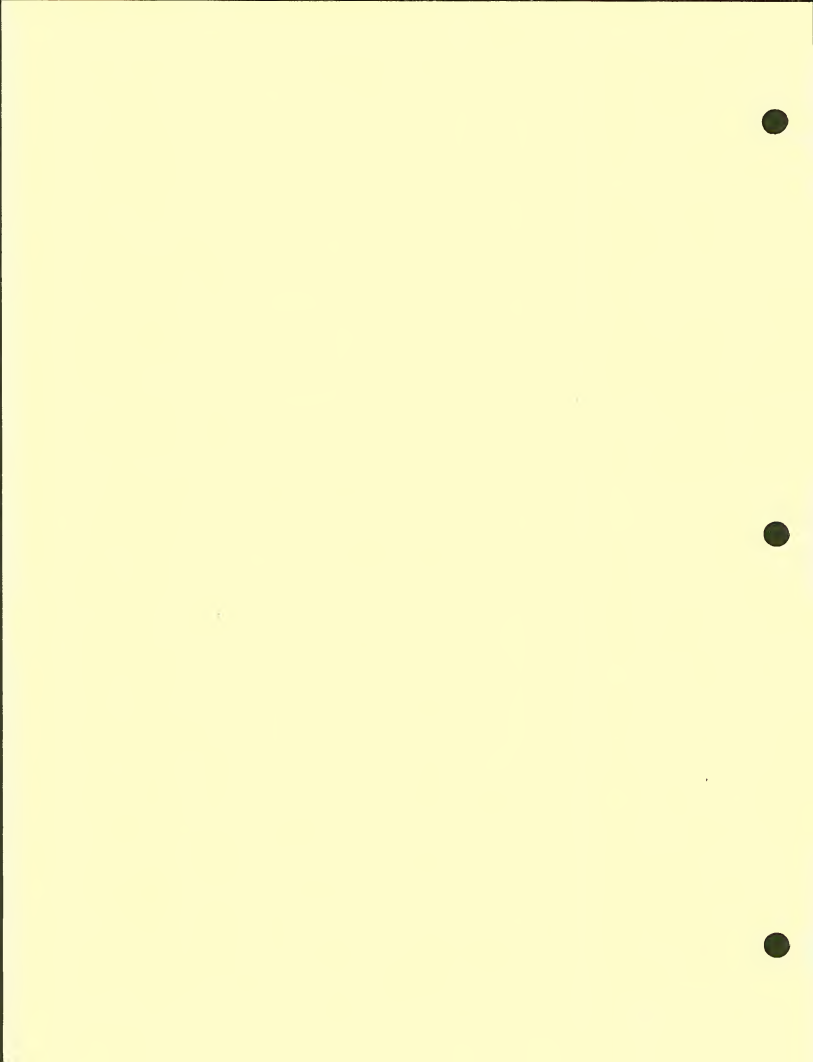
Appendix C Federal Non-Regulatory Guidance for Chapter 1

Appendix D Circular A-102, Attachment P: The Single Audit
Concept (Federal Office of Management and Budget)

Appendix E Montana Chapter 1 Checklists and Forms



CHAPTER 1
INSTRUCTIONAL PROGRAM
OPERATION



CHAPTER 1 INSTRUCTIONAL PROGRAM

Purpose Of Chapter 1

Chapter 1, authorized under ECIA Public Law 97-35, supercedes ESEA Title I but retains the same basic purposes as Title I. It is designed to provide federal financial assistance to meet the special educational needs of educationally deprived students in public and private schools which qualify for the funds. The program is also intended to provide services for children in private local institutions for neglected or delinquent children.

Chapter 1 funds are allocated based on low-income data (census information, children residing in licensed foster homes, children residing in licensed local private neglected or delinquent homes and children whose parents receive public welfare payments equal to or above the national poverty level). While low-income information generates Chapter 1 funds, Chapter 1 services in an eligible school are provided based on educational rather than economic need. It is acknowledged that Chapter 1 funds may not be sufficient to meet all identified educational needs. Thus, it is stipulated that Chapter 1 services shall be delivered to those eligible students in greatest need of such help.

Traditionally, Chapter 1 programs are provided in basic skills areas such as reading, math and/or language arts. Like Title I, Chapter 1 programs are intended to be supplementary to the educational services a school district would provide students with state and local funds. Chapter 1 services are not intended to replace services which a district is required by law to provide for students.



OPERATION OF A CHAPTER 1 PROGRAM

Sufficient Size, Scope And Quality

A Chapter 1 project must have sufficient size, scope and quality to give reasonable promise of meeting the special educational needs of the children being served.

Law: Section 556 (b) (3), P. L. 97-35

Regulations: Section 200.51 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 9 (page 12)

A minimum of \$2,500 in Chapter 1 funds is necessary for approval of a Chapter 1 application. Projects with less than \$2,500 are deemed to lack sufficient funds to adequately meet the requirements of the section of the law. Districts may combine their Chapter 1 allocations in a cooperative project to meet the \$2,500 minimum requirement.

In designing a Chapter 1 program to comply with this requirement, a district needs to consider the nature of the problems students are having and the delivery system available in the district for providing the indicated services. Sufficient concentration of effort must be applied in the selected subject or subjects to assure a high probability of success for students.

Annual Needs Assessment

An assessment of educational needs is required on an annual basis to identify educationally deprived students and their needs. The Chapter 1 program must be designed to address the needs of these students. Chapter 1 administrators and instructional staff should cooperatively plan, conduct and utilize information obtained through the needs assessment process.

Law: Section 556 (b) (2), P.L. 97-35

Regulations: Section 200.50 (November 15, 1982)

Federal Non-Regulatory Guidance: Section 8 (pages 10-12)

Step 1: COLLECT APPROPRIATE DATA PRIOR TO PROGRAM APPLICATION

- Suggested Time Line: Spring of the school year.
- Minimum Information: Data relative to basic skills needs of students in reading, math and language arts.



- Possible Sources Of Information: Test scores below acceptable criteria (e.g., 40th percentile and below), report card grades, student grade point averages, school attendance records, surveys of teachers, parents, students and/or school board members.
- Use current, project-wide data which is representative of the student. (See Chart A for representative random sample size if information is not compiled on all students in the school/district.)

A simple random sample involves developing a list of all available data and randomly selecting a predetermined sample size. Use the chart below to select sample size.

NOTE: There is little advantage to doing a random sample if the group size is less than 100. Select data in a pattern (e.g., every fifth score or every seventh score).

CHART A

<u>Group Size</u>	<u>Sample Size</u>
10	10
20	19
50	44
100	80
150	108
200	132
250	152
300	169
400	196
500	217
750	254
1,000	278

- Compile information in a consistent, systematic format.
- Gather information to substantiate the need of support services (e.g., home-school coordinator, counselors) if such services are being considered for inclusion in the program.

(See Chart B for Three Needs Assessment Options.)



CHART B

EXAMPLES OF THREE NEEDS ASSESSMENT OPTIONS

Needs Assessment Characteristics	Minimal	Average	Comprehensive
Needs to be assessed	Basic skills (reading, math, language arts)	Basic skills Support services	Basic skills Support services, social, emotional, physical and economic factors
Frequency	Annual	Annual plus three-year cycle updates	Comprehensive annually
Data collected	Test scores	Test scores Teacher surveys	Test scores Teacher, parent and student surveys Attendance records Student GPAs
Types of data	Current year's achievement tests	Existing and generated data	Existing and generated data
Data sources	School records	School records Teachers	School records Community members Parents Students Administrators Teachers
Data analysis	Scan objective data Find discrepancies Analyze	Combine objective and subjective data Aggregate Analyze	Combine objective and subjective data Aggregate Weigh Analyze
Data summary	Summarize Prioritize needs Plan Chapter 1	Summarize Prioritize needs Plan Chapter 1	Summarize Prioritize needs Plan Chapter 1 program



Step 2: COMPILE AND SUMMARIZE THE INFORMATION GATHERED

- Compile information by grade levels and subject areas.
- Be careful not to duplicate the student counts (inflation); using percentage figures rather than an individual tally count will compensate for duplicate counts. (See Chart C for an example of a simple needs assessment summary.)
- Be careful to balance various sources of information if more than one source of data is collected. Options for balancing information can include:
 - a. Establishing priorities among sources of data, e.g., four sources of data have been collected: test score results, teacher surveys, parent surveys and student surveys. After summarizing the data, establish a "priority order" for reviewing the data. For example, examine the instructional priorities indicated by test scores; see if results of the teacher surveys confirm the test score priorities. If the teacher surveys indicate a different priority, review results of the parent and student surveys to determine whether test score priorities or teacher survey priorities should be given preference in designating the instructional focus of the Chapter 1 program.
 - b. Develop a weighted composite score by adjusted percent scores. (See Chart D for detailed directions.)

Step 3: PLAN THE UPCOMING YEAR'S PROGRAM BASED ON NEEDS ASSESSMENT INFORMATION

Input:

- a. Current needs assessment summary
- b. Chapter 1 evaluation results
- c. Current educational research regarding effective practices
- d. District parameters (physical facilities available, other available programs)

Output:

- a. The focus for instruction:
 - What subject area(s) should be served by the Chapter 1 program?
 - What grade levels should be served by the Chapter 1 program?



CHART C

TEST DATA -- NEEDS ASSESSMENT SUMMARY

1. READING

Grade:	K	1	2	3	4	5	6	7	8	Total
Number of students scoring below 40 percentile										
Number of students tested										
Percent of students scoring below 40 percentile										
Total number of students (Do not duplicate count)										

2. MATH

Grade:	K	1	2	3	4	5	6	7	8	Total
Number of students scoring below 40 percentile										
Number of students tested										
Percent of students scoring below 40 percentile										
Total number of students (Do not duplicate count)										

3. LANGUAGE ARTS

Grade:	K	1	2	3	4	5	6	7	8	Total
Number of students scoring below 40 percentile										
Number of students tested										
Percent of students scoring below 40 percentile										
Total number of students (Do not duplicate count)										

4. INDICATED PRIORITIES The Chapter 1 program should focus on the area(s) with the indicated greatest need. Exception: If the indicated need is being met through another program or service, it may not be necessary to also address that need in the Chapter 1 program.

Priorities for Chapter 1 Program
(as indicated by test data)

- a. _____
b. _____
c. _____



CHART D

DEVELOPING A WEIGHTED COMPOSITE SCORE
(Adjusted Percent Scores)

Adjusted Percent = A process to equally weigh different areas which are combined in the Needs Assessment Summary

The steps in developing Adjusted Percent Scores (or Weighted Composite) are:

1. Find the range (the difference between the highest and lowest score) for each source of information in the composite. In the example, the ranges were 29 for Students Below 25th Percentile, 12 for Parent Surveys and 32 for Teacher Ratings.
2. Divide the largest range by the ranges for each type of information. In the example, the results would be:

$$\begin{array}{l} \text{Students Below 25th Percentile: } 32/29 = 1.1 \\ \text{Parent Surveys: } 32/12 = 2.7 \\ \text{Teacher Ratings: } 32/32 = 1.0 \end{array}$$

3. If all information is to have equal weight, multiply the scores by the appropriate score from Step 2. The resulting numbers should be added to form the total composite score. For example, the numbers used for Vocabulary would be:

$$\begin{array}{l} 15 \times 1.1 = 16.5 \\ 22 \times 2.7 = 59.4 \\ 12 \times 1.0 = 12.0 \\ \text{Total} = 87.9 \end{array}$$

4. If some information should carry more weight, multiply the appropriate number in Step 2 by the weight for the information. If you want parent priorities to carry twice as much weight as any other information, multiply all of the parent results by 5.4 (Step 2 results \times weighting = 2.7×2).

Needs Assessed	% Of Students Below 25th Percentile		Results Of Parent Survey (In %)		Teacher Survey Results (In %)		Total Of Adjusted Scores	Priority
	% Before Adjustment	Adjusted %	% Before Adjustment	Adjusted %	% Before Adjustment	Adjusted %		
READING								
Vocabulary	15	16.5	22	59.4	12	12	87.9	1
Comprehension	20	22.0	10	27.0	24	24	73.0	2
Word Attack	5	5.5	13	35.1	3	2	43.6	3
MATH								
Computation	6	6.6	21	56.7	21	21	84.3	1
Problem Solving	8	8.8	11	29.7	15	15	53.5	3
Reasoning	17	18.7	14	37.8	8	8	64.5	2
LANGUAGE ARTS								
Writing	21	23.1	22	59.4	33	33	115.5	2
Composition	31	34.1	21	56.7	35	35	125.8	1
Spelling	2	2.2	21	56.7	4	4	62.9	3



b. Potential Chapter 1 students:

- Based on the subject area(s) and grade levels to be served, determine which students are eligible for Chapter 1 services (potential Chapter 1 students).

c. Appropriate Chapter 1 case load:

- Of the eligible Chapter 1 students, which ones will not be placed for services due to special education placement, parent refusal for placement, student transfer from the school, etc.?
- Of the remaining students, how many can be served on the available Chapter 1 funds?

d. Appropriate Chapter 1 program:

Now that a determination has been made on the needs of students and the appropriate case load of Chapter 1 students who can be served with the available Chapter 1 funds, decisions should be made regarding:

- Program design (in-class, pull-out, replacement or elective class)
- Number and type of Chapter 1 staff needed
- Student selection criteria
- Specific program objectives and goals
- Equipment and supplies needed

Step 4: COMPLETE CHAPTER 1 APPLICATION OR AMENDMENT FORMS AND SUBMIT COMPLETED FORMS TO THE OFFICE OF PUBLIC INSTRUCTION

- An application/amendment must be received by the Office of Public Instruction at least FOUR WEEKS prior to the beginning date of the project.
- The earliest approval date which can be requested for a project is July 1.



SELECTING CHAPTER 1 STUDENTS

Chapter 1 student selection must be aligned with the needs assessment information. An objectively-based, systematic process must be used to select the students in greatest need of help. This student selection process must generate a prioritized list for each subject area served in the program and students must be selected in order from the prioritized lists.

Law: Section 556 (b) (2), P.L. 97-35

Regulations: Section 200.50 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 8 (pages 10-12)

BASIC GUIDELINES FOR CHAPTER 1 STUDENT SELECTION

- Students greatest in need are selected in order according to the prioritized list.
- Teacher referral alone is NEVER adequate for placing a student into the Chapter 1 program.
- Objective information (e.g., test scores, basal placement, grades) must constitute the majority of the selection process.
- Non-placement of a high priority student or placement of a low-priority student (instead of a high priority student) must be documented (see Section 2).
- Acceptable reasons for non-placement of high priority students include: parents refuse placement, student's needs addressed through other services (e.g., special education, bilingual program); scheduling difficulties (secondary level only).

Section 1: OPTIONS FOR PRIORITIZED LISTS

- Choose the option which will be the best process for determining which students in your district should be placed into the Chapter 1 program; minor adaptations to the examples listed are acceptable as long as all selection guidelines are maintained.
- Establish an appropriate cut-off score (minimum number of points a student must compile in order to be selected for the program).
- The cut-off score must be high enough to require more than teacher referral and limit the number of Chapter 1 students to the case load approved in the Chapter 1 application.



- Establish equivalent criteria across grade levels (the same possible total points and number of criteria used).
- Teacher referral, if included in the selection process, must be a written referral. Sample teacher referral forms are included on pages 10a, 10b and 10c of this handbook.

A. Test Score Only

The student with the lowest test score is the first selected into the Chapter 1 program; the student with the second lowest test score is selected next; the student with the third lowest test score is selected third; continue in this sequence until the approved Chapter 1 case load is full.

Example:

<u>Name Of Student</u>	<u>Grade</u>	<u>Test Score</u>	<u>Placement</u>	<u>Waiting</u>
Anna A.	4	8 %ile	Spec. Ed.	
Bobby B.	3	12 %ile	"	
Carla C.	4	18 %ile	"	
Danny D.	2	24 %ile	"	
Eddie E.	2	32 %ile	"	
Fran F.	4	36 %ile	Parents Refuse Placement	
George G.	3	36 %ile	"	

B. Test Score Combined With Teacher's Referral

- Test score and teacher's referral are combined in a systematic manner according to the indicated severity of student need.
- Selection is based on a total (or combined) score.

Example:

<u>Test Score Percentile</u>	+	<u>Teacher Referral</u>	=	
Above 40	=	No Referral	=	0
36 - 40	=	1-2 Weak Areas Noted	=	15
26 - 35	=	3-4 Weak Areas Noted	=	30
20 - 24	=	5 or More Weak Areas	=	40
15 - 19	=			
Below 15	=			

Student Selection: 90 (highest priority) - - - - - 0 (lowest priority)





SAMPLE B

INDIVIDUAL REFERRAL FORM

CHAPTER 1 REFERRAL FORM

Student's Name _____ Grade _____ Teacher _____

This student is referred for help in:

READING I have observed problems in the following area(s). Check and/or circle choices.

- _____ Decoding Skills
Phonics: consonants short/long vowels irregular vowels/vowel combinations
consonant blends
Structural Analysis: root/base words prefixes suffixes
- _____ Comprehension Skills
Literal: main idea use of context use of details following directions
recall of facts sequencing
Inferential: drawing conclusions perceive relationships predict outcomes
Critical: characterization skills author's intent mood-tone-setting
- _____ Vocabulary
Basic language development basic sight vocabulary antonyms-synonyms-homonyms
figurative language/idiomatic language general vocabulary acquisition
specific subject area vocabulary
- _____ Study Skills
dictionary skills library reference skills reading maps and graphs
general study habits
- _____ Other (specify) _____

MATH

- _____ Basic number concepts
_____ Basic facts knowledge: addition subtraction multiplication division
_____ Whole number computation skills: add subtract multiply divide
_____ Fraction computation skills: add subtract multiply divide
_____ Math reasoning skills: word problems equation solving geometry
_____ Decimals
_____ Measurement
_____ Math terminology and concepts
_____ Application of math skills: money time daily life/survival math
_____ Other (specify) _____

Additional help is needed in: homework preparation preparation for tests
need for individualized help needs small group instruction

The student's reading level is approximately _____.

The student's math level is approximately _____.

Other comments:

Referring Teacher's Signature



SAMPLE C

CHAPTER 1 REFERRAL

Name of Student _____ Grade _____ Date _____

Referring Teacher _____

Complete the following information about the referred student by checking the appropriate column to answer each question. Complete the general information section and the questions for each academic area in which the student is being referred.

GENERAL INFORMATION

	Always	Sometimes	Rarely
Does the student complete homework assignments?	/		2
Does the student complete work assigned during the class period?		/	2
Is the student easily distracted from class activities?		2	/
Does the student take part in class discussions and activities?		/	2
Does the student follow oral directions?		/	2
Does the student follow written directions?		/	2
Does the student cooperate in the classroom?		/	2
Does the student get easily discouraged when doing assigned work?		/	2

LANGUAGE ARTS

Does the student write an acceptable complete simple sentence?		/	2
Does the student write an acceptable compound sentence?		/	2
Does the student apply basic rules of capitalization?		/	2
Does the student apply basic rules of punctuation?		/	2
Does the student spell most words correctly?		/	2

READING

Does the student use phonetic analysis (decoding)?		/	2
Does the student use structural analysis (pronunciation)?		/	2
Does the student have a grade level vocabulary?		/	2
Does the student have comprehension skills on grade level?		/	2
Does the student have study skills on grade level?		/	2

MATH

Is the student capable of doing all whole number operations?		/	2
Is the student capable of doing all operations when working with fractions?		/	2
Is the student capable of doing all operations when working with decimals?		/	2
Is the student capable of solving and applying word problems?		/	2
Is the student capable of dealing with money problems?		/	2

ADDITIONAL COMMENTS:

Total points in language arts (general information + language arts) = _____
 Total points in reading (general information + reading) = _____
 Total points in math (general information + math) = _____



Name of Student	Grade	Test Score	Points For		Total	Placement	Waiting
			Test Score	Teacher Referral			
Jenny A.	6	21 %ile	30	40	70	X	
Carl B.	7	10 %ile	50	15	65	X	
Shawn C.	6	32 %ile	20	40	60	Parents Refuse Placement	
David D.	5	22 %ile	30	15	45	X	
----- Cut Off Score = 45 -----							
Leah E.	8	52 %ile	0	40	40	No*	

* Teacher referral only. Documentation necessary before placement.

C. Weighted List

- A combination of multiple criteria is generally felt best in order to provide a balanced reflection of students' needs while maintaining reasonable time and effort requirements from teachers and administrators.
- Three criteria are combined; usually included are a test score, teacher's referral and an indicator of student performance (basal placement, subject area grades, high school grade point average).
- Selection is based on the total (or combined) score.

Example:

Test Score Percentile	+	Teacher Referral	+	Basal Placement
Above 40 = 0		No Referral = 0		On Grade Level = 0
36 - 40 = 10		1 Weak Area = 10		1 Book Below = 10
26 - 35 = 20		2 Weak Areas = 20		2 Or More Books
16 - 25 = 30		3 Weak Areas = 30		Below Level = 20
10 - 15 = 40				
Below 10 = 50				

Student Selection: 100 (highest priority) ----- 0 (lowest priority)

Name of Student	Grade	Test Score	Points For		Total	Placement	Waiting
			Teacher Referral	Basal Placement			
Joe A.	4	50	20	20	90	X	
Lynn B.	3	30	30	10	70	X	
Tom C.	5	10	30	20	60	X	
Donna E.	5	40	0	20	60	X	
Jack F.	2	20	20	10	50	X	
Jason G.	4	20	10	10	40		X
----- Cut Off Score = 40 -----							
Hal H.	3	0	30	0	30		Not Eligible



D. Composite Scale

- Four or more criteria are combined for a total score.
- It is commonly recommended that a maximum of five criteria be included in a composite scale for reasons of time and practicality.
- Criteria can include: test score, report card grades, teacher referral, retention in previous grade(s), previous placement in a special program, parent/student request, absenteeism, diagnostic test scores.
- Selection is based on the total score.
- All criteria included on the composite scale must be gathered for every eligible student (making sure all eligible students have an equal opportunity to be selected).

Example:

CHAPTER 1 STUDENT SELECTION

PRIORITIZED LIST

	Student's Name	Test Score		Attendance		Grades		Retention Points	Teacher Referral Points		Chapter 1 Placement List Or Comments
		%ile	Points	Absences	Points	Grade	Points				
G		1-10	..... 50	0-10	..... 2	A or B	..... 0	Once 2 pts. More than Once 5 pts.	0-25 pts.	T	Chapter 1 Placement List Or Comments
R		11-20	..... 40	11-20	..... 4	C	..... 1				
A		21-27	..... 30	21-30	..... 6	D	..... 5				
D		28-33	..... 20	31-40	..... 8	F	..... 10				
E		34-40	..... 10	41 or more	10					L	
9	Alan A.	8 %ile	50	35	8	F	10	5	20	88	Chapter 1
9	Barbara B.	16 %ile	40	22	6	D	5	0	24	75	Chapter 1
10	Candace C.	28 %ile	20	49	10	F	10	5	25	70	Dropped School
11	Donna D.	15 %ile	40	8	2	D	5	2	18	67	Chapter 1
9	Earl E.	36 %ile	10	18	4	F	10	2	25	51	Chapter 1
----- Cut Off Score -----											
10	Fred F.	12 %ile	40	3	2	C	1	0	6	49	Waiting List



Section 2: DOCUMENTATION

Documentation is additional objective information (minimum of two sources) which clarifies which students are in greatest need when placement exceptions are made to the prioritized list.

- Must be provided when placing a student who ranks low on the prioritized list while "skipping" students with a higher priority ranking; the documentation must justify that the student being placed is greatest in need of Chapter 1 help in comparison to the students who were skipped.
- Must be provided in the non-placement of a high priority student when students ranking lower on the priority list are placed in the program. The documentation must clearly establish that the student does not need help due to adequate classroom performance.
- Must be provided when placing any student who does not meet the established cut-off score criteria.
- Subjective information, such as teacher opinion, and general statements, such as "doing okay in the classroom," are not adequate as documentation sources.
- Specific objective information such as diagnostic test scores, report card grades, current classroom grades or achievement test scores are acceptable as documentation sources.

Example of a placement documentation:

Tim Roy (grade six) scored 4.6 grade equivalent on the Keymath Test (October, 1984) and is currently maintaining a "D" average in the classroom math program. His percent correct on independent math assignments in the classroom (September 19-24, 1984) was 64%.

Example of a non-placement documentation:

Lisa Brown (grade three) was doing satisfactorily in the classroom as of October 1, 1984. She is reading in the 3¹ level of the basal reading series and scored at the third-grade level on a graded word recognition test. Her percent correct on independent reading assignments in the classroom (September 17-28, 1984) was 88%.



DIAGNOSIS AND INDIVIDUAL EDUCATIONAL PROGRAMS (IEPs)

It is required that the specific educational needs of the students selected for Chapter 1 services be determined. Chapter 1 instruction must focus directly on those identified needs. An IEP, based on appropriate diagnostic information, is required for all students served in Montana Chapter 1 programs. This IEP shall be the basis for instruction provided in the Chapter 1 program.

Law: Section 556 (b) (2), P.L. 97-35

Regulations: Section 200,50 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 8 (pages 8-12)

DIAGNOSIS

Diagnosis should be:

- Directed towards improving instruction.
- Relevant to the student's Chapter 1 placement and program.
- Efficient (use existing information to the extent possible and test only when necessary).
- A continual process throughout the school year.

Diagnosis should not be:

- The same for all students (vary according to individual needs).
- All "formal" or "informal" (have variety in the information gathered, e.g., tests, student performance, classroom teacher input).

Types of diagnostic information to gather:

- General information (to identify strengths and weaknesses of the individual student).
- Specific information (to detail the weak areas so appropriate instruction can be planned).

Sources of general diagnostic information include:

- Low scores on subtests of achievement and/or diagnostic tests.
- Teacher observation/ratings/referral/screening information.
- Unit/chapter tests from classroom basal materials.
- General review of student's classroom work.
- Screening tests in specific subject areas.



Sources of specific diagnostic information include:

- Item analysis of achievement or diagnostic tests.
- Teacher-made tests on specific skills.
- Detail review of student work.
- Criterion referenced tests.
- "Cluster profile" of objectives from achievement, diagnostic or basal text tests.
- Detail analysis of specific diagnostic tests.

INDIVIDUAL EDUCATION PLANS

Effective IEPs are:

- Composed of long-range goals, instructional goals and plans for implementation.
- Based directly on diagnostic information and serves as the basis for all Chapter 1 Instruction.
- Reviewed at least every nine weeks and revised as needed.
- Limited to three to six long-range goals -- the most important or in a logical sequence as indicated by student needs.

Long-range goals are:

- Based on weaknesses indicated through general diagnosis.
- Examples: improve reading comprehension or master multiplication skills.

Instructional goals are:

- Based on specific diagnostic information.
- Related to the long-range goal (three to four instructional goals for each long-range goal).
- Specific enough to write a lesson plan.
- General enough to cover a period of time (several weeks to several months).
- Examples: Identify the main idea in paragraphs and one-page stories; read one-syllable words with irregular vowel combinations OI/OY, AU/AW, OO/OO; master addition with two regroupings in the problem.



Plans for implementation are:

- Suggestions of how the instructional goals will be achieved.
- Includes various methods and materials to be used in instruction and/or ways student progress might be evaluated.

General comments:

- No IEP form is specified; each district may choose the IEP format which will best suit the district.
- It is not expected that non-certified Chapter 1 personnel will be responsible for diagnosis and IEPs; in those cases when there is not a certified Chapter 1 teacher, the non-certified personnel will work cooperatively with the student's classroom teacher and/or Chapter 1 project director to gather diagnostic information and compose the IEP.
- IEPs do not include goals relating to the student's classroom grades or providing homework help. Such goals would be tutorial and research has shown that tutorial help does not provide as much long-term success for students as a remedial approach to academic problems.

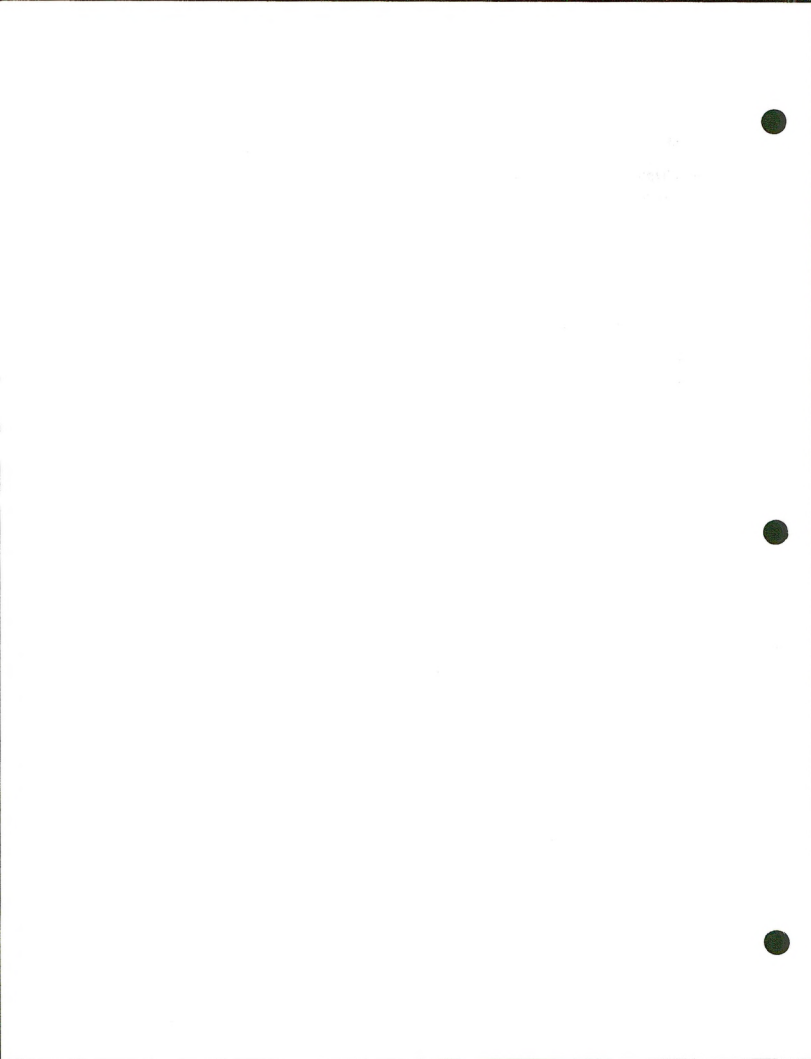
DIRECT INSTRUCTION

- Instruction for each Chapter 1 student should be based on the student's IEP.
- Instruction may take place on a one-to-one basis or in small groups. It is recommended that elementary groups not exceed five students and high school groups not exceed eight students for each Chapter 1 instructor.
- An appropriate case load for a full-time Chapter 1 teacher would be approximately 20 to 30 students (elementary) or up to 50 students (high school). The total case load will depend upon the possibilities for grouping students and the severity of student instructional needs.
- An appropriate case load for a Chapter 1 aide would be approximately 15 to 20 students (if working alone) or sharing a teacher's case load plus 10 students if working with a Chapter 1 teacher.
- It is recommended that Chapter 1 instruction be remedial, not tutorial, in nature.
- Tutors or instructional aides must work directly under the direction of a certificated staff member. The tutors and instructional aides may NOT introduce concepts to students unless the tutor or aide is also appropriately certificated by the state.



- Classroom support activities may be included for a limited percentage of the instructional time, but should be of a parallel nature (e.g., working on the same skill, but not completing a classroom assignment).
- Chapter 1 Instructors are encouraged to maintain contact on a regular basis with the student's classroom teacher. This contact should relate to goals and objectives pursued through Chapter 1 Instruction, as well as progress and/or problems observed in the regular classroom.
- Research studies have shown that direct instructional interaction between student and instructor and the amount of time spent on appropriate instructional tasks are important factors in student achievement. It is encouraged that considerable attention be given these aspects of Chapter 1 Instructional activities.
- It is recommended that daily or weekly lesson plans be written to insure that instruction provided is in accordance to the student's IEP. An example of a lesson plan format is:

Student(s) <u>Jennifer H.</u>					
Grade <u>3</u>		Chapter 1 Time <u>1:15 - 1:45</u>			
	Monday	Tuesday	Wednesday	Thursday	Friday
IEP Objective	• Phonics: irregular vowels • Comprehension: (Main Idea)	• Phonics: Syllables • Comprehension: (Context)	• Phonics: irregular vowels • Comprehension: (Details of Main Idea)	• Phonics: irregular vowels • Comprehension: (Context)	
Daily Lesson Plan	1. Vowels: au/aw 2. Main Idea	1. Syllables: vc/cv 2. Use of Context Clues	1. Vowels: oi/oy 2. Identify supporting details to main idea	1. vowels: review au/aw/oi/oy 2. Use of Context clues	
Materials/ Procedures	1. Specific Skills Series, Sounds-B pp. 12-16 (au/aw) New Phonics We Use "B" p. 21 & 37 2. SRA Red Kit, cards 7-B	1. List of words from basal rdr; Phonics Fun ditto 2. Cloze Connection (a18); LEA story about Horses & vocabulary list	1. Blackboard lesson w/ teacher; System 80, Lesson 28 (oi/oy) 2. Review stories on SRA Red Kit, cards 7-B, for main idea & details	1. Frank Schaffer ditto oi/oy/au/aw Phonics Flash Card words au/aw/oi/oy 2. Reading/Thinking "Raindrops" wk ldr p. 24	
Evaluation/ Comments	Specific Skills: 83% w/ help - Phonics We Use: 80% indep SRA - 92%	Phonics: good wk. LEA story was good - include in Jennifer's storybk.	Phonics: 84% Details: needed much help - review on Friday	Phonics: 90% Context Clues: 86%	



CHARACTERISTICS OF SELECTED READING DIAGNOSTIC TESTS

(A Summary Of Published Test Reviews)

Compiled: Summer 1983

TEST NAME (EDITION DATE)	GENERAL DESCRIPTION	ADMINIS- TRATION	TIME REQUIRE- MENT	FORMS	VALIDITY	RELIABILITY	READING SUBTESTS	DIAGNOSTIC SPECIFICITY
Botel Reading In- ventory (1978 edition) Follett Publishing	Informal test of phonics skills (word recognition and decoding), grades 1 through 6.	Some group other in- dividual	No time limit	2	Correlation with reading basal placement = .77- .95 for grades 2 through 5 (above average to very good), validity less expressive for grades 1 and 6.	No data given; judged to be a weakness.	Word Recognition Test, Word Oppo- sites Test, Decoding Test (12 sub- tests, awareness of sounds-letter correspondence to multi-syllabic words), Spelling Placement Test.	Test included words -- no passages to read. Spelling placement test keyed to 1975 Follett Spelling Series of minimal use with other series. Word Recognition Test from primer through 4th grade level; of limited usefulness for students reading above 4th grade level. Useful for place- ment but should be used with other data for diagnostic purposes.
Durrell Analysis of Reading Diffi- culty (1980 edition) Harcourt Brace Jovanovich	Oral Reading, Silent Reading and Listening Comprehension Test and Word Recognition and Word Analysis Tests for non-readers through 6th grade level.	Individual test	30-90 minutes	1	Correlation with MAT reading subtest = .33- .65 (below aver- age to average)	.81 (moderate)	Oral Reading Silent Reading; Listening Comprehension; Word Recognition/Word Analysis (tach- istoscope presentation); Listening Vocabulary; Sounds in Isolation; Spelling; Visual Memory of Words (tachistoscope presentation); Identifying Sound in Words.	Time most important factor in set- ting instructional level. Test not easy to administer or interpret. Strength of test a various "check- lists of difficulties" for instruc- tional planning. Passages reviewed as dry and uninteresting. Compre- hension questions a low level re- sponses, often answerable without reading passages.
Gates-MacGinitie Reading Tests (1978 edition) Houghton Mifflin	Survey tests of general reading achievement with seven levels which permit contin- uous assessment of reading achievement, grades 1 through 12.	Group test	55 minutes	2	No validity in- formation pro- vided; author encourages users to judge whether test is valid for their program (questions to guide decision provided).	.88-.95 (strong to very strong)	Vocabulary subtests (mainly synonym matching), Comprehen- sion passages with multiple choice questions.	Vocabulary tests only synonyms but weak vocabulary score could be low word knowledge and/or weak word re- cognition. Comprehension passages interesting; questions passage de- pendent; approximately 50 percent are inferential questions. Tests useful to estimate reading level, determine need for diagnostic testing and assess progress in reading.
Glinzore (Oral Reading Test (1968 edition) Harcourt Brace Jovanovich	Test for analysis of oral reading, grades 1 through 6.	Individual test	15-20 minutes	2	Validity infor- mation is missing.	.50-.84 (weak to adequate)	Ten graded passages which read as a continuous story. Record oral reading errors. Scores for ac- curacy, comprehension and rate are yielded from the results.	Content of passages dated so in- terest of students may be affected. Criteria for errors not totally based on current diagnostic prac- tices; may wish to develop checklist for semantic, syntactic and/or graphophonemic errors.
Iowa Silent Reading Test (1973 edition) Harcourt Brace Jovanovich	Test for reading achievement in com- prehension, vocabu- lary and reading efficiency for high school and college students.	Group test	1 hour 15 minutes	2	Correlation with grades and reading test scores = .50- .77 (above average)	.86-.90 (strong to very strong)	Reading comprehension, vocabulary and reading efficiency.	Rated as a good group test based on sound reading theory; good item dif- ficulty for older students. Lacks specificity for individual prescrip- tion; additional diagnostic infor- mation necessary in order to plan in- struction. Well-rated for assessing student progress.
Nelson-Denny Reading Test (1973 edition) Houghton Mifflin	Predictive, screening and broadly diagnostic test, grades 9-post- secondary.	Group test	30-45 minutes	4	Correlation with grades and reading test scores = .31- .45 (low)	.69-.92 (weak to adequate)	Vocabulary and Comprehension with Reading Rate section.	Test is brief and easy to administer. Comprehension questions adequately answerable without reading passages. Reviewers stated adequate for pre- dictive or placement purposes but lacks specific information useful for diagnostic or evaluation (pre/posttest) purposes.
Peabody Individ- ual Achievement Test (1970 edition) American Guidance Service	A wide-range screening measure of achievement in the areas of mathe- matics, reading, spelling and general information for grades K through 12.	Individual test	30-45 minutes	1	Correlation with PIAT = .48-.66 (average to above average)	.68-.94 (weak to strong)	Word Recognition (letter and word recognition) and Comprehension (single sentences read silently once followed by presentation of four line drawings, one of which best illustrates the sentence).	Large standard error of measurement as scores lack precision and depend- ability. PIAT not intended as diag- nostic test nor as precise measure of achievement. Comprehension sub- test at upper levels contains "artificial" contrived sentences unlikely to be encountered in reading texts. Test adequate as initial gross screening measure; not recommended as diagnostic test.

NOTE: Sources of published reviews include *Journal of Reading*, *The Reading Teacher*, *Journal of Developmental and Remedial Education*, *Diagnostic, Educational and Psychological Assessment*, *Diagnostic and Criterion-Referenced Reading Tests: Review and Evaluation* (IRA monograph) and ERIC documents 190982, 210287 and 165088.

Some of these tests may be useful for initial screening, reading placement or specific diagnosis, but do not meet Chapter 1 evaluation requirements for use as pre/posttests.



TEST NAME (EDITION DATE)	GENERAL DESCRIPTION	ADMINIS- TRATION	TIME REQUIRE- MENT	FORMS	VALIDITY	RELIABILITY	READING SUBTESTS	DIAGNOSTIC SPECIFICITY
Silverroll Classroom Reading Inventory (1976 edition) W. C. Brown Co.	An informal reading inventory designed to indicate a student's reading level, prepriener through grade 8.	Individual test	20 minutes	3	Validity and reliability information are lacking and judged to be a weakness of the test.		Graded Word Lists (to determine starting level for passages); Oral Selections of varying lengths (24-176 words) with comprehension questions (infer- ential, literal, vocabulary); optional Spelling Survey.	Little training needed to adminis- ter/interpret. Inconsistency between levels in passage length and compre- hension questions (literal, inferen- tial and vocabulary); requires cau- tion in making diagnostic judgments. Analysis improves when frustration level errors omitted. Useful in screening and placing students and in combination with other diagnosis; lacks specificity for measuring achievement.
Spache Diagnostic Reading Scales (1972 edition) CTB/McGraw-Hill	Assess instructional, independent and poten- tial reading levels for grade scores 1 through 6.5; determine reading skill development in word attack, word analysis; sight recognition and audi- tory discrimination, grades 1 through 8.	Individual test	45 minutes	1	Correlation with reading tests and teacher judgments = .67- .94 (above aver- age to very strong)	.65-.87 (weak to average)	Comprehension oral and silent reading passages. Phonics skills (consonant and vowel sounds, consonant blends, common syl- lables, blending, letter sounds, initial consonant substitution and auditory discrimination).	Interpretation lacking for phonics test. Reading achievement levels are based on lower accuracy levels (60% instead of 75%-90%). Tends to score slightly higher than grade placement. Format allows independent level higher than instructional level in many cases.
Stanford Diagnostic Reading Test (1976 edition) Harcourt Brace Jovanovich	Test of vocabulary, de- coding, comprehension and reading rate given in four levels covering from the end of grade 1 through grade 12. De- signed particularly for low achieving reading students.	Group test	2 hours +	2	Correlation with 1973 SAT reading subtest = .64-.98 (above average to very strong) except at Reading Rate subtest = .39-.56 (below average-average)	.71-.97 (weak to very strong)	Subtests vary somewhat according to the level of the test; pri- marily subtests include vocabu- lary, auditory discrimination, phonetic analysis, structural analysis, reading comprehension and reading rate.	Well-constructed group diagnostic test; results global in nature -- inadequate for determining in- structional level; eight words knowledge and some syntactic and semantic clues; additional diagnosis necessary. Designed for under- achieving readers. Problems with use as posttest (ceiling effect, uneven norm samples, changing test levels).
Sueher-Allred Reading Placement Inventory (1973 edition) Economy Co.	An informal reading in- ventory designed to indicate a student's reading level, pre- primer through grade 8.	Individual test	20 minutes	2	Validity and reliability informa- tion are lacking and judged to be a weakness of the test.		Word Recognition Test (graded word lists to find approximate instructional level) and Oral Reading Test (levels A-L) to determine a student's independ- ent, instructional and frus- tration reading levels and common word recognition and com- prehension errors. Derived from Economy Company basal reading series.	Little training needed to adminis- ter/interpret. Inconsistency between levels in passage length and compre- hension questions (literal, inferen- tial and vocabulary); requires cau- tion in making diagnostic judgments. Analysis improves when frustration level errors omitted. Useful in screening and placing students and in combination with other diagnosis; lacks specificity for measuring achievement.
Woodcock-Johnson Psycho-Educational Battery (1978 edition) American Guidance Service	A battery of 22 subtests of Broad Cognitive, Achievement and Interest. A shortened form = Scholastic Aptitudes, Cognitive Factors and Tests of Achievement. Can be given for ages 3 through adult.	Individual test	2 hours total or less if fewer sub- tests ad- ministered	1	Validity studies done but informa- tion not available in reviews.	Reviewers stated "quite adequate."	Letter-Word Identification (name visually presented letters and words), Word Attack (read non- sense words phonetically) and Passage Comprehension (read a short passage and supply a missing word).	No information on obtaining ceiling level (could frustrate some students attempting items above their ability) or how to select clusters for diag- nostic purposes. Strength of test = internally consistent battery for measuring aptitude and achievement; reading subtests in isolation not a primary use of test. Manual does not provide adequate interpretation data for instructional purposes.
Woodcock Reading Mastery Tests (1973 edition) American Guidance Service	Battery of subtests, intended for clinical use, designed for use in grades K through 12, but adequate mainly in grades K through 6.	Individual test	45 minutes	2	Validity studies judged inadequate by reviewers.	Generally in range of .90- .99 (very strong) for lower grade levels, but below .78 (weak) for grades 7 through 12.	Letter Identification; Word Identification (grades 1, through 8); Word Attack (uses of nonsense words); Word Com- prehension (measures ability to draw analogies as well as word knowledge); Passage Com- prehension (modified Cloze presentation -- tends to over- estimate achievement levels).	Usefulness of test above grade 6 highly suspect due to weak validity and reliability. Use caution in interpreting "total score" as variety in student performance can create misleading "average" score. Use item analysis with Word Attack subtest to obtain instructional information -- tends to over- estimate achievement levels. Results are not easily used for instructional purposes.

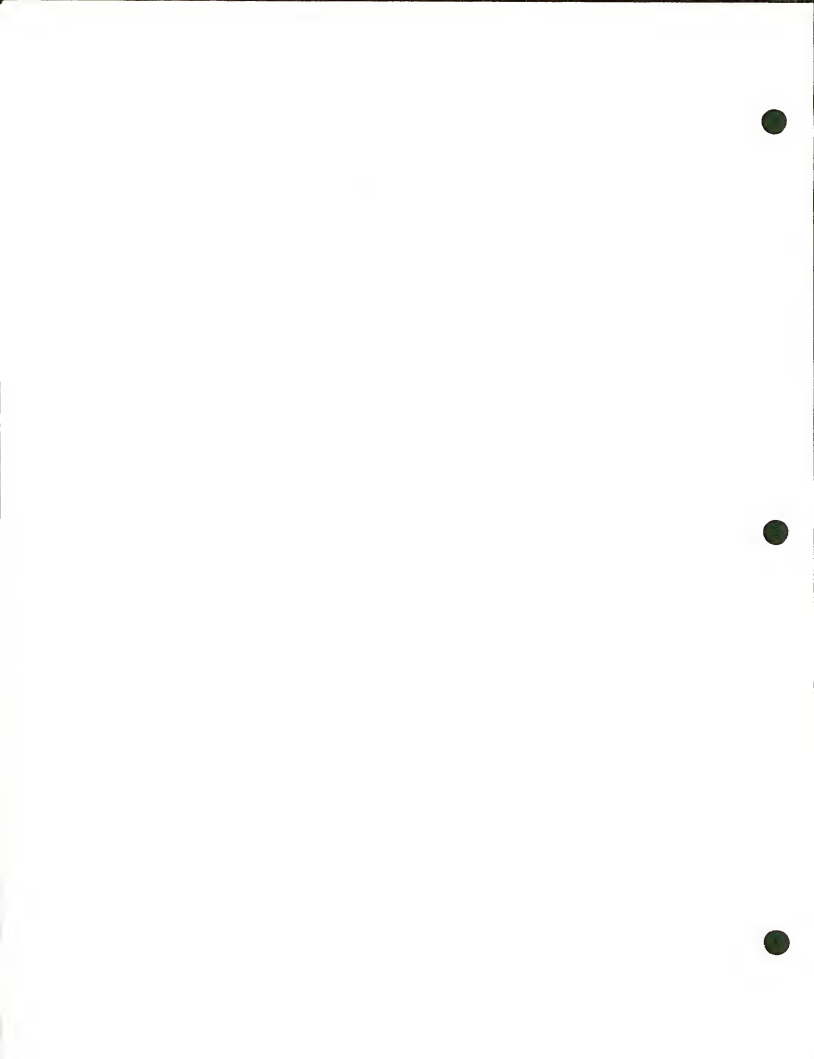


CHAPTER 1

INDIVIDUALIZED EDUCATIONAL PLAN

Student's Name Jennifer H. Grade 3 Teacher SmithSignature of Chapter 1 Personnel Responsible T. JonesDate 10/1/82

Goal	Instructional Objective	Methods and Materials	Starting Date	Date of Mastery	Evaluation
Improve Phonetic Skills	1-Learn irregular vowel combinations: au, aw, oi, oy, ou, ow, oo	"New Phonics We Use" workbook Teacher-made materials	1-1/13/81	1/29/81	Basal Reader Competency Test Decoding Section - 83% correct
	2-Learn basic syllabication rules: \bar{v}/cv , vc/cv , $\bar{v}/$ suffix	Dictionary	2-1/20/81		
Improve Structural Analysis Skills	1-Learn proper changes before adding suffix: y to i, f/fe to v, drop final e	Basal Reader Vocabulary Teacher-made materials	1-1/26/81		
	2-Adding common prefixes and suffixes		2-1/15/81		
Improve Literal Comprehension	1-Identify main idea and supporting details in a paragraph 2-Draw conclusions based on short story 3-Evaluate solution to a story problem	Barnell-Loft "Specific Skills" Level B & C Self-Selection reading materials Supplementary Basal materials	1-1/13/81		
			2-1/16/81		
			3-1/19/81		



EVALUATION

Each school district is required to evaluate its Chapter 1 program. Each Chapter 1 project must submit an annual evaluation report by July 1 of each year. In Montana, it is necessary to follow the TIERS Model A-1 Evaluation Plan and meet the necessary requirements of that model. (A Model "A" Evaluation Handbook may be requested from the Office of Public Instruction.) Each Chapter 1 program's evaluation will be included in the national sample of test data submitted to the federal government according to a three-year sampling plan. It is necessary to determine whether gains are sustained over a period of more than one year during the three-year sampling cycle.

Law: Section 556 (b) (4), P.L. 97-35 and Technical Amendments (December, 1983)
Regulations: Section 200.54 (November 19, 1982)
Federal Non-Regulatory Guidance: Section 12 (page 15)

Section 1: ANNUAL EVALUATION REPORT

The following information must be submitted to the Office of Public Instruction by July 1 of each year:

- Subjective evaluation of the current project's strengths and weaknesses and recommendations for next year's project. This information is to be submitted by the project supervisor and each Chapter 1 employee (teacher, aides, support personnel).
- Student participation information by grade level and public/nonpublic school categories.
- Student participation information by subject area and Chapter 1 support services.
- Age, gender and ethnic group information on Chapter 1 students.
- Chapter 1 staff and inservice information.
- Information regarding Chapter 1 services to local neglected or delinquent institutions, if applicable.

Chapter 1 projects must submit achievement information (pretest/posttest scores) for Chapter 1 students at least once every three years and are encouraged to submit such data every year. Pretests and posttests must be selected and administered in accordance



with TIERS Model A-1 plan. (See Evaluation sections 2, 3 and 4 of this handbook.) In submitting pretest/posttest data as part of the evaluation report, it is necessary to include:

1. A separate page for each grade and subject served in the Chapter 1 program (e.g., third grade reading, third grade math, fourth grade reading, fourth grade math).
2. The membership for each grade and subject served in the Chapter 1 program. Federal regulations establish membership as the number of Chapter 1 students enrolled in each grade and subject area as of the first Monday in December.
3. Exact dates for pretest/posttest administration.
4. Only students with both a pretest and a posttest score.
5. If tests are hand-scored, the raw scores, percentile scores and NCE scores for each Chapter 1 student.

Be certain to complete all blanks on each form and compute the average NCEs for pretests and posttests. Chapter 1 achievement data cannot be computer processed unless complete and accurate information is provided.

Chapter 1 evaluation forms will be provided each project in the spring of each year.

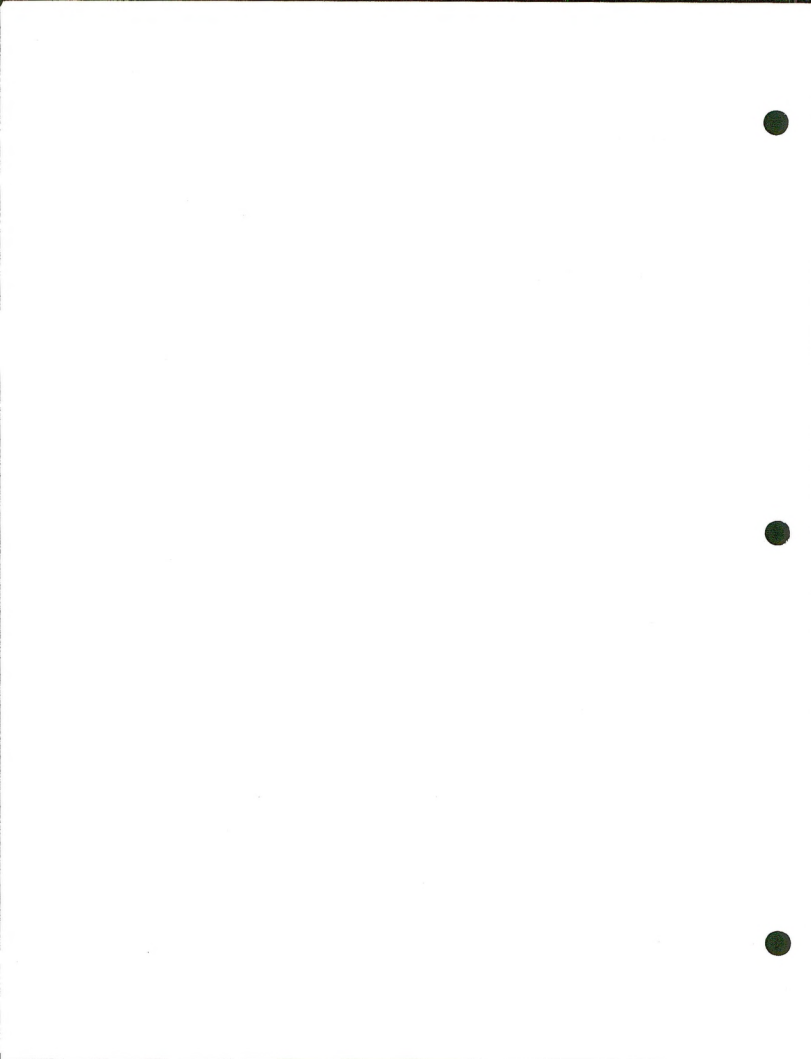
Section 2: TEST CHOICE/TESTING CYCLE

Each district should choose an appropriate test to evaluate the specific subject areas served in the Chapter 1 program. See pages 19a and 19b for test chart of possible Chapter 1 tests.

The test chosen should be one which is:

- Current (suggestion: edition date not more than seven years old).
- Is valid and reliable.
- Matches the content of the Chapter 1 program and the instructional objectives of the school.
- Has national empirical norms and percentile scores.
- Provides for local considerations (e.g., functional level testing, group vs individual testing, machine vs hand-scoring).

The testing cycle for evaluation refers to the dates for administering the pretest and posttests for the program. The choices for testing cycle are:



Chapter 1 Evaluation

CHARACTERISTICS OF SELECTED TESTS*

Test Series	Expanded Score	Empirical Norm Dates (Appropriate Grades)	Recommended In-Level Grade Ranges (Level: Grade)	Comments	Forms	Publisher
California Achievement Tests, 1977	Obtained Scale Score	See Comments	10: K-0-K-9; 11: K-6-1-9; 12: 1-6-2-9; 13: 2-6-3-9; 14: 3-6-4-9; 15: 4-6-5-9; 16: 5-6-6-9; 17: 6-6-7-9; 18: 7-6-9-9; 19: 9-6-12-9	Although empirical norm dates are November 3 and May 4, districts wishing to use norm tables in test manuals should test October 1-7 (fall) and April 1-7 (spring). The publisher provides Quarter Month norms interpolated 2-6 weeks from the empirical norm date. Locator tests for out of level testing are available. The publisher recommends testing no more than two levels out of level.	C & D	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
Comprehensive Assessment Program Achievement Series, 1980	Equal Interval Score	October 15 April 23 (K-12)	4: Pre-K-K-5; 5: K-0-1-5; 6: 1-0-2-5; 7: 2-0-3-5; 8: 3-0-4-5; 9: 4-0-5-5; 10: 5-0-6-5; 11: 6-0-7-5; 12: 7-0-9-5; 13: 9-0-11-5; 14: 11-0-12-9	Locator tests are available for out of level testing. The publisher recommends testing no more than two levels out of level.	A & B	American Testronics 209 Holiday Road, Suite #150 Conville, IA 52241
Comprehensive Tests of Basic Skills, 1961	Converted Scale Score	October 14 April 29	A: K-0-K-9; B: K-6-1-6; C: 1-0-1-9; D: 1-6-2-9; E: 2-6-3-9; F: 3-6-4-9; G: 4-6-6-9; H: 6-6-8-9; J: 6-6-12-9; K: 11-0-12-9 (see comments on Level K)	The publisher provides Quarter Month norms interpolated 2-6 weeks from the empirical norm date. Locator tests are available for out of level testing. The publisher recommends testing no more than two levels out of level. Level K is more appropriate for testing students in college preparatory programs	L & V	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
Curriculum Referenced Tests of Mastery, 1983 (Standard Edition)	Scale Score	September 26 (Anticipated) January 19 May 16	E: 1; F: 2; G: 3; H: 4; I: 5; J: 6; K: 7; L: 8		A & B	Charles E. Merrill Pub. Co. Division of Bell & Howell 1300 Alum Creek Drive Columbus, OH 43216
DMI Mathematics Systems, 1983	See Comments	See Comments	A: K-6-1-5; B: 1-6-2-5; C: 2-6-3-5; D: 3-6-4-5; E: 4-6-5-5; F: 5-6-6-5; G: 6-6-8-9	Percentiles and NCEs for the total score are linked to the 1981 CTBS and the 1977 CAT through the publisher's scoring service. Normed scores can be provided for CAT or CTBS empirical or projected norms dates when the Instructional Objective Inventory is used. Normed scores are not available for band scored tests. Locator tests are available for out of level testing.	One Form	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
Diagnostic Mathematics Inventory, 1975	Scale Score	See Comments	A/Red: 1-5-2-5; B/Green: 2-5-3-5; C/Blue: 3-5-4-5; D/Orange: 4-5-5-5; E/Aqua: 5-5-6-5; F/Purple: 6-5-7-5; G/Brown: 7-5-8-5	Percentiles and NCEs for the total score are linked to the 1981 CTBS and the 1977 CAT through the publisher's scoring service. Normed scores can be provided for CAT or CTBS empirical or projected norms dates. Normed scores are not available for band scored tests.	One Form	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
Gates-MacGillivray Reading Tests, 1978	Extended Scale Score	October 15 (1-10) February 15 (Level A only) May 15 (1-12)	Basic: R: 1-0-1-9; A: 1-5-1-9; B: 2; C: 3; D: 4-6; E: 7-9; F: 10-12	Supplementary out of level norms tables may be requested from the publisher. The Basic Reading level should not be used out of level beyond grade 2.	1, 2, 3	The Riverside Publishing Company Division of Houghton Mifflin 8420 Bryn Mawr Avenue Chicago, IL 60631
Individualized Criterion Referenced Tests, 1979	See Comments	October 5 May 1	Prim. I: 1; Prim. II: 2; Elem. I: 3-4; Elem. II: 5-6; Intermed.: 7-8	ICRT has an expanded scale score which "links" nearly all of the ICRT test booklets to a continuous scale. The tests must be machine scored to use the expanded scale score. Machine scoring is included in the test price.	A	Educational Progress - Division of Educational Development Corp. 4335 South Memorial Tulsa, OK 74145
Iowa Tests of Basic Skills, 1978 Tests of Achievement and Proficiency, 1978	Standard Score	October 28 (K-3) May 2 (K-3) October 30 (3-9) April 28 (3-9) (1978 norms) April 30 (3-9) (1982 norms) October 29 (9-12) April 21 (9-12)	S: K-1-1-5; 6: K-9-1-9; 7: 1-7-2-6; 8: 2-7-3-5; 9: 3; 10-6-11; 5; 12: 6; 13: 7; 14: 8-9; TAP 15: 9; 16: 10; 17: 11; 18: 12	ITBS in continuous with Tests of Achievement and Proficiency, 1978. NCE conversion tables are available for all levels of the ITBS and TAP. 1982 norms are available for the ITBS Levels 5-14. The publisher recommends testing no more than two levels out of level.	7 & 8 T	The Riverside Publishing Company Division of Houghton Mifflin 8420 Bryn Mawr Avenue Chicago, IL 60631
KeyMath Diagnostic Arithmetic Test, 1971	Not Applicable	October 15 (2-10) (1977-78 norms) April 15 (2-6) (1977-78 norms)	Same test covers K-6	Empirical fall and spring norms (developed in 1977-78) for grades 2-6 are available in Supplementary Norms Tables, which must be requested from the publisher. Directions for interpolating norms are available from the publisher.	One form	American Guidance Service Publisher's Building Circle Pines, MN 55014
Metropolitan Achievement Tests, 1978 Instructional Battery Survey Battery	Scaled Score	October 15 April 20	Primers: K-5-1-4; Prim. I: 1-5-2-4; Prim. II: 2-5-3-4; Elem.: 3-5-4-9; Intermed.: 5-0-6-9; Adv. I: 7-0-9-9 Preprimers: K-0-K-5; Primers: K-5-1-4; Prim. I: 1-5-2-4; Prim. II: 2-5-3-4; Elem.: 3-5-4-9; Intermed.: 5-0-6-9; Adv. I: 7-0-9-9; Adv. II: 10-0-12-9	Survey Battery provides norm-referenced scores; Instructional Battery provides norm- and criterion-referenced scores. The batteries were coordinated in content and standardized together. The Reading Comprehension tests are the same in both batteries. Interpolated norms may be ordered through the publisher's scoring service. These allow districts using Model A to test up to six weeks from norm dates. For Chapter 1 program evaluation (fall-spring), the publisher suggests the following use of test levels: Primar: 1; Prim. I: 2; Prim. II: 3; Elem. 4; Elem. or Inter.: 5; Inter.: 6; Inter. or Adv. I: 7; Adv. I: 8, 9.	J & K	The Psychological Corporation 7500 Old Oak Blvd. Cleveland, OH 44130

*NOTE: Inclusion of tests on this chart does not imply a recommendation for Chapter 1 use.

OVER



Test Series	Expanded Score	Empirical Norm Dates (Appropriate Grades)	Recommended In-Level Grade Ranges (Level: Grade)	Comments	Forms	Publisher
Nelson Reading Skills Test, 1977	Grade Equivalent	October 28 March 8	A: 3-4.5; B: 4.5-6; C: 7-9	The publisher recommends testing no more than two levels out of level.	3 & 4	The Riverside Publishing Company Division of Houghton Mifflin 8420 Bryn Mawr Avenue Chicago, IL 60631
Peabody Individual Achievement Test, 1970	Not Applicable	March 15	Same test: K-12	Supplementary norms tables are available from the publisher. Fall and midyear norms do not fit Model A guidelines.	One form	American Guidance Service Publisher's Building Circle Pines, MN 55014
PRI Reading Systems, 1980	See Comments	See Comments	A: K-1; B: 1-2; C: 2-3; D: 4-6; E: 7-9	Percentiles and NCEs for the total score are listed to the 1981 CTBS and the 1977 CAT through the publisher's scoring service. Normed scores can be provided for CAT or CTBS empirical or projected norms dates when the System 1 Instructional Objectives Inventory is used. Normed scores are not available for hand-scored tests. Locator tests are available for out of level testing.	One form	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
Reading Yardsticks, 1981	Standard Score	See Comments	6: K; 7: 1; 8: 2; 9: 3; 10: 4; 11: 5; 12: 6; 13: 7; 14: 8	Norm-referenced score estimates for comparable subtests on the ITBS. Gates-MacGinitie and the 3-R's Test are available from the publisher for Levels 9-14 (for in level testing).	One form	The Riverside Publishing Company Division of Houghton Mifflin 8420 Bryn Mawr Avenue Chicago, IL 60631
Sequential Tests of Educational Progress III, 1979 CIRCUS, 1972-79	Standard Score	October 5 (4-12) October 15 (K-3) January 15 (PreK) May 10	CIRCUS A: PreK-K.5; B: K.5-1.5; C: 1.5-2.5; D: 2.5-3.5; STEP Intermed E: 3.5-4.5; F: 4.5-5.5; G: 5.5-6.5; H: 6.5-7.5; Adv.: 7.5-10.5; J: 10.5-12.9	CIRCUS is continuous with STEP. Locator tests are available in Language and Mathematics. Out of level norms are available from the publisher. The publisher recommends testing no more than one level out of level.	X & Y	CTB/McGraw-Hill Del Monte Research Park 2500 Garden Road Monterey, CA 93940
SRA Achievement Series 1978	Growth Scale Value	October 1 April 22	A: K.5-1.5; B: 1.5-2.5; C: 2.5-3.5; D: 3.5-4.5; E: 4.5-6.5; F: 6.5-8.5; G: 8.5-10.5; H: 9-12	For Chapter 1 students the publisher suggests the following use of test levels: A: K; 1; B: 2; C: 3; D: 4; E: 5-6; F: 7-8; G: 9; H: 10-12.	1 & 2	Science Research Associates, Inc. 155 North Wacker Drive Chicago, IL 60606
Stanford Achievement Test, 1982 Stanford Early School Achievement Test Stanford Test of Academic Skills	Scaled Score	October 7 February 3 (SESAT 1 only) May 5	SESAT 1: K, 0-K, 9; SESAT 2: K, 5-1.9; Prim.1: 1.5-2.9; Prim.2: 2.5-3.9; Prim.3: 3.5-4.9; Inter.1: 4.5-5.9; Inter.2: 5.5-7.9; Adv.: 7.0-9.9; TASK 1: 8.0-12.9; TASK 2: 9.0-13	The Stanford is continuous with the Stanford Early School Achievement Test and the Stanford Test of Academic Skills. Interpolated norms tables are available from the publisher.	E (1982) F (1983)	The Psychological Corporation 7500 Old Oak Blvd. Cleveland, OH 44130
Stanford Diagnostic Mathematics Test, 1976	Scaled Score	October 8 (2-12) April 28 (1-8)	Red: 1.5-4.5; Green: 3.5-6.5; Brown: 5.5-8.5; Blue: 7.5-13	Spring norms tables are available from the publisher. Interpolated norms tables, available from the publisher, can be used by a district testing up to six weeks from the norm dates. The publisher does not recommend out of level testing.	A & B	The Psychological Corporation 7500 Old Oak Blvd. Cleveland, OH 44130
Stanford Diagnostic Reading Test, 1976	Scaled Score	See Comments	Red: 1.5-3.5; Green: 2.5-5.5; Brown: 4.5-9.5; Blue: 9-13	Norm dates for Red, Green and Brown levels: October 8, April 28; Blue level: November 8 (all grades), April 28 (grades 1-9 only). Spring norms tables must be requested from the publisher. Interpolated norms tables, available from the publisher, can be used by a district testing up to six weeks from the norm dates. No Total Reading score is available. The publisher does not recommend out of level testing.	A & B	The Psychological Corporation 7500 Old Oak Blvd. Cleveland, OH 44130
The 3-R's Test, 1982 (Achievement Edition)	Expanded Standard Score	October 27 April 28	6: K; 7: 1; 8: 2; 9: 3; 10: 4; 11: 5; 12: 6; 13: 7; 14: 8; 15/16: 9-10; 17/18: 11/12	The Class Period edition provides only a single, combined score for all three subjects. The publisher recommends testing no more than two levels out of level.	A & B	The Riverside Publishing Company Division of Houghton Mifflin 8420 Bryn Mawr Avenue Chicago, IL 60631
Wide Range Achievement Test, 1978	Not Applicable	See Comments	1: 5 years-11 years 11 months; H: 12 years-adult	Norms are based on age groupings of subjects included in norming sample. The reading subtest must be administered individually; spelling and arithmetic can be administered in a group except for very young students.	One form	Jastak Associates, Inc. 1526 Gilpin Avenue Wilmington, DE 19806
Woodcock Reading Mastery Tests, 1973	Mastery Scale Score	October 15 (1977-78 norms; 2-6) April 15 (1977-78 norms; 2-6) May 15 (1973 norms; K-12)	Same test covers grades K-12	Empirical fall and spring norms (developed in 1977-78) for grades 2-6 are available from the publisher. Directions for interpolating norms are available from the publisher.	A & B	American Guidance Service Publisher's Building Circle Pines, MN 55014





- Fall pretest/spring posttest
- Spring pretest/spring posttest
- Fall pretest/fall posttest

It is possible to combine the Chapter 1 evaluation requirements with the district's annual achievement test program. Examples of how this can be done include:

- If Chapter 1 administers a fall pretest and spring posttest and the district administers school-wide achievement tests in the spring, in the fall Chapter 1 may administer an appropriate subtest of the district's achievement test for each subject area served in the Chapter 1 program. The Chapter 1 posttest will be given as part of the district-wide achievement testing in the spring.
- If Chapter 1 administers a spring pretest and spring posttest and the district administers school-wide achievement tests in the spring, the Chapter 1 program must designate one subtest in each subject area served which will be reserved as the pretest/posttest score. A separate subtest in each subject area must be reserved as the test score used to select Chapter 1 students for the upcoming school year. Chapter 1 pretesting/posttesting, as well as selection testing, will occur as part of the district's achievement testing program. (Due to a statistical factor known as "regression to the mean," it is required that the test score used to select students be different from the test score used as a pretest.)

Section 3: NORMAL CURVE EQUIVALENTS (NCEs)

Test scores must be reported in NCEs which are a standard score related to percentiles. In fact, NCEs and percentiles match at the 1st, 50th and 99th points on the scales. However, percentiles are distributed along a curve with a clustering of scores in the middle of the curve. As a result, gains measured in percentile scores have different meanings at different places on the percentile scale. For example, a gain from the 5th to the 10th percentiles is much larger than a gain from the 40th to the 45th percentiles.

To avoid the problems with percentiles, NCEs were constructed to have equal units along a scale. A gain of five NCEs is the same anywhere along the scale. By using NCEs, gains of one Chapter 1 project can more accurately be compared to those of other Chapter 1 projects in Montana and across the nation.



A percentile-NCE conversion chart is included on page 21a of this handbook.

Section 4: TEST ADMINISTRATION AND PROCEDURES

1. It is recommended that Chapter 1 pretests and posttests be administered within two weeks of the test's empirical norm dates for the district's testing schedule. It is allowable to test within six weeks of the empirical norm dates only if:
 - The pretest and posttest are similarly treated in relation to the norm date (e.g., pretest and posttest four weeks before the respective empirical norm dates), or
 - Interpolate/extrapolate any scores for tests administered during the two week - six week period from the empirical norm dates.
2. The test/subtest used as a pretest must also be used as the posttest for the Chapter 1 project.
3. The score used for student selection MUST NOT be used for a pretest score. It is permissible to use the same test/subtest for selection and pretest only if the tests are given on separate dates (e.g., a spring selection test score and a fall pretest score).
4. At least two-thirds of the Chapter 1 project's instruction should take place between the pretest and posttest dates.
5. Use testing procedures which will minimize errors:
 - Follow the test publisher's directions exactly.
 - Provide a similar environment for the pretesting and posttesting (group test both times or individual test both times).
 - Score the test accurately; double check hand-scored tests; make sure the correct norm table is used.
6. Test at the student's functional level. Follow the publisher's guide for administration and scoring of "out-of-level" tests.
7. Chapter 1 evaluation is a measure of overall program effectiveness as well as individual student's gains. It is necessary that all students in similar grade levels of the program are administered the same test/subtest in order to gauge program effectiveness. For example, all reading students in grades two through six would be administered the reading comprehension subtest of an achievement test as the pretest/posttest. It would be incorrect to administer the Vocabulary subtest for some



Percentile to Normal Curve Equivalent
Conversion Table

%	NCE	%	NCE	%	NCE
1	1.0	41	45.2	71	61.7
2	6.7	42	45.8	72	62.3
3	10.4	43	46.3	73	62.9
4	13.1	44	46.8	74	63.5
5	15.4	45	47.4	75	64.2
6	17.3	46	47.9	76	64.9
7	18.9	47	48.4	77	65.6
8	20.4	48	48.9	78	66.3
9	21.8	49	49.5	79	67.0
10	23.0	50	50.0	80	67.7
11	24.2	51	50.5	81	68.5
12	25.3	52	51.1	82	69.3
13	26.3	53	51.6	83	70.1
14	27.2	54	52.1	84	70.9
15	28.2	55	52.6	85	71.8
16	29.1	56	53.2	86	72.8
17	29.9	57	53.7	87	73.7
18	30.7	58	54.2	88	74.7
19	31.5	59	54.8	89	75.8
20	32.3	60	55.3	90	77.0
21	33.0	61	55.9	91	78.2
22	33.7	62	56.4	92	79.6
23	34.4	63	57.0	93	81.1
24	35.1	64	57.5	94	82.7
25	35.8	65	58.1	95	84.6
26	36.5	66	58.7	96	86.9
27	37.1	67	59.3	97	89.6
28	37.7	68	59.9	98	93.3
29	38.3	69	60.4	99	99.0
30	39.0	70	61.0		
31	39.6				
32	40.1				
33	40.7				
34	41.3				
35	41.9				
36	42.5				
37	43.0				
38	43.6				
39	44.1				
40	44.7				



students, the Comprehension subtest for other students and the Word Study Skills subtest for additional students in addressing the pretest/posttest requirement.

Section 5: SUSTAINED EFFECTS

It is required that a Chapter 1 program determine whether the gains measured during a pretest/posttest cycle are maintained over a longer period of time (at least 12 months). This Sustained Effects Study must be conducted once every three years (during the school year following submission of evaluation data as part of the national Chapter 1 sample). A Sustained Effects Study is conducted by comparing the pretest and posttest scores to a third test score to determine if students continue to improve, maintain at the posttest level or drop off in their achievement gains.

Step 1: ASK A QUESTION TO BE ANSWERED BY THE STUDY

- The sustained effects question to be answered should be of interest to the project, relate to one subject area, but may cross more than one grade level. To increase statistical validity, it is recommended that the question be one which will include as many students as possible. However, in deference to practicality, a question may be limited if it requires data collection on more than 20 students.
- Not everyone's Sustained Effects Study will be the same. A sustained effects question should be posed which is relevant to a particular district's Chapter 1 program. Questions will differ on:

Whom to measure (e.g., students exited from the Chapter 1 program, continuing Chapter 1 students, only third through sixth graders).

When to measure--the third test score must be collected at least 12 months after the pretest score, but data may be collected any time during the school year.

- Examples of questions which might be asked are:

Are achievement gains occurring during the school year maintained over the summer months?

Do the effects of Chapter 1 instruction continue after the students leave the program?



How are students performing who were in Chapter 1 last year and continued in the Chapter 1 program?

Step 2: COLLECT DATA TO ANSWER THE QUESTION POSED

- Students included in the Sustained Effects Study must have three test scores: a pretest score, a posttest score and a sustained effects test score.
- Collection of sustained effects information does not always require additional testing. For example, a pretest for one year could also serve as a measure of sustained effects for the previous year or sustained effects test scores could be taken from the district's achievement testing information.
- The test instrument used to measure sustained effects must be an objective test in the same content area as served by the Chapter 1 project and whose scores can be reported in NCEs.
- The sustained effects test does not have to be the same test as that used for the pretest and posttest.

Step 3: COMPILE THE DATA AND SUMMARIZE THE RESULTS

- The sustained effects question and the test data relative to that question should be compiled on the Sustained Effects Worksheet furnished by the Office of Public Instruction. A Sustained Gains Worksheet is included on page 23a of this handbook.
- Average NCEs are computed for the pretests, posttests and sustained effects test scores.
- The summary information should be reviewed to determine if the students continued to improve, maintained the posttest level or dropped off in their achievement levels. To what may this pattern of achievement be attributed? What implications does this study have for the current and future Chapter 1 programs in the district?
- The Sustained Effects Worksheet must be submitted to the Office of Public Instruction upon completion of the required information.



SUSTAINED GAINS WORKSHEET

Ed Argenbright
 Superintendent
 Office of Public Instruction
 State of Montana
 Helena, MT 59620

1. Building Name _____
2. District Name _____
3. Subject Matter: () Reading () Language Arts () Mathematics
4. State the question(s) to be studied or answered by the sustained gains study:

5. Identify the student population who have been included in the sustained gains study:

Test Description:

Pretest

6. (name and edition) _____ 7. (subtest) _____ 8. (date administered) _____

Posttest

6. (name and edition) _____ 7. (subtest) _____ 8. (date administered) _____

Sustained
 Gains Test

6. (name and edition) _____ 7. (subtest) _____ 8. (date administered) _____

The following should be completed for each Chapter 1 student for whom a pretest, a posttest and a sustained gains score is available.

9. Student Name	10. Pretest NCE	11. Posttest NCE	12. Sustained Gains Test NCE
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i.			
j.			
k.			
l.			
13. NCE Totals			
14. Average NCE*			

(Use additional pages for recording more scores.)

Total number of students listed with pretest, posttest and sustained gains scores: 15.

* To find average NCE score: Divide NCE totals by the total number of students having pre, post and sustained gains scores.

$$\frac{\text{NCE Total}}{\text{Total N}}$$



CHAPTER 1 SERVICES IN PRIVATE SCHOOLS

Federal law, regulations and guidelines are quite specific in regards to Chapter 1 services in nonpublic schools. Essentially, a nonpublic school is entitled to Chapter 1 services if they wish to participate as part of the district's program and there are nonpublic school students who qualify for Chapter 1 services. Chapter 1 services in the nonpublic school must be equitable to those provided in the public school.

Law: Sections 556 (b) (5) and 557 (a), P.L. 97-35

Regulations: Sections 200.70-200.75 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 21 (pages 34-38)

- An ECIA Chapter 1 Nonpublic School Letter form must be completed each year for each nonpublic school in the district. The nonpublic school's decision regarding participation or non-participation is indicated on this form. An ECIA Chapter 1 Nonpublic School Letter form is included on page 24a of this handbook.
- A program description of Chapter 1 services to be provided in the nonpublic school(s) must be included as part of the public district's Chapter 1 application. This program description must demonstrate that the nonpublic school(s) will receive equitable Chapter 1 services to those offered in the public schools.
- It is intended that nonpublic school students receive services to which they would be entitled if they attended the public schools. Nonpublic school students may be served only if they reside in a Chapter 1 project area. Student selection in the nonpublic school must be equivalent to the process used to select Chapter 1 students in the public schools.
- Non-instructional duties which could be construed as providing for the general needs of non-public schools and nonpublic school students or of a religious connection are probable violations of federal law and are STRONGLY discouraged. It is preferable that Chapter 1 staff be given no non-instructional duties at a nonpublic school.



State of Montana
Office of Public Instruction
Ed Argenbright, Superintendent
Helena, MT 59620

ECIA CHAPTER 1
NONPUBLIC SCHOOL LETTER
1984-85

One original of this form, completed and signed by the responsible authority representing the nonpublic school listed in Item D below, *must accompany* a public school's *application* for Chapter 1 funds and any subsequent amendments thereto.

- A. As the responsible authority for the nonpublic school listed in Item D below, I hereby give assurance to the Superintendent of Public Instruction that I was informed that School District No. _____

School Name

County

was filing an application for ECIA Chapter 1 funds and that the school listed below was given the opportunity of participating in the program as provided in Section 557 of Public Law 97-35.

- B. The nonpublic school listed below: (check one)

1. _____ decided to participate.
2. _____ decided not to participate.

- C. Having decided to participate in the project, I certify that I have been informed of all the applicable sections of Public Law 97-35 and that the public school district met the specific requirements of Section 557 of the statute.

I further certify that the above-named school will: (1) comply with the provisions of Title VI of the Civil Rights Act of 1964 "... to the end that no person ... shall on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance ...", (2) comply with the provisions of Title IX of the education amendments of 1972 "... which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance ..." and (3) comply with the provisions of Section 504 of the Rehabilitation Act of 1973 "... which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance."

NOTE: A nonpublic school program description **MUST** be completed for each participating nonpublic school.

- D. List the name and address of the nonpublic school:
- _____

- E. _____
Signature—Responsible Authority and Title

Date



PARENT INVOLVEMENT IN CHAPTER 1

Law: Section 556 (b) (3), P.L. 97-35 and
Technical Amendments (December, 1983)

Regulations: Section 200.53 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 1 (pages 13-14)

- Parent Involvement In Chapter 1 is Intended to inform parents of the nature and intent of the program and provide opportunities for parents to assist in the education of their children.
- An annual open meeting must be held at which the program is explained and parents consulted for their ideas in the planning and implementation of the Chapter 1 program.
- Additional ways to promote parent involvement include: Parent Advisory Council meetings, Chapter 1 open house, individual Chapter 1 parent-teacher conferences, Chapter 1 meal functions (e.g., brown bag lunch, potluck dinner, chili supper), PTA/PTO meeting featuring a Chapter 1 program.

SPECIAL EDUCATION AND CHAPTER 1

Special education students are permitted to receive Chapter 1 academic services with certain restrictions. See pages 25a and 25b of this handbook for the Office of Public Instruction, December 10, 1982, program directive relative to Chapter 1 Services and Handicapped Students.

Law: Section 558 (b), P.L. 97-35

Special education students may be served in the Chapter 1 program if the following criteria are met:

- The Special Education Child Study Team (CST) specifies the student's handicapping condition and provides appropriate services to meet those identified needs.
- The Special Education CST does not place students in the Chapter 1 program; the Chapter 1 prioritized list determines the students to be placed in the Chapter 1 program.
- Chapter 1 services are provided in different academic area(s) than those identified by special education.





OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

December 10, 1982

To: ECIA Chapter 1 Authorized Representatives
Special Education Directors

From: Judith A. Johnson, Assistant Superintendent
Department of Special Services

Re: ECIA Chapter 1 Services and Handicapped Students

Handwritten signature of Judith A. Johnson in cursive.

The ECIA Chapter 1 guidelines, under Public Law 97-35, Section 558(b), permit special education students to receive Chapter 1 academic services with certain restrictions. The basic rule is:

Chapter 1 services may not be provided in the same academic area as the student's handicapping condition served by special education.

Federal special education regulations (December 29, 1977 Federal Register, Section 121a.541) specify that a multidisciplinary evaluation team may identify a specific learning disability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation or mathematics reasoning if there is a severe discrepancy between achievement and intellectual ability in one or more of those areas. The team must identify a processing deficit and determine that the severe discrepancy is not due to a physical impairment, mental retardation, emotional disturbance or environmental, cultural or economic disadvantage. The team should document its decision and clearly indicate the basis on which the determination was made.

Special education and related services are determined by the Child Study Team. Appropriate services are designed to meet the student's unique handicapped needs. The Child Study Team does not place students into the Chapter 1 program. Determination of Chapter 1 placement will be made by the appropriate Chapter 1 staff and according to Chapter 1 selection criteria.

The special education student may have other academic areas, not directly related to the identified learning disability, which also reflect below average achievement. If the student meets the selection criteria for approved Chapter 1 subject areas and ranks high on the Chapter 1 prioritized list, he/she may be selected for Chapter 1 services in the other academic area(s). The services provided by Chapter 1 may not be in the same academic area as served by special education.



December 10, 1982

Page two

- a. Academic areas may not be split between special education and Chapter 1 services. For example, if the Child Study Team determines the student to have a learning disability in written expression, all pertinent areas to that disability will be served by special education. A student may not be served in special education for grammar and composition and receive Chapter 1 services for spelling and handwriting.
- b. Similarly, services may not be split across related subject areas. For example, if the student is determined to have a learning disability in reading comprehension, special education will address the reading components affected by that disability. The student could not be placed in special education for science and social studies and also receive Chapter 1 services in reading. (Special education regulations do not address a learning disability in content subject areas such as science and social studies; the related disability would most likely be in basic reading skill or reading comprehension.)

Any questions regarding joint services of Chapter 1 and special education should be addressed to:

Jay McCallum, Manager, ECIA Chapter 1, telephone 444-5443
Gail Gray, Manager, Special Education, telephone 444-4429

JAJ:gs

ST15982



BILINGUAL STUDENTS AND CHAPTER 1

Students with limited English speaking abilities may receive services through a bilingual program, as well as receive Chapter 1 academic services, provided placement in the Chapter 1 program is based on the same selection criteria as used to select all other Chapter 1 students and relates to the student's academic needs (not limited English proficiency). It is not intended that Chapter 1 services replace bilingual services or that Chapter 1 be provided in lieu of bilingual services.

Law: Section 558(b), P.L. 97-35

The percentage of ESL/Bilingual students in the Chapter 1 program should approximately equal the percentage of ESL/Bilingual students enrolled in the school.



SUPPLEMENT, NOT SUPPLANT

The district must provide all services required by state or federal law, such as the basic curriculum program and special education. Chapter 1 services must be additional to those required services. A Chapter 1 program may include more than one program design option. For example, a high school program may have two periods of replacement class, two periods of elective credit and two periods of pull-out from study hall.

Law: Section 558 (b) (d), P.L. 97-35

Regulations: Section 200.62 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 19 (pages 23-30)

Program Design Options

1. In-Class

- Chapter 1 services are provided in the regular classroom.
- Chapter 1 staff may include certified teachers or aides.
- The classroom teacher remains responsible for basic instruction and grades.
- Chapter 1 instruction is additional to the classroom instruction.
- Chapter 1 staff may work only with Chapter 1 students and instruction must be directed to student needs as identified on IEPs.
- Close communication and cooperation are required between the Chapter 1 instructor and the regular classroom teacher.

2. Limited Pull-Out

- Students leave the regular classroom to receive Chapter 1 services.
- Chapter 1 services may not exceed 25 percent of the student's instructional day (e.g., time spent in instruction not counting recesses, lunch, free periods).
- Chapter 1 staff may include certified teachers and/or aides.
- The classroom teacher remains responsible for basic instruction and grades.
- Chapter 1 instruction may not replace regular classroom instruction and must focus on student's needs according to the IEPs.



- It is preferable to schedule students from study hall or classroom seatwork time than during classroom instruction time.

3. Extended Pull-Out

THIS OPTION REQUIRES THE OFFICE OF PUBLIC INSTRUCTION'S APPROVAL PRIOR TO IMPLEMENTATION.

- Students leave the regular classroom to receive Chapter 1 services.
- Chapter 1 services exceed 25 percent of the student's instructional day or replace instruction from the regular classroom teacher.
- This option usually requires a certified teacher rather than an aide.
- Assignment to Chapter 1 classes are made from the regular classroom roster according to the Chapter 1 prioritized list.
- A classroom teacher remains responsible for student's instructional program even when Chapter 1 replaces classroom instruction.
- This option may require a district contribution of funds or staff to the Chapter 1 program.

4. Elective Credit Class

- This option available only at the secondary level.
- Chapter 1 services are provided in a separate classroom during a regularly scheduled class period.
- Students offered this option must be selected according to the Chapter 1 prioritized list.
- This must be a class not ordinarily included in the school's curriculum (e.g., developmental reading class).
- The Chapter 1 certified teacher is responsible for basic instruction and grades.
- Chapter 1 students receive elective credit toward high school graduation.

5. Replacement Class

THIS OPTION REQUIRES THE OFFICE OF PUBLIC INSTRUCTION'S APPROVAL PRIOR TO IMPLEMENTATION

- This option is only available at the secondary level.



- This class replaces a course required for graduation (e.g., English or math).
- This option must be an added class to the district schedule and not a substitution on federal funds for a class the district would be required to provide otherwise (e.g., if the student:teacher ratio in English classes was 24:1 during the previous school year before adding the replacement class, the district must provide district-paid staff to maintain the 24:1 ratio and then add the replacement class).
- Chapter 1 services are provided in a separate classroom during a regularly scheduled class period.
- Students offered this option must be selected according to the Chapter 1 prioritized list.
- This option must be operated as a distinct self-contained class and not in combination with a pull-out or elective credit class.
- The curriculum offered in this class must meet state accreditation requirements for the subject area and address student's remedial needs.
- A low student:teacher ratio must be maintained equal to less than half that of a regular class in the subject or a contribution of district funds or staff is required.



SERVICES TO LOCAL NEGLECTED OR DELINQUENT INSTITUTIONS

Certain districts which have local institutions for neglected or delinquent children within the district will receive a neglected or delinquent allocation to provide services to those students.

Law: Section 554, P.L. 97-35

Regulations: Section 200.22 (a), (November 19, 1982)

Federal Non-Regulatory Guidance: Section 23 (pages 39-41)

- A local institution for neglected or delinquent children is licensed by the Montana Department of Social and Rehabilitation Services or the Montana Department of Institutions and is located within a local school district's boundaries. These institutions are residential group homes or ranches for children ages 5-17 who have been identified as neglected or delinquent.
- Chapter 1 funds are allocated to local neglected or delinquent institutions according to the case load of children reported on a survey of these institutions conducted in October of each year. This October count is used to distribute neglected or delinquent funds to school districts for the following school year.
- Chapter 1 funds for neglected or delinquent institutions are requested on page 10 of the district's Chapter 1 application. This portion of the application must include the results of the annual needs assessment for the local institution and the plans for Chapter 1 services and evaluation. The budget for the neglected or delinquent funds must be outlined by line item on this page; neglected or delinquent funds must also be included as part of the total project budget.
- Chapter 1 funds must be used to supplement existing programs and may not be used to supplant non-federal funds.
- Where applicable, Chapter 1 services for local neglected or delinquent institutions should be planned with district personnel and institutional personnel working together.
- Both instructional and non-instructional services appropriate to the special needs of the neglected or delinquent children may be considered as Chapter 1 services. Services commonly requested include a homework tutorial program and counseling services.



- Neglected or delinquent services may be provided as part of the public school's Chapter 1 program if such services are appropriate according to the local institution's needs assessment. It is necessary to maintain appropriate student placement records demonstrating that neglected or delinquent students received Chapter 1 services in an appropriate proportion to the amount of neglected or delinquent funds included in the public school's Chapter 1 budget.



Private Local Neglected or Delinquent Institutions

Complete the following for each institution participating in this Chapter 1 program.

Name of Institution _____

A. General Information

1. Address of institution _____
2. Phone number of institution _____
3. Contact person for institution _____
4. Type of services provided by this institution _____

5. Average number of students in residence at this institution _____

B. Chapter 1 Program Information

1. Chapter 1 allocation _____
2. Briefly describe the special educational needs of the participants and the Chapter 1 services designed to meet those needs _____

3. Type of personnel to be hired. (Circle appropriate positions.) Aide Tutor Teacher Other (specify)

4. Proposed number of students to be served _____
5. Hours per week of service _____ 6. Number of weeks of service _____
7. Briefly describe the plans for determining the effectiveness of this project _____

Distribution of Allocation*

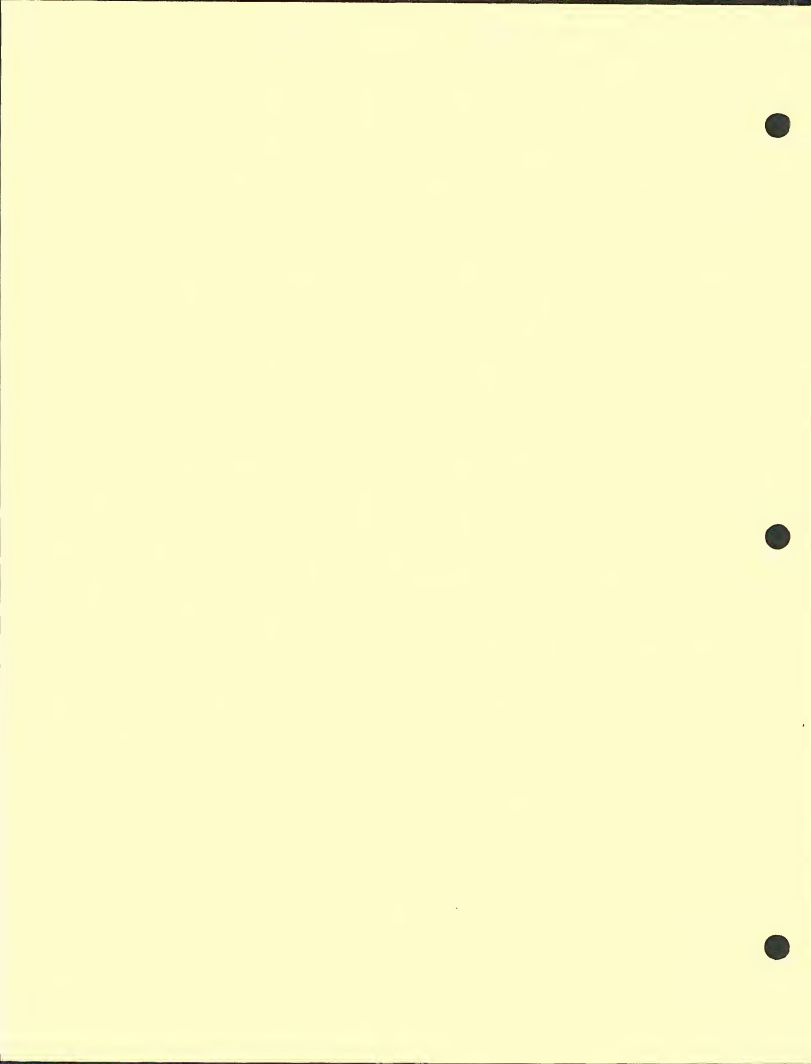
Instruction		
Teachers' Salaries	22-2-10-112	
Other Instructional Salaries	22-2-10-117	
Instructional Supplies	22-2-10-610	
Inservice Training	22-2-22-580	
Supportive Services		
Professional Salaries (attend.)	22-2-21-113	
Other Current Charges		
Social Security	-210	
Teachers' Retirement	-220	
P.E.R.S.	-230	
Unemployment Compensation	-240	
Workers' Compensation	-250	
Insurance-Health	-260	
Insurance-Life & Disability	-270	
Capital Outlay		
Equipment for Instruction	22-2-10-734	
	TOTAL	

* All funds budgeted on this page must be included in detailed project budget.



CHAPTER 1

PROGRAM ADMINISTRATION



PROGRAM ADMINISTRATION

STATE RULEMAKING

Federal regulations establish the authority of the State Education Agency (SEA) to adopt rules, regulations, procedures, guidelines and criteria regarding the use of Chapter 1 funds. Any such rules must not conflict with Chapter 1 statute, regulations or legislative history.

Regulations: Section 200.59 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 17 (page 19)

The Montana Office of Public Instruction has decided, at this time, not to issue any state rules or regulations. This document is to serve as state guidelines for local school districts to use in the operation of Chapter 1 programs. This action does not prohibit the Office of Public Instruction from promulgating state rules or regulations in the future.

ALLOCATION OF FUNDS

Law: Section 554 (a) (b), P.L. 97-35

Regulations: Section 200.20 (a), (November 19, 1982)

Chapter 1 funds are allocated to Montana counties by the U.S. Department of Education according to the annual Congressional Chapter 1 allocation and the funding formula mandated by law. The Montana Office of Public Instruction allocates each county's Chapter 1 funds to school districts within that county according to a formula based on the following data:

- Federal Census: This count is taken from the 1980 census of children ages 5-17 living in homes currently classified as having incomes below the poverty level. (Poverty level is defined by federal regulations.)
- Aid to Families with Dependent Children (AFDC): Children ages 5-17 from families receiving assistance from AFDC. This information, as of October of each year, is provided by the Montana Department of Social and Rehabilitation Services.
- Foster Homes: A count of children ages 5-17 placed in licensed foster homes. This count, as of October of each year, is provided by the Montana Department of Social and Rehabilitation Services.



- Local Institutions for Neglected or Delinquent: Residential group homes and ranches licensed by the Montana Department of Social and Rehabilitation Services or Montana Department of Institutions and located within school district boundaries for neglected or delinquent children ages 5-17.

The case load of these children is provided through a survey of these institutions conducted as of October of each year. This October count is used to distribute funds to the school districts for the following school year.

- Bureau of Indian Affairs (BIA) General Welfare and Foster Homes: Funds provided by the BIA to tribal members residing on reservations in lieu of Social and Rehabilitation Services payments for AFDC or foster home placements.
- Totals: The total of these categories provides a count of low-income children for each district in the state. These totals are used to distribute Chapter 1 funds. Because the Neglected or Delinquent, Foster Home, AFDC and BIA General Welfare/ Foster Home counts are updated each year, the totals are changed each year.

A total of ten low-income students per school district must be obtained from these data students in order to initially generate a Chapter 1 allocation. Those districts which do not maintain the count of ten or more low-income students in subsequent years will receive an allocation under the "Hold Harmless" provision of Chapter 1 law. The "Hold Harmless" provision requires a 15 percent reduction of the previous year's allocation to the district.



MAINTENANCE OF EFFORT

In order for a local school district to receive Chapter 1 funds, the local school district must maintain an adequate level of local fiscal effort according to federal statute. The calculation is computed for the local school district by the Chapter 1 office within the Office of Public Instruction. The data used for this report is based on each district's Annual Trustees Report submitted to the Office of Public Instruction, Department of Financial Services.

Law: Section 558 (a), P.L. 97-35

Regulations: Sections 200.60-200.61 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 18 (pages 20-23)

- Since the Montana Office of Public Instruction computes all school districts' maintenance of effort, the local school district will not have to make those calculations.
- Any district which fails to maintain an adequate level of fiscal effort according to the maintenance of effort requirements will receive notification from the Office of Public Instruction relative to the effect on the district's Chapter 1 project in the next school year.
- The local school district should be aware of the waiver process if a school district does not maintain fiscal effort. The waiver process is outlined in Section 18 of the non-regulatory document.



COMPARABILITY OF SERVICES

The comparability of services requirement insures that services provided with state and/or local funds at both project and nonproject schools are comparable. Any local school district with more than one building (or school) serving similar grade components must comply with this requirement. All school districts which target Chapter 1 services into certain low-income area buildings and have other buildings which do not qualify for Chapter 1 services, must demonstrate comparability of services.

Law: Section 558 (c) and (d), P.L. 97-35 and Technical Amendments: Section 558 (d) (December, 1983) Regulations: Section 200.63 (November 19, 1982) Federal Non-Regulatory Guidance: Section 20 (pages 31-34)
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- Montana, according to state law, considers elementary and high school districts as separate districts.
- The comparability of services provision must be followed when there are project and non-project schools within the same school district.
- In order to comply with this requirement, a local school district must have on file the following:
 - Written salary schedule(s) for all school district employees.
 - A written policy, signed by the school board chairperson, to insure equivalence among schools in the provision of curriculum and instructional materials.
 - A completed worksheet to show an appropriate student/staff ratio between project and nonproject schools. (See Comparability Worksheet on page 36a.)
- The foregoing items must be on file at the school district level by December 1 of the current school year.
- Student enrollment and numbers of staff are collected on October 1 of the current school year unless the information is being collected for a second time after an adjustment has been made to bring the school district into compliance.
- School staff to be included in this report must be instructional. They must have a direct effect on instructional services provided to children.



- If the local school district cannot demonstrate comparability by December 1, the Office of Public Instruction must take steps to disapprove that current project and recover Chapter 1 funds that have been spent on that Chapter 1 project.
- Each local school district which must comply with this requirement must complete a comparability check once between January 1 and April 30 of that project year.
- Special terms and concepts related to comparability are:
 1. 105 percent variance (5 percent leeway)
 2. Instructional staff
 3. Enrollment of 100 or less
 4. Unpredictable changes
 5. Excluded expenditures
 6. Signature of assurance
 7. December 1
 8. October 1
- The definitions for the above can be found in the Chapter 1 statute, regulations, technical amendments or non-regulatory guidance cited in this section.



District Name

District No.

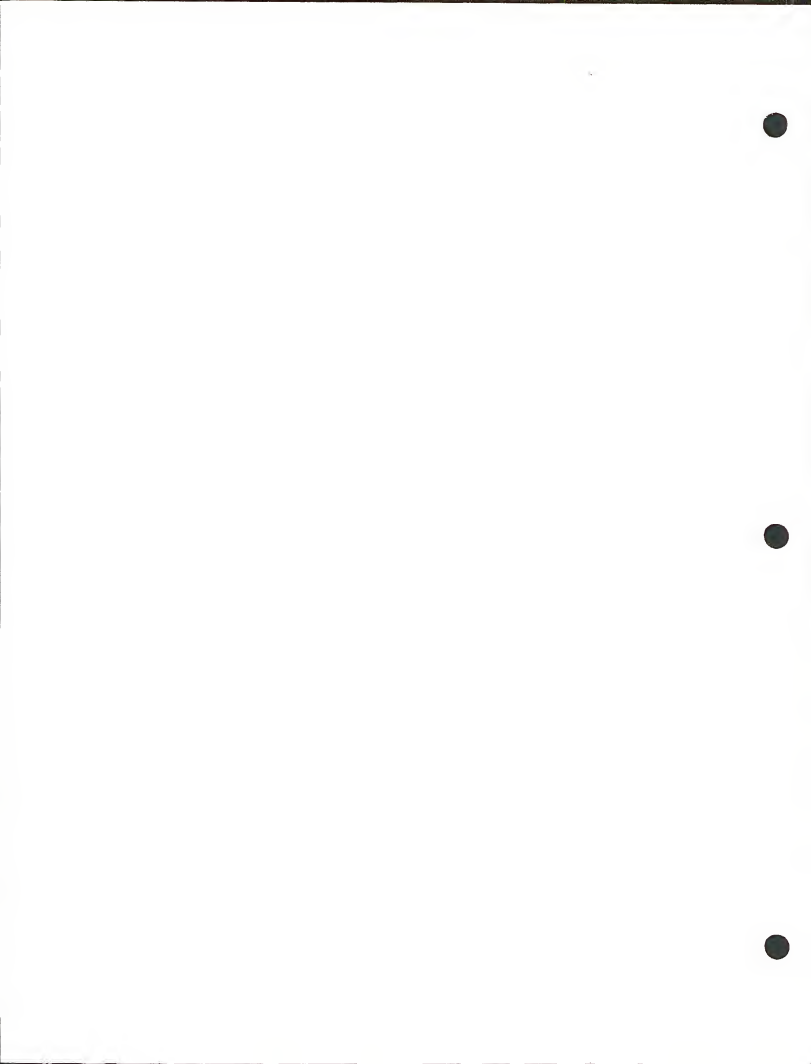
Authorized Representative

Date

1	2	3	4	5	6	7	8	9
Project Schools	Actual Grade Span	Pupils Enrolled Oct. 1	FTE Teacher Staff	FTE Administration Staff	FTE Auxiliary Staff	Total FTE Staff Columns 4 + 5 + 6	Col. 3 ÷ By Col. 7	Material, Supply Budget
NAME								
Average For Non-Project Schools In This Grade Span	X	Average	Average	Average	Average	Average	8A.	
							8B.	

Enter here 105%
of Box 8A.

8B.



SELECTION OF ATTENDANCE AREAS

Target area selection information must be collected and summarized for any school district with enrollment of more than 1,000 students and which has more than one building serving two or more similar grade level components (e.g., K-5, 1-6 and K-6) at the elementary level or two or more high school level buildings. The target area selection requirement is fulfilled by completion of page number four of the Chapter 1 application or amendment.

Law: Section 556 (b) (1), P.L. 97-35 and Technical Amendments: Section 556 (b), (c) and (d) (December, 1983)
Regulations: Section 200.49 (November 19, 1982)
Federal Non-Regulatory Guidance: Section 7 (pages 6-9)

- All local school districts submitting Chapter 1 applications or amendments must complete columns a, b, c, d and e on page four (Target Area Selection).
- Those school districts with more than one building serving similar grade components must also complete columns f, g, h and i to comply with this requirement. For example, a district with two elementary K-6 buildings must complete targeting information. A district with two elementary buildings, one a K-3 building and the second a grades 4-6 building, would not be required to complete the additional targeting information.
- Special terms and concepts relating to target area selection are:
 1. No wide-variance
 2. Percentage method
 3. Numerical method
 4. Combination method
 5. 25 percent rule
 6. School groupings
 7. Less than or equal to 100 enrollment
 8. Eligible low-income data
 9. Rank order
 10. School-wide project
 11. Enrollment targeting
 12. Residency targeting



13. Three-year targeting
14. Targeting services
15. Skipping

The definitions can be found in the Chapter 1 statute, regulations, technical amendments or non-regulatory guidance as cited above.

EXAMPLE

CHAPTER 1 TARGET AREA SELECTION

The following example is not the only way a local school district may comply with target area selection, but only an example of the steps a school district could take once it has been determined that the school district must complete targeting information.

1. Selection of attendance areas is only necessary in those districts with enrollment of more than 1,000 students and more than one building serving similar grade components. In a district with more than one building serving the same grade levels (e.g., three K-6 buildings) but a single building serving other grade components (e.g., a grade 7-8 building), it is only necessary to target at the grade levels where there is more than one building serving similar grades. Group buildings by similar grade components for targeting purposes.
2. Decide on the appropriate low-income data to use for targeting purposes. Options include: Aid for Families with Dependent Children (AFDC), foster home information (furnished by Chapter 1 of the Office of Public Instruction), free lunch data, and/or reduced lunch data. Combinations of the above-listed data are permissible; if multiple sources of low-income data are used in targeting, make certain that there is no duplicated student count (e.g., a student who receives free lunch and is also on the AFDC list would only be counted as one student).
3. Use the same sources of data for targeting all buildings and collect the data on the same date. Collect the enrollment total for each building for that same date.
4. Organize the data relative to the school boundaries set for each building and the address of residence of low-income students according to those boundaries. If there are no consistently set boundaries for each building or if the district has an open-enrollment policy set by the local school board, it is permissible to target according to the actual building of enrollment rather than the residential address of the students.



5. If there are nonpublic school students listed on the low-income data count, these students must be included in the "Total Enrollment" for the public school building according to the residential address (i.e., the school building the non-public student is eligible to attend if enrolled in a public school).
6. Once all enrollment and low-income data has been compiled and assigned to the appropriate buildings, make the following computations for each building:
 - Building enrollment
 - Number of low-income per building
 - Percent of low-income per building
 - Total district enrollment for the buildings being targeted
 - Total district low-income for the buildings being targeted
 - Average number of low-income for the buildings being targeted
 - Average percent of low-income for the buildings being targeted
7. Chapter 1 eligible schools are those buildings whose number of low-income students or percent of low-income students exceeds the district average for number or percent of low-income. The maximum number of eligible Chapter 1 buildings must not exceed the number of buildings qualified under any one method (number or percent). Chapter 1 buildings must be selected in rank order according to the selection method used.
8. All buildings may be qualified based on "No-Wide Variance" if the difference between the building with the highest percent of low-income and the lowest percent of low-income does not vary more than ten percent.
9. If the district average of low-income is 25 percent or more, the district may serve every building within the targeted group that has an average low-income percentage of 25 percent or more.
10. Additional targeting information is available in the Chapter 1 law, regulations and non-regulatory guidance and from the Office of Public Instruction Chapter 1 office.



INSTRUCTIONS FOR ITEM C

AMENDMENT

C. SELECTION OF ELIGIBLE ATTENDANCE AREAS (target areas)

Instructions: Columns (a) (b) (c) (d) and (e) must be completed by all applicants.
Columns (f) (g) (h) and (i) must be completed only by applicants with multiple attendance areas serving the same grade component.

Exception: Any district with enrollment of 1,000 or fewer students is not required to complete targeting information (columns f, g, h, i) regardless of the number of buildings in the district.

A district may target schools for the three-year duration of the application. Once targeted, the appropriate building(s) must be served unless the district submits new targeting information to the Office of Public Instruction. A district may elect to re-target at any time during the three-year application period.

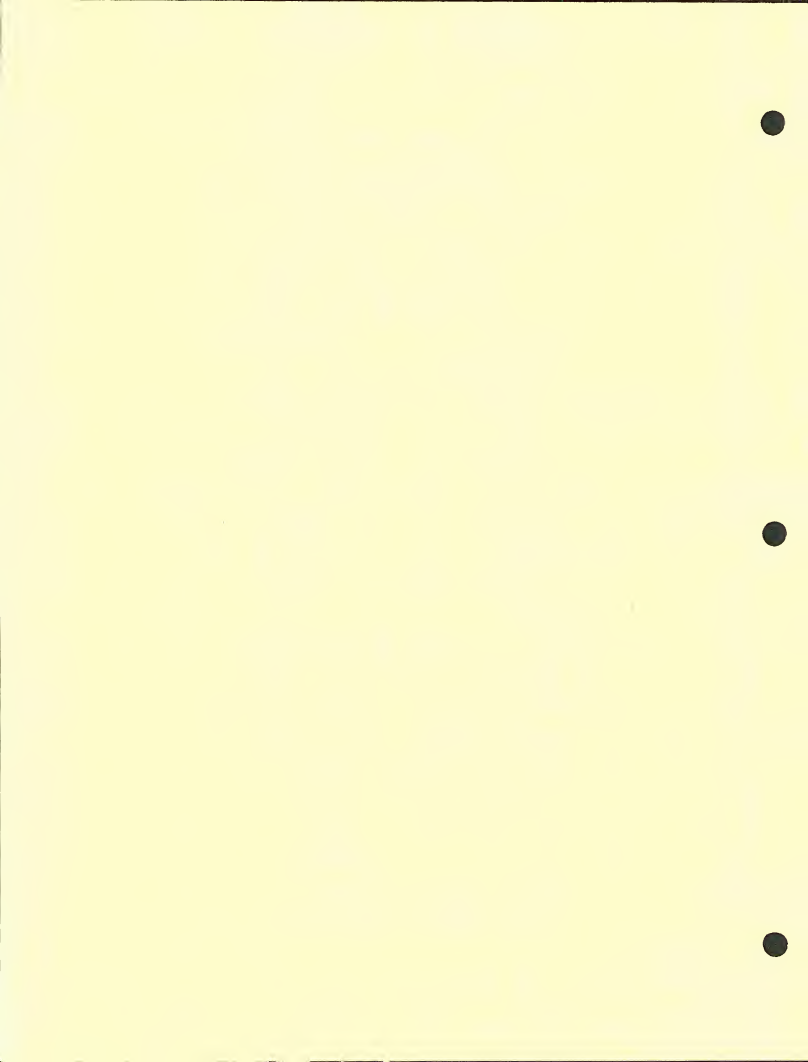
						TARGETING VERIFICATION			
1.	Name of School(s) (Attendance Areas)	Grade Span	Enroll- ment	Project Site	Number of Proposed Participants from Public School	Number of Children (5-17) Residing in Public Attendance Area Served		Qualified Attendance Area(s)	
						Total Includes Nonpublic Stu- dents Residing in Attendance Areas	From Low-income Families		QN or QP
							Number	Percent	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
List all public schools in this section. List all nonpublic schools in Section 2. Group attendance areas with like grade components.									
For OPI Use Only:						TOTAL			
						AVERAGE			
						Please check the source(s) of targeting data used: A <input type="checkbox"/> U.S. Census Bureau D <input type="checkbox"/> Other B <input type="checkbox"/> Aid for Dependent Children (specify) _____ C <input type="checkbox"/> Free School Lunch			
2.	NONPUBLIC SCHOOL(S)	Nonpublic school letter required from each nonpublic school in the district, whether participating or not.						Nonpublic School(s) Participants	
	(a)	(b)	(c)			(d)	(e)		

NOTE: A nonpublic school application MUST be completed for each nonpublic school.



CHAPTER 1

FISCAL REQUIREMENTS



CHAPTER 1 FISCAL INFORMATION

ALLOWABLE COSTS

Local Education Agencies (LEAs) may use Chapter 1 funds only for the cost of project activities that are designed to meet the special educational needs of educationally deprived children and have been approved in the LEA's Chapter 1 application and budget.

Law: Section 555 (c), P.L. 97-35

Regulations: Section 200.5 (November 19, 1982)

Federal Non-Regulatory Guidance: Section 13 (pages 16-17)

Chapter 1 expenditures may include:

- Salaries of teachers and teachers' aides (salaries may include a limited amount of assigned duties not related to classroom instruction). See non-regulatory guidance, Section 13.
- Salaries of special Chapter 1 instructional, counseling and guidance personnel.
- Equipment and instructional materials.
- Inservice training of Chapter 1 personnel.
- Vacation, sick leave and holiday benefits for non-contracted Chapter 1 personnel (limited to Montana State Law). See pages 42, 43 and 44 of this handbook.
- Other current benefits including social security, retirement, employment and workers' compensation, health, life and disability insurance.
- Instructional and inservice related travel.
- Indirect cost (May be taken as part of your total Chapter 1 allocation and reduces direct cost available to the district. Annual application must be submitted to the Office of Public Instruction, Department of Administrative Services, to obtain an indirect cost rate.)

A complete list of allowable expenditures and related budget codes has been included. See pages 40a through 40f of this handbook.



CHAPTER I OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT

Listed below are basic accounting codes from the Accounting and Reporting System Design Manual which are to be used for ECIA Chapter 1 budgeting and reporting. Account codes that do not appear on this listing must be discussed with your program specialist so uniform budgeting and accounting can be maintained. Each fund number should be preceded by a 1 or a 2 to designate elementary or high school and all digits for each account code must be used exactly as shown.

level and fund	program	function	object
XXX	X	XX	XXX

INSTRUCTIONAL SERVICES

- 22-2-10-112 Teachers' Salaries. Salaries and prorated portions of salaries for certified teaching personnel.
- 22-2-10-122 Substitute Teachers' Salaries. Salaries and prorated portions of salaries for personnel substituting for Chapter 1 teachers.
- 22-2-10-115 Clerical Salaries. Salaries and prorated portions of salaries for secretarial and clerical services for Chapter 1 instructional staff.
- 22-2-10-117 Other Instructional Salaries. Salaries and prorated portions of salaries for instructional aides and tutors.
- 22-2-10-160 Sick Leave. Amounts paid an employee for sick leave.
- 22-2-10-170 Vacation Leave. Amounts paid an employee for vacation leave.
- 22-2-10-452 Equipment Rental. Expenditures for the rental and/or lease of equipment to be used in a Chapter 1 program.
- 22-2-10-581 Instructional Travel. Expenditures for in-district travel in connection with Chapter 1 instructional activities.
- 22-2-10-610 Instructional Supplies. Consumable and non-consumable supplies to be used in a Chapter 1 program. (Equipment is neither budgeted nor purchased in this code. Use 22-2-10-733 or 734.)
- 22-2-10-660 Minor Equipment - New. Expenditures for new equipment with a cost of less than \$150.00.
- 22-2-10-800 Instructional Miscellaneous. Other miscellaneous instructional expenses not elsewhere classified.

Capital Outlay

- 22-2-10-733 New Furniture and Fixtures. Expenditures for equipment with a monetary value of \$150.00 or more that will be used in the Chapter 1 program for sitting; as a support for writing and work activities; and as storage space for material items.
- 22-2-10-734 Equipment for Instruction. Expenditures for equipment (not built-in) with a monetary value of \$150.00 or more that will be used in the teaching-learning process in a Chapter 1 program.



SUPPORTIVE SERVICES - ATTENDANCE

- 22-2-21-113 Professional Salaries. Salaries and prorated portions of salaries for counselors, home-school coordinators and other personnel directly involved in Chapter 1 programs.
- 22-2-21-115 Clerical Salaries. Salaries and prorated portions of salaries for secretarial and clerical assistants to Chapter 1 attendance personnel.
- 22-2-21-581 Travel Expenses. Expenditures for in-district travel in connection with Chapter 1 attendance activities.
- 22-2-21-610 Supplies. Expenditures for consumable and non-consumable supplies used for Chapter 1 attendance purposes.

SUPPORTIVE SERVICES - HEALTH

- 22-2-21-330 Professional Salaries. Salaries and prorated portions of salaries paid to professional and technical health personnel.
- 22-2-21-115 Clerical Salaries. Salaries and prorated portions of salaries for secretarial and clerical assistants to Chapter 1 health personnel.
- 22-2-21-581 Travel Expenses. Expenditures for in-district travel in connection with Chapter 1 health activities.
- 22-2-21-610 Supplies. Expenditures for medical supplies.

SUPPORTIVE SERVICES - COMMUNITY

- 22-2-21-800 Welfare Activities. Expenses for glasses etc. for Chapter 1 indigent children. Welfare can only be provided if it can be documented there is no other source of funds and that the Chapter 1 child cannot function in the instructional program without the welfare services.

SUPPORTIVE SERVICES - INSTRUCTIONAL

- 22-2-22-111 Supervisor Salaries. Salaries and prorated portions of salaries of certified supervisory personnel as a direct cost to the program.
- 22-2-22-320 Consultant Fees. Fees for outside consultative services employed in connection with the Chapter 1 instructional program.
- 22-2-22-580 Inservice Training. Expenditures for inservice training related to Chapter 1 activities, including travel and per diem.



SUPPORTIVE SERVICES - INSTRUCTIONAL continued

- 22-2-22-610 Supplies. Consumable and non-consumable supplies to be used by instructional support services personnel.
- 22-2-22-660 Minor Equipment - New. Expenditures for new equipment with a cost of less than \$150.00.

Capital Outlay

- 22-2-22-733 New Furniture and Fixtures. Expenditures for equipment with a monetary value of \$150.00 or more that will be used by instructional support personnel for sitting; as a support for writing and work activities and as storage space for material items.
- 22-2-22-734 Equipment for Supervision. Expenditures for equipment (not built-in) with a monetary value of \$150.00 or more that will be used by instructional support personnel.

ADMINISTRATION SERVICES

- 22-2-23-330 External audit of the ECIA Chapter 1 financial records.

OPERATION AND MAINTENANCE OF PLANT SERVICES

- 22-2-26-116 Salaries. Salaries and prorated portions of salaries paid to custodians and maintenance personnel needed for the Chapter 1 program.
- 22-2-26-410 Energy Utility Services. Expenditures for energy services including electricity and gas needed for a Chapter 1 program.
- 22-2-26-433 Contracted Services. Expenditures for custodial services provided to the Chapter 1 program by personnel who are not on the school district payroll.
- 22-2-26-440 Contracted Services. Expenditures including labor and other expenses for the repair of Chapter 1 equipment by personnel who are not on the payroll of the district.
- 22-2-26-451 Rental of Buildings. Expenses for the rental of buildings for instructional purposes.
- 22-2-26-530 Communications Services. This category includes telephone, telegraph, postage and rental of telephone lines directly related to the Chapter 1 program.



PUPIL TRANSPORTATION SERVICES

- 22-2-27-116 Transportation Salaries. Salaries and the prorated portions of salaries for employees whose work is directly related to transportation for Chapter 1.
- 22-2-27-513 Contracted Services. Expenditures for contracted bus transportation needed for Chapter 1.
- 22-2-27-514 Individual Transportation. Reimbursement to parents in lieu of the costs of transportation of pupils to Chapter 1 programs.
- 22-2-27-520 Pupil Transportation Insurance. Expenditures for public liability, property damage, medical care, fire and theft insurance.

SCHOOL FOOD SERVICE

- 22-9-31-116 Salaries. Salaries and prorated portions of salaries for all personnel in a food service program conducted as part of a Chapter 1 program.
- 22-9-31-630 Food Expenditures. Expenditures for the purchase of food to be used in a Chapter 1 program.

BUILDING IMPROVEMENTS SERVICES

- 22-2-46-460 Renovating and remodeling. Minor construction costs for remodeling or improving present structures to be used by Chapter 1 for instructional activities.

PERSONAL SERVICES - EMPLOYEE BENEFITS

- 22-2-**-210 Social Security
- 22-2-**-220 Teachers' Retirement
- 22-2-**-230 Public Employees' Retirement System
- 22-2-**-240 Unemployment Compensation
- 22-2-**-250 Workers' Compensation
- 22-2-**-260 Health Insurance
- 22-2-**-270 Life and Disability Insurance





OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

July 26, 1984

TO: ECIA Chapter 1 Authorized Representatives and Staff

FROM: Jay R. McCallum, ECIA Chapter 1 Director
Linda Thompson, ECIA Chapter 1 Specialist
John Ericksen, ECIA Chapter 1 Specialist

RE: Computer Purchase

In this age of technology, the Office of Public Instruction receives many requests to purchase computers with ECIA Chapter 1 funds. In the past, the Chapter 1 office has not had any firm guidelines for computer purchases; however, monitoring visits by the Chapter 1 staff have brought about concerns regarding purchase and use of computers in Chapter 1 programs. Therefore, the Chapter 1 office is establishing guidelines for the purchase of computers with Chapter 1 funds. The guidelines that the Chapter 1 office is now using for approval of the purchase of computers with Chapter 1 funds are as follows:

1. Number: Approval is limited to one computer per Chapter 1 building, unless special circumstances are presented to and approved by the Office of Public Instruction Chapter 1 specialist.
2. Planned Use: Chapter 1 computers will be approved for student instructional use and must be purchased from budget line item 22-2-10-734, Instructional Equipment. Management uses of these computers must be incidental use and not the primary use of the computers.
3. Inservice: Chapter 1 staff must receive appropriate service in the operation of the computer to insure competent use will be made of the computer purchased. It is understood that any computer purchased with Chapter 1 funds will be an instructional tool for achieving instructional objectives with Chapter 1 students, and not as a "game" or "dust-gatherer." Chapter 1 staff should develop skills to pursue computer-assisted instruction integrated with diagnostic-prescriptive instruction.
4. Software: An adequate amount of appropriate computer software must be purchased for use with the Chapter 1 computer. Software purchases should be planned in conjunction with the computer purchase; software should be chosen for its quality and appropriateness to Chapter 1 uses.



5. Diagnosis and Prescription: Chapter 1 computer use must be consistent with the diagnostic-prescriptive emphasis of the program. Computer use must relate to the instructional needs of the Chapter 1 student. Appropriate preliminary and follow-up instruction should accompany computer-assisted instruction for students. "Play time" or "game time" on the computer is discouraged as less than optimal use of computer time with students.

6. Monitoring: Chapter 1 programs which purchase computers with Chapter 1 funds will be monitored in accordance with the guidelines listed above. Misuse or inappropriate use of instructional equipment with Chapter 1 funds can result in an audit exception for the project.

cmw24



LIMITATION OF EXPENDITURES

- Chapter 1 funds shall not be obligated or expended prior to the date of project approval even if such obligations are related to the project.
- All inservice training and related travel must have prior approval (other than Office of Public Instruction Chapter 1 workshops).
- Salaries and benefits paid Chapter 1 personnel must be comparable to those paid other district employees for comparable services.
- Equipment and instructional materials must be ordered prior to the end of the district's first semester.
- Any modification in program design, personnel or budgets must be done by amendments (a letter requesting specific changes must be sent to the Office of Public Instruction and must be signed by the Authorized Representative).
- Cash on hand must be limited to those funds needed for that month's proposed expenditures.
- Expenditures for each school district may not exceed the individual elementary or high school budgets.
- Expenditures per line item may not exceed 110 percent of amount budgeted without prior budget revision. Budget revisions or amendments will not be approved to cover "after the fact" overexpenditures of line items.
- Expenditures may not be made for items not approved in the application.
- Expenditure must never exceed cash on hand.
- All revisions, amendments and requests for funds must be signed by the Authorized Representative.



SICK LEAVE

"Employee" means any person employed by an agency except elected state, county and city officials, school teachers and persons contracted as independent contractors or hired under personal services contracts. (Section 2-18-601, School Laws of Montana, 1983).

All regularly scheduled permanent, temporary, seasonal, intermittent and part-time employees are eligible to earn sick leave credits. Sick leave credits accrue from the first day of employment.

Employees must be continuously employed for the qualifying period of 90 days to use sick leave. Upon completion of the qualifying period, the employee is entitled to use the sick leave credit earned.

Sick leave credits are earned at the rate of 12 working days (one per month) for each year of service. For calculating sick leave credits, 2,080 hours of full-time employment shall equal one year. An employee accrues .046 hours of sick leave for each hour in a pay status.

There is no restriction as to the number of sick leave credit hours that may be accumulated, or to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability provided that the qualifying period has been completed.

An employee is not entitled to both paid sick leave and workers' compensation payments. An employee injured on the job has the option of taking either sick leave or workers' compensation payments. Record actual hours and minutes used.

An employee MAY NOT accrue sick leave credits while in a leave without pay status. Sick leave will accrue based on hours in a pay status only. An employee who has worked the qualifying period for use of sick leave does not have to repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days. An employee who has not worked the qualifying period for use of sick leave must repeat the period upon return to work from a continuous leave of absence without pay exceeding 15 working days. The employee would not lose any accrued sick leave credits, but would not be eligible to use any earned sick leave credits until after working 90 continuous days.

An employee who TERMINATES employment and who has worked the qualifying period is entitled to a lump-sum payment equal to one-fourth of pay attributed to the accumulated sick leave



which is computed on the basis of the employee's last rate of pay. Accrual of sick leave credits for calculating the lump-sum payment commences with July 1, 1971. An employee who is reemployed by the state will not be credited with any sick leave which was previously compensated.

ABUSE of sick leave is cause for dismissal and forfeiture of the lump-sum payment. Abuse of sick leave occurs when an employee misrepresents the actual reason for charging an absence to sick leave or uses sick leave for unauthorized purposes.

Those instances of FAMILY illness or necessary absences from duty to receive medical attention or treatment, or to attend a funeral, will be discretionary to the employee as long as the approving authority is satisfied that the request is justifiable. Maternity leave is chargeable against sick leave with no restriction as to the amount of sick leave credits that may be approved and used subject to medical certification.

VACATION LEAVE

"Employee" means any person employed by an agency except elected state, county and city officials, school teachers and persons contracted as independent contractors or hired under personal services contracts. (Section 2-18-601, School Laws of Montana, 1983)

Each full-time employee EARNs annual vacation leave credits from the first day of employment; however, an employee is not eligible to USE vacation leave until continuously employed for a period of six full months.

For calculating years of employment, 2,080 hours of employment shall equal one year.

It is the responsibility of the employee to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule.

Annual vacation leave may be ACCUMULATED to a total not to exceed two times the maximum number of days earned annually as of the last day of any calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.



Vacation leave charges are RECORDED to the nearest one-half hour. The dates when annual leave is taken will be agreed to by the employee and the immediate supervisor.

At the option of the employee, unused vacation leave credits may be used when sick leave credits have been exhausted.

An employee is entitled to earn annual vacation leave credits while in a leave-without-pay status of 15 continuous working days or less.

Time in an approved continuous LEAVE OF ABSENCE WITHOUT PAY may be credited toward years of employment for the first year. Time in an approved continuous leave of absence without pay of more than one year shall not be counted toward years of employment. If an employee does not work the qualifying period and takes leave without pay exceeding 15 continuous working days, the employee must begin anew the qualifying period to use vacation leave credits. The employee would not lose any accrued vacation leave credits, but would not be eligible to use any earned vacation leave credits until after working six continuous months. For seasonal employees, this does not apply to the leaves taken between employment seasons.

Permanent, temporary, intermittent and seasonal part-time employees are eligible to earn annual vacation credits. The employee accrues the number of hours of vacation leave credits calculated by the applicable rate multiplied by the hours worked schedule. (See following schedule.)

	<u>Vacation Credit For Less Than 80 Hours Worked Per Pay Period</u>	<u>Credit For 80 Hours Or More Worked In A Pay Period</u>
0 - 10 years	.058 x number of hours worked	4.62 hours credited
11th year - 15th year	.069 " " " "	5.54 " "
16th year - 20th year	.081 " " " "	6.46 " "
21st year on	.092 " " " "	7.38 " "

Upon TERMINATION with the state, an employee is entitled to cash compensation for unused vacation leave credits, assuming the employee has worked the qualifying period.

An employee who terminates employment before the end of the month will earn prorated vacation leave for the applicable portion of the final month.



RECORD KEEPING

Each LEA shall keep such records and provide such information as may be required for fiscal audit and program evaluation. These records should provide the following information and must be maintained for five years after the completion of the activity for which the funds were used.

Records to be maintained for five years include:

- Amount of Chapter 1 funds received
- Copy of the approved Chapter 1 application
- Fiscal records detailing how the Chapter 1 funds were expended
- Total cost of the Chapter 1 project
- Compliance with Chapter 1 requirements (e.g., copies of needs assessment, student selection--prioritized list, Chapter 1 staff schedules)
- Evaluation data and report(s)
- Targeting and comparability data (if required)

Law: Section 555 (d) and Section 556 (b), P.L. 97-35
Section 437 (a) and Section 435 (b) (5)
of GEPA, incorporate by Section 596 (a) of ECIA
Regulations: Section 200.56 (November 19, 1982)
Federal Non-Regulatory Guidance: Section 14 (pages 17-18)

In carrying out its responsibility to insure that the above records are available for each LEA, the Office of Public Instruction has provided the following forms for record keeping. Forms are available upon request.

- Cash Disbursement Record: Submitted quarterly and may be substituted with comparable computer printout. Reporting dates October 10, January 10, April 10, July 10. Final records and a refund of any cash on hand must be submitted within 90 days of the project closing date. It is encouraged that the final fiscal records and refund be submitted to the Office of Public Instruction promptly following the closing date to facilitate final close-out of the current project and approval of the next year's Chapter 1 program.
- Project Quarterly Report: Submitted quarterly and used to request monthly payments. First payment is automatic upon approval of application.



- Chapter 1 Evaluation Report: Student participation data and subjective evaluation information are required annually. Student achievement data is required once every three years, but may be submitted annually.
- Sustained Gains Worksheet: Required once every three years.



AUDITS

Chapter 1 projects must be audited in accordance with Attachment P and the federal requirements as listed below.

Law: Section 555 (d) and 556 (b), P.L. 97-35 Section 452 of GEPA Section 1744 of the Omnibus Budget Reconciliation Act of 1981 Regulations: Section 200.57 (November 19, 1982); 34 CFR 74.62 Federal Non-Regulatory Guidance: Section 15 (page 18)
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ATTACHMENT P AUDIT REQUIREMENTS

- LEAs and other recipients of federal funds must arrange for their independent audits.
- LEAs and other recipients of federal funds will pay for their independent audits. (Federal programs may be charged through direct or indirect costs for a reasonable share of audit costs if directly charged funds must be budgeted.)
- Audits are to be conducted by qualified independent auditors (state auditors, certified public accountants or public accountants licensed before December 31, 1970).
- Maximum use should be made of the work of internal auditors and program reviewers.
- Audit organization and individual auditor must be independent of the LEA (General Accounting Office standards).
- Financial and compliance audits will be made no less frequently than every two years and cover the period since the last audit.

As the recipient organization, the Office of Public Instruction has cognizant agency responsibilities over all subrecipients organization as follows:

- Require all subrecipients to adopt the requirements of OMB Circular A-102 Attachment P.
- Assure that satisfactory audit coverage is provided of subrecipients in a timely manner and in accordance with Attachment P.
- Provide technical advice and act as liaison between the federal cognizant agency, independent auditor and subrecipient organization.
- Assure that all audit reports of subrecipients are received and reviewed.



- Maintain a follow-up system on audit findings to assure that findings are resolved.
- Inform the federal cognizant audit agency of irregularities uncovered.
- Obtain or make quality control reviews of the work papers of auditors and provide the results to the federal cognizant audit agency.
- Obtain or make quality assessment reviews of the quality of the work of non-federal audit organizations and provide the results to the federal cognizant audit agency.



A P P E N D I X A

C H A P T E R 1 L A W

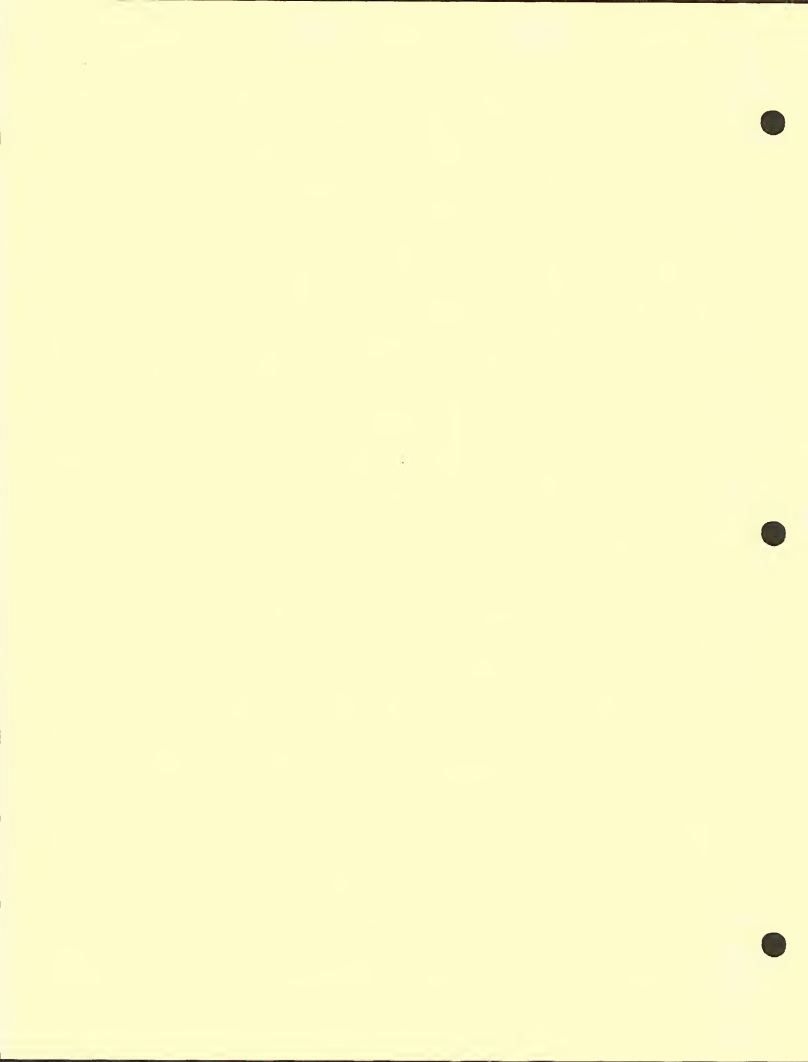
P U B L I C L A W 9 7 - 3 5

(August 13, 1981)

T E C H N I C A L A M E N D M E N T S T O

C H A P T E R 1 L A W (P . L . 9 7 - 3 5)

(December 8, 1983)



PUBLIC LAW 97-35—AUG. 13, 1981

CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL
EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

DECLARATION OF POLICY

Sec. 552. The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children, on the basis of entitlements calculated under title I of the Elementary and Secondary Education Act of 1965, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Further, the Congress recognizes the special educational needs of children of low-income families, and that concentrations of such children in local educational agencies adversely affect their ability to provide educational programs which will meet the needs of such children. The Congress also finds that Federal assistance for this purpose will be more effective if education officials, principals, teachers, and supporting personnel are freed from overly prescriptive regulations and administrative burdens which are not necessary for fiscal accountability and make no contribution to the instructional program.

DURATION OF ASSISTANCE

Sec. 553. During the period beginning October 1, 1982, and ending September 30, 1987, the Secretary shall, in accordance with the provisions of this subtitle, make payments to State educational agencies for grants made on the basis of entitlements created under title I of the Elementary and Secondary Education Act of 1965 and calculated in accordance with provisions of that title in effect on September 30, 1982.

APPLICABILITY OF TITLE I PROVISIONS OF LAW

Sec. 554. (a) PROGRAM ELIGIBILITY.—Except as otherwise provided in this subtitle, the Secretary shall make payments based upon the amount of, and eligibility for, grants as determined under the following provisions of title I of the Elementary and Secondary Education Act in effect on September 30, 1982:

- (1) Part A—"Programs Operated by Local Education Agencies":
 - (A) Subpart 1—"Basic Grants"; and
 - (B) Subpart 2—"Special Grants".
- (2) Part B—"Programs Operated by State Agencies":
 - (A) Subpart 1—"Programs for Migratory Children";
 - (B) Subpart 2—"Programs for Handicapped Children";
 - (C) Subpart 3—"Programs for Neglected and Delinquent Children"; and
 - (D) Subpart 4—"General Provisions for State Operated Programs".

(b) ADMINISTRATIVE PROVISIONS.—The Secretary, in making the payments and determinations specified in subsection (a), shall continue to use the following provisions of title I of the Elementary and Secondary Education Act as in effect on September 30, 1982:

- (1) Part E—"Payments":
 - (A) Section 191—"Payment Methods";

PUBLIC LAW 97-35—AUG. 13, 1981

- (B) Section 192—"Amount of Payments to Local Educational Agencies";
 - (C) Section 193—"Adjustments Where Necessitated by Appropriations"; and
 - (D) Section 194—"Payments for State Administration", subject to subsection (d) of this section.
- (2) Part F—"General Provisions":
- (A) Section 197—"Limitation on Grants to Puerto Rico"; and
 - (B) Section 198—"Definitions" and conforming amendments to other Acts, except that only those definitions applicable to this subtitle shall be used.
- (c) APPLICATION RULE.—The provisions of title I of the Elementary and Secondary Education Act of 1965 which are not specifically made applicable by this chapter shall not be applicable to programs authorized under this chapter.
- (d) AMENDMENT.—Section 194(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by striking out "1.5 per centum" and inserting in lieu thereof "1 per centum".

AUTHORIZED PROGRAMS

Sec. 555. (a) GENERAL.—Each State and local educational agency shall use the payments under this chapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.

(b) PROGRAM DESIGN.—State agency programs shall be designed to serve those categories of children counted for eligibility for grants under section 554(a)(2) in accordance with the requirements of this chapter.

(c) PROGRAM DESCRIPTION.—A local education agency may use funds received under this chapter only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 556(b)(2), and which are included in an application for assistance approved by the State educational agency. Such programs and projects may include the acquisition of equipment and instructional materials, employment of special instructional and counseling and guidance personnel, employment and training of teacher aides, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, the construction, where necessary, of school facilities, other expenditures authorized under title I of the Elementary and Secondary Education Act as in effect September 30, 1982, and planning for such programs and projects.

(d) RECORDS AND INFORMATION.—Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

APPROVAL OF APPLICATIONS

Sec. 556. (a) APPLICATION BY LOCAL EDUCATIONAL AGENCY.—A local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years,

PUBLIC LAW 97-35—AUG. 13, 1981

and such application has been approved by the State educational agency.

(b) APPLICATION ASSURANCES.—The application described in subsection (a) shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this chapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children;

(B) are located in all attendance areas of an agency which has a uniformly high concentration of such children; or

(C) are designed to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency;

(2) are based upon an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas, permits selection of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

(3) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served and are designed and implemented in consultation with parents and teachers of such children;

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year; and

(5) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 557.

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

SEC. 557. (a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 555(c), 556(b) (2), (3), and (4), and 558(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

(b) BYPASS PROVISION.—(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of

PUBLIC LAW 97-35—AUG. 13, 1981

services to such children through arrangements which shall be subject to the requirements of subsection (a).

(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

(3)(A) When the Secretary arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) 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 thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. 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.

(c) Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965 prior to the effective date of this chapter shall remain in effect to the extent consistent with the purposes of this chapter.

PUBLIC LAW 97-85—AUG. 18, 1981

GENERAL PROVISIONS

SEC. 558. (a) MAINTENANCE OF EFFORT.—(1) Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 per centum of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

(3) The State educational agency may waive, for one fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NON-FEDERAL FUNDS.—A local educational agency may use funds received under this chapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection a local education agency shall not be required to provide services under this chapter outside the regular classroom or school program.

(c) COMPARABILITY OF SERVICES.—(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

(2) A local educational agency shall be deemed to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established—

(A) a districtwide salary schedule;

(B) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

PUBLIC LAW 97-35--AUG. 13, 1981

(d) EXCLUSION OF SPECIAL STATE AND LOCAL PROGRAM FUNDS.--For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, if such programs are consistent with the purposes of this chapter.

(e) ALLOCATION OF FUNDS IN CERTAIN STATES.--In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency is authorized to make allocations of basic grants and special incentive grants directly to local educational agencies without regard to counties, if such allocations were made during fiscal year 1982, except that (1) precisely the same factors are used to determine the amount of such grants to counties, and (2) a local educational agency dissatisfied with such determination is afforded an opportunity for a hearing on the matter by the State educational agency.

~~CHAPTER 2--CONSOLIDATION OF FEDERAL PROGRAMS FOR
ELEMENTARY AND SECONDARY EDUCATION~~

~~STATEMENT OF PURPOSE~~

~~Sec. 561. (a) It is the purpose of this chapter to consolidate the program authorizations contained in--~~

- ~~(1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;~~
- ~~(2) the Alcohol and Drug Abuse Education Act;~~
- ~~(3) part A and section 532 of title V of the Higher Education Act of 1965;~~
- ~~(4) the Follow Through Act (on a phased basis);~~
- ~~(5) section 3(a)(N) of the National Science Foundation Act of 1950 relating to precollege science teacher training; and~~
- ~~(6) the Career Education Incentive Act;~~

~~into a single authorization of grants to States for the same purposes set forth in the provisions of law specified in this sentence, but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by such agencies. It is the further purpose and intent of Congress to financially assist State and local educational agencies to improve elementary and secondary education (including preschool education) for children attending both public and private schools, and to do so in a manner designed to greatly reduce the enormous administrative and paperwork burden imposed on schools at the expense of their ability to educate children.~~

~~(b) The basic responsibility for the administration of funds made available under this chapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the chapter shall be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents.~~

~~AUTHORIZATION OF APPROPRIATIONS; DURATION OF ASSISTANCE~~

~~Sec. 562. (a) There are authorized to be appropriated such sums as may be necessary for fiscal year 1982 and each of the five succeeding fiscal years to carry out the provisions of this chapter.~~

PUBLIC LAW 97-35—AUG. 13, 1981

~~REFERS~~

~~Sec. 587. (a) Effective October 1, 1982, the provisions of—~~

~~(1) titles II, III, IV, V, VI, VIII, and IX (except part C) of the Elementary and Secondary Education Act of 1965;~~

~~(2) part A and section 532 of title V of the Higher Education Act of 1965;~~

~~(3) the Alcohol and Drug Abuse Education Act; and~~

~~(4) the Career Education Incentive Act;~~

~~are repealed.~~

~~(b) Effective October 1, 1984, subchapter C of chapter 8 of subtitle A of title VI of this Act, relating to Follow-Through programs is repealed.~~

CHAPTER 3—GENERAL PROVISIONS

FEDERAL REGULATIONS

Sec. 591. (a) The Secretary is authorized to issue regulations—

(1) relating to the discharge of duties specifically assigned to the Secretary under this subtitle;

(2) relating to proper fiscal accounting for funds appropriated under this subtitle and the method of making payments authorized under this subtitle; and

(3) which are deemed necessary to reasonably insure that there is compliance with the specific requirements and assurances required by this subtitle.

(b) In all other matters relating to the details of planning, developing, implementing, and evaluating programs and projects by State and local educational agencies the Secretary shall not issue regulations, but may consult with appropriate State, local, and private educational agencies and, upon request, provide technical assistance, information, and suggested guidelines designed to promote the development and implementation of effective instructional programs and to otherwise assist in carrying out the purposes of this subtitle.

(c) Regulations issued pursuant to this subtitle shall not have the standing of a Federal statute for the purposes of judicial review.

WITHHOLDING OF PAYMENTS

Sec. 592. (a) Whenever the Secretary after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this subtitle the Secretary shall notify such agency of these findings and that beginning sixty days after the date of such notification, further payments will not be made to the State under this subtitle, or affected chapter thereof (or, in his discretion, that the State educational agency shall reduce or terminate further payments under the subtitle or affected chapter thereof, to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under the subtitle or affected chapter thereof, or (2) payments by the State educational agency under the subtitle or affected chapter thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be.

PUBLIC LAW 97-35—AUG. 13, 1981

(b) Upon submission to a State of a notice under subsection (a) that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring his action to the attention of the public within the State.

JUDICIAL REVIEW

Sec. 593. (a) If any State is dissatisfied with the Secretary's action under section 592(a), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) A State educational agency shall be presumed to have complied with this subtitle, but the findings of fact by the Secretary, if supported by the weight of evidence, may overcome such presumption. The court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings.

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. 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.

AVAILABILITY OF APPROPRIATIONS

Sec. 594. Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this subtitle shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the succeeding fiscal year.

DEFINITIONS

Sec. 595. (a) Except as otherwise provided herein as used in this subtitle—

(1) the term "State" means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands;

(2) the term "Secretary" means the Secretary of Education;

(3) the term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools;

(4) 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 or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having

PUBLIC LAW 97-35—AUG. 13, 1981

administrative control and direction of a public elementary or secondary school;

(5) the term "parent" includes a legal guardian or other person standing in loco parentis;

(6) the term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade twelve;

(7) the term "elementary school" means a day or residential school which provides elementary education, as determined under State law, and the term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade twelve;

(8) the term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities;

(9) the term "equipment" includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials; and

(10) the term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(b) Any term used in provisions referenced by section 554 and not defined in this section shall have the same meaning as that term was given in title I of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

APPLICATION OF OTHER LAWS

Sec. 596. (a) Sections 434, 435, and 436 of the General Education Provisions Act (relating to "State Educational Agency Monitoring and Agency Application") shall not apply to programs authorized under this subtitle except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds), and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle.

(b) Section 412 of the General Education Provisions Act shall apply to any funds appropriated for any fiscal year pursuant to this subtitle.

TITLE XVII

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

ACCESS TO RECORDS BY COMPTROLLER GENERAL

SEC. 1744. For the purpose of evaluating and reviewing the use of block grant funds, consolidated assistance, or other grant programs established or provided for by this Act, the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such funds, assistance, or programs, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of the grantees of such States or political subdivisions.

THE GENERAL EDUCATION PROVISIONS ACT (GEPA) ^{/1}

CONTROL OF PAPERWORK

SEC. 400A. (a)(1)(A) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisition activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, or (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

(2) For the purposes of this section, the term—

(A) "information" has the meaning given it by section 3502 of title 44, United State Code;

(B) "Federal agency" has the meaning given it by section 3502 of the same title; and

(C) "educational agency or institution" means any public or private agency or institution offering education programs.

(3)(A) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraph (1)(A) of this subsection, in accordance with procedures approved by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

^{/1}

The GEPA provisions contained in this appendix are those that have been determined to apply to Chapter 1 and that—

- ° Confer rights or possible opportunities on Chapter 1 grantees,
- ° Limit the Department's authority in taking actions affecting Chapter 1 grantees, and
- ° Impose requirements or duties on Chapter 1 grantees.

A number of sections of GEPA that legally apply to Chapter 1 are not included in this appendix because they do not contain subject matter relevant to the Chapter 1 program specifically.

(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, United States Code. If a requirement for information is submitted pursuant to this Act for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1980 shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act.

(C) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

(b)(1) The Secretary shall assist each Federal agency in performing the review and coordination required by this section and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

(A) a detailed justification of how information once collected will be used;

(B) the methods of analysis which will be applied to such data;

(C) the timetable for the dissemination of the collected data; and

(D) an estimate of the costs and man-hours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process, and analyze the information, based upon previous experience with similar data or upon a sample of respondents.

(2) In performing the review and coordination required by this section, the Secretary shall assure that—

(A) no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it;

(B) sampling techniques, instead of universal responses, will be used wherever possible, with special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

(C) no request for information or data will be approved if such information or data exist in the same or a similar form in the automated indexing system required to be developed pursuant to subsection (d).

(3) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

(4) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this section, after such plans have been finally approved under this section, unless the changed plans go through the same approval process.

(5) The Secretary may waive the requirements of this section for individual research and evaluation studies which are not designated for individual project monitoring or review, provided that—

(A) the study shall be of a nonrecurring nature;

(B) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

(C) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

(D) the Federal agency requesting information or data has announced the plans for the study in the Federal Register.

The Secretary shall inform the relevant agency or institution concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this subsection shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

(6) Nothing in this section shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

(c) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of section 406(f)(2)(A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

(d) The Secretary shall, insofar as practicable—

(1) develop standard definitions and terms consistent, wherever possible, with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to be used by all Federal agencies in dealing with education-related information and data acquisition requests;

(2) develop an automated indexing system for cataloging all available data;

(3) establish uniform reporting dates among Federal agencies for the information and data acquisition required after review under this section;

(4) publish annually a listing of education data requests, by Federal agency, and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from each such program; and

(5) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any, and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

(e)(1) Subject to the provisions of paragraph (2), the Secretary shall develop, in consultation with Federal and State agencies and local educational agencies, procedures whereby educational agencies and institutions are permitted to submit information required under any Federal educational program to a single Federal or State educational agency.

(2) Any procedures developed under paragraph (1) shall be considered regulations for the purpose of section 431 and shall be submitted subject to disapproval in accordance with section 431(e) of this Act for a period of not to exceed 60 days computed in accordance with such section.

(3) The Secretary shall submit a report to the Congress not less than once every three years, describing the implementation of this section. Such report shall contain recommendations for revisions to Federal laws which the Secretary finds are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Department.

(f)(1) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of education management information systems.

(2) Any State educational agency is eligible for a grant of funds under this subsection subject to the following conditions:

(A) The agency agrees to use such funds for the development or improvement of its management information system and agrees to coordinate all data collection for Federal programs administered by the agency through such a system.

(B) The agency agrees to provide funds to local educational agencies and institutions of higher education for the development or improvement of management information systems when such grants are deemed necessary by the State educational agency.

(C) The State agency agrees to take specific steps, in cooperation with the Secretary and with local educational agencies or institutions of higher education in the State, as appropriate, to eliminate excessive detail and unnecessary and redundant information requests within the State and to achieve the collection of information in the most efficient and effective possible manner so as to avoid imposing undue burdens on local educational agencies or institutions of higher education.

(g) For the purpose of carrying out this subsection—

(1) there are authorized to be appropriated for salaries and expenses \$600,000 for fiscal year 1979, \$1,000,000 for fiscal year 1980, and \$1,200,000 for each of the two succeeding fiscal years;

(2) there are authorized to be appropriated for grants under subsections (f) (1) and (2) the sums of \$5,000,000 for fiscal year 1979, \$25,000,000 for fiscal year 1980, and \$50,000,000 for each of the two succeeding fiscal years; and

(3) the sums appropriated according to paragraphs (1) and (2) shall be appropriated as separate line items.

(20 U.S.C. 1221-3) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1212(b), 92 Stat. 2338-2341; amended Aug. 5, 1979, P.L. 96-46, sec. 4(a), 93 Stat. 342 (effective Oct. 1, 1978); amended by reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Dec. 11, 1980, P.L. 96-511, sec. 4(a), 94 Stat. 2826.

RESPONSIBILITY OF STATES TO FURNISH INFORMATION

SEC. 406A. (a) The Commissioner shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available;

(3) with respect to the second preceding fiscal year, include a compilation of reports from local educational agencies and other public and private agencies and institutions within such State which sets forth the amount of such Federal funds received by each such agency and the purposes for which such funds were expended;

(4) with respect to such second preceding fiscal year, include a statistical report on the individuals served or affected by programs, projects, or activities assisted with such Federal funds; and

(5) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

(b) On or before March 31 of each year, the Commissioner shall submit to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

(20 U.S.C. 1232f) Enacted August 21, 1974, P.L. 93-380, sec. 512(a), 88 Stat. 571; amended April 21, 1976, P.L. 94-273, sec. 17, 90 Stat. 379; amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 5011(k)(2), (f)(3), 90 Stat. 2237; redesignated Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(2), 92 Stat. 2342 (effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years); see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS

SEC. 412. (a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year which are not obligated and ex-

pended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

(c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 3679(d)(2) of the Revised Statutes and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.

(20 U.S.C. 1225) Enacted Jan. 2, 1968, P.L. 90-247, Title I, sec. 405, 81 Stat. 815; amended April 13, 1970, P.L. 91-230, Title IV, sec. 401(a) (5), (7), (8), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, redesignated and amended, August 21, 1974, P.L. 93-380, sec. 306(a)(1), 88 Stat. 562, 565; amended April 21, 1976, P.L. 94-273, sec. 3(12), 90 Stat. 378; amended Sept. 24, 1977, P.L. 95-112, sec. 5, 91 Stat. 912; amended Nov. 1, 1978, P.L. 95-561, sec. 1245, 92 Stat. 2354.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. 420. No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except for funds appropriated pursuant to title I of the Act of September 30, 1950 (Public Law 874, 81st Congress), but not including any portion of such funds as are attributable to children counted under subparagraph (C) of section 3(d)(2) or section 403(1)(C) of that Act.

(20 U.S.C. 1228) Enacted August 21, 1974, P.L. 93-380, sec. 252, 88 Stat. 519.

TECHNICAL ASSISTANCE

Sec. 426.

(b) The Commissioner shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

Sec. 432. No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(20 U.S.C. 1232a) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 717(b), 86 Stat. 369; amended October 12, 1976, P.L. 94-482, Title IV, sec. 404(b), 90 Stat. 2230.

LABOR STANDARDS

Sec. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(20 U.S.C. 1232b) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326.

STATE EDUCATIONAL AGENCY MONITORING AND ENFORCEMENT

Sec. 434. (a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Commissioner may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Commissioner may require such plan to provide—

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency;

SINGLE STATE APPLICATION

Sec. 435. (a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject, in the case of programs under titles I and IV of the Elementary and Secondary Education Act of 1965, to the provisions of title V of such Act) to the Commissioner a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

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

SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

Sec. 436. (a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

RECORDS

SEC. 437. (a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

SEC. 438. (a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution.

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)

(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(20 U.S.C. 1232g) Enacted August 21, 1974, P.L. 93-380, sec. 513(a), 88 Stat. 571, 574; amended December 31, 1974, P.L. 93-568, sec. 2, 88 Stat. 1858, 1860; amended Aug. 6, 1979, P.L. 96-46, sec. 4(c) 93 Stat. 342 (effective Oct. 1, 1978); see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PROTECTION OF PUPIL RIGHTS

Sec. 439 (a). All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or his family;
- (3) sex behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;
- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h) Enacted August 21, 1974, P.L. 93-380, sec. 514(a), 88 Stat. 574; amended Nov. 1, 1978, P.L. 95-561, sec. 1250, 92 Stat. 2355, 2356.

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

Sec. 440. (a) Except as provided in section 438(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this

section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(20 U.S.C. 1232) Enacted August 21, 1974, P.L. 93-380, sec. 515(a), 88 Stat. 574; amended October 12, 1976, P.L. 94-482, Title IV, secs. 407, 408, 90 Stat. 2232, 2233.

EDUCATION APPEAL BOARD

Sec. 451. (a) The Commissioner shall establish in the Office of Education an Education Appeal Board (hereinafter in this part referred to as the "Board") the functions of which shall be to conduct—

(1) audit appeal hearings pursuant to section 452 of this Act,

(2) withholding hearings pursuant to section 453 of this Act,

(3) cease and desist hearings pursuant to section 454 of this Act, and

(4) other proceedings designated by the Commissioner.

(b) The members of the Board shall be designated by the Secretary, in consultation with the Assistant Secretary for Education and the Commissioner, and may include individuals who are officers or employees of the United States, as well as individuals who are not full-time employees of the Federal Government.

(c) The Board shall be composed of not less than fifteen nor more than thirty members, of whom no more than one-third shall be officers or employees of the Department. The Secretary shall designate one of the members of the Board to be the Chairman.

(d) For the purposes of conducting hearings as provided in subsection (a) the Chairman may appoint hearing panels of not less than three members of the Board, or the Chairman may designate the entire Board to sit as a panel for any case or class of cases. On any such panel—

(1) the majority of members shall not be individuals in the full-time employment of the Federal Government,

(2) the membership shall not include any individual who is a party to, or has any responsibility for, any particular matter assigned to that panel, and

(3) the Chairman of the Board shall designate one member of each such panel to be the presiding officer.

(e) The proceedings of the Board shall be conducted according to such rules as the Commissioner shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557 respecting—

(1) the receipt of oral or written testimony,

(2) notice of the issues to be considered,

(3) the right to counsel,

(4) intervention of third parties,

(5) transcripts of proceedings, and

(6) such other matters as may be necessary to carry out the functions of the Board.

(f) If there has been established within the Department of Health, Education, and Welfare an appeal board which the Commissioner determines is capable of carrying out the functions of the Board established under this section, he may, with the approval of the Secretary, designate such Department appeal board to carry out the functions of this section.

(20 U.S.C. 1234.) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1232, 92 Stat. 2347 (effective Feb. 29, 1979); see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUDIT DETERMINATIONS

Sec. 452. (a) Whenever the Commissioner determines that an expenditure not allowable under a program listed in section 435(a) of this title, or conducted under title VI and title VII of the Elementary and Secondary Education Act of 1965, or under the Emergency School Aid Act, has been made by a State or by a local educational agency, or that a State or local educational agency has otherwise failed to discharge its obligation to account for funds under any such program, the Commissioner shall give such State or local educational agency written notice of a final audit determination, and he shall at the same time notify such State or agency of its right to have such determination reviewed by the Board.

(b) A State or a local educational agency that has received written notice of a final audit determination and that desires to have such determination reviewed by the Board shall submit to the Board an application for review not later than thirty days after receipt of notification of the final audit determination. The application for review shall be in the form and contain the information specified by the Board. The Board shall return to the Commissioner for such action as he deems appropriate any final audit determination which, in the judgment of the Board, contains insufficient detail to identify with particularity those expenditures which are not allowable. Unless the Board determines that a final audit determination lacks sufficient detail, the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination.

(c) When a State or a local educational agency has submitted an application for review with respect to a final audit determination, no action shall be taken by the Commissioner to collect the amount determined to be owing until the Board has issued a final decision upholding the audit determination as to all or any part of such amount. The filing of such an application shall not affect the authority of the Commissioner to take any other adverse action against such State or agency under this part.

(d) A decision of the Board with respect to an application for review under this section shall become final unless within sixty days following receipt by the State or by the local educational agency of written notice of the decision—

(1) the Commissioner for good cause shown, modifies or sets aside the decision, in whole or in part, in which case the decision shall become final sixty days after such action by the Commissioner, or

(2) the State or the local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final audit determination by the Commissioner under subsection (a) with respect to which review has not been requested pursuant to subsection (b), or a final decision of the Board under this section upholding a final audit determination against a State or a local educational agency shall establish the amount of the audit determination as a claim of the United States which the State or the local educational agency shall be required to pay to the United States and which may be collected by the Commissioner in accordance with the Federal Claims Collection Act of 1966.

(f)(1) Notwithstanding any other provision of law, the Commissioner may, subject to the notice requirements of paragraph (2), compromise any claim established under this section for which the initial determination was found to be not in excess of \$50,000, where the Commissioner determines that (A) the collection of any or all of the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the claim has been corrected and will not recur.

(2) Not less than forty-five days prior to the exercise of the authority to compromise a claim pursuant to paragraph (1), the Commissioner shall publish in the Federal Register a notice of his intention to do so. Such notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

(g) No State and no local educational agency shall be liable to refund any amount expended under an applicable program which is determined to be unauthorized by law if that expenditure was made more than five years before that State or local educational agency is given the notice required by subsection (a).

(h) The Secretary shall employ, assign, or transfer sufficient professional personnel to ensure that all matters brought before the Board may be dealt with in a timely manner.

(20 U.S.C. 1234a.) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1232, 92 Stat. 2347-2349 (effective Feb. 29, 1979); see also general reference Oct. 17, 1979, P.L. 96-48, sec. 301, 93 Stat. 971.

CEASE AND DESIST ORDERS

SEC. 454. (a) Whenever the Commissioner has reason to believe that any State or any local educational agency that receives funds under any applicable program has failed to comply substantially with any requirement of law applicable to such funds in lieu of proceeding under section 453 of this Act, the Commissioner may issue and cause to be served upon such State or upon such local educational agency a complaint (1) stating the charges upon which his belief is based, and (2) containing a notice of a hearing to be held before the Board on a date at least thirty days after the service of that complaint.

(b) The State or the local educational agency upon which such a complaint has been served shall have the right to appear before the Board on the date specified and to show cause why an order should not be entered by the Board requiring such State or such local educational agency to cease and desist from the violation of law charged in the complaint.

(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Board. If upon that hearing the Board shall be of the opinion that the State or the local educational agency is in violation of any requirement of law as charged in the complaint, it shall make a report in writing stating its findings of fact and shall issue and cause to be served upon the State or the local educational agency an order requiring the State or the local educational agency to cease and desist from the practice, policy, or procedure which resulted in such violation.

(d) The report and order of the Board shall become final on the sixtieth day following the date upon which the order of the Board was served upon the State or the local educational agency unless before that day the State or local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final order of the Board under this section may be enforced, as determined by the Commissioner, by—

(1) the withholding of any portion of the amount payable, including amounts payable for administrative costs, under the affected program to the State or the local educational agency against which the final order has been issued, or

(2) the Commissioner certifying the facts to the Attorney General whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the order.

(20 U.S.C. 1234c.) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1232, 92 Stat. 2349, 2350 (effective Feb. 29, 1979); see also general reference Oct. 17, 1979, P.L. 96-98, sec. 301, 93 Stat. 677.

JUDICIAL REVIEW

SEC. 455. (a) Any recipient of funds under an applicable program that would be adversely affected by any action under section 452, 453, or 454 of this Act, and any State entitled to receive funds under a program listed in section 435(a) of this title whose application therefor has been disapproved by the Commissioner, shall be entitled to judicial review of such action in accordance with the provision of this section.

(b) Any State, local educational agency, or other recipient entitled to judicial review under subsection (a) that desires such review of any action by the Commissioner or the Board qualifying for review under this section shall, within sixty days of that action, file with the United States Court of Appeals for the circuit in which that State, local educational agency, or other recipient is located, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

(c) The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) The court shall have jurisdiction to affirm the action of the Board or the Commissioner or to set it aside, in whole or in part. 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.

(20 U.S.C. 1234d) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1232, 92 Stat. 2350 (effective Feb. 29, 1979); see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

USE OF RECOVERED FUNDS

Sec. 456. (a) Whenever the Commissioner has recovered funds following a final audit determination with respect to any applicable program, he may consider those funds to be additional funds available for that program and may arrange to repay to the State or the local agency affected by that action not to exceed 75 percent of those funds upon his determination that—

(1) the practices or procedures of the State or local agency that resulted in the audit determination have been corrected, and that the State or the local agency is in all other respects in compliance with the requirement of that program;

(2) the State or the local agency has submitted to the Commissioner a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally granted.

(b) Any payments by the Commissioner under this section shall be subject to such other conditions as the Commissioner deems necessary to accomplish the purposes of the affected programs, including—

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the State or local agency with parents or representatives of the population that will benefit from the payments.

(c) Notwithstanding any other provisions of law, the Commissioner may authorize amounts made available under this section to remain available for expenditure, subject to such conditions as he deems appropriate, for up to three fiscal years following the fiscal year in which the audit determination referred to in subsection (a) was made.

(d) At least thirty days prior to entering into an arrangement under this section, the Commissioner shall publish in the Federal Register a notice of his intent to do so and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least thirty days to submit comments to the Commissioner regarding the proposed arrangement.

(20 U.S.C. 1234e) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1232, 92 Stat. 2351 (effective Feb. 29, 1979); see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

TITLE I

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

"PART A--PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"Subpart 1--Basic Grants

"GRANTS--AMOUNT AND ELIGIBILITY

"SEC. 111. (a) AMOUNT OF GRANTS.—(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under part E (other than payments under such part to jurisdictions excluded from the term 'State' by this subsection, and payments pursuant to section 156), and there is authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1975 for Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust

Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(2) (A) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States.

"(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Commissioner.

"(C) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year (exclusive of any amount received under paragraph (3)(D)) shall be the amount arrived at by multiplying the number of children counted under subsection (c) for Puerto Rico by the product of—

"(i) the percentage determined under the preceding sentence, and

"(ii) 32 per centum of the average per pupil expenditure in the United States.

"(3) (A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educa-

tional agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

“(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Commissioner for authority during any particular fiscal year to make the allocations under this part (other than section 117) directly to local educational agencies without regard to the counties. If the Commissioner approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Commissioner for a final determination.

“(D) (i) From one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979, there shall be allotted to each State an amount which bears the same ratio to such excess as the product of—

“(I) the number of children in such State aged five to seventeen, inclusive, from families below 50 per centum of the median national income for four-person families from the 1975 survey of income and education conducted by the Bureau of the Census, multiplied by—

“(II) 40 per centum of the amount determined under the second sentence of paragraph (2) (A) and, in the case of Puerto Rico, the product determined under subparagraph (C) (i) and (ii) of this paragraph.

bears to the sum of such products for all the States.

“(ii) In any case in which the Commissioner finds that a State's percentage decrease in children from low-income families exceeds 25 per centum between the 1970 decennial census, as adjusted, and the 1975 survey of income and education, the Commissioner shall allocate funds based on the most current valid data available or based on a survey of the affected State by the Bureau of the Census.

“(iii) From the amount allotted to each State under division (i), the amount which each local educational agency in that State shall be eligible to receive under this subparagraph shall be an amount which bears the same ratio to the total amount allotted to such State under this subparagraph as the amount such local educational agency receives under paragraph (2) bears to the total amount of funds made available to local educational agencies in such State under such paragraph.

“(E) From the remaining one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979 after the application of subparagraph (D), there shall be allotted to each State an amount determined in accordance with paragraph (2) of this subsection.

“(4) For purposes of this subsection, the term ‘State’ does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

“(b) **MINIMUM NUMBER OF CHILDREN TO QUALIFY.**—A local educational agency shall be eligible for a basic grant for a fiscal year under

PUBLIC LAW 95-561—NOV. 1, 1978

this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

"(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purposes of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

"(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

"(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purposes of this subsection.

"(c) **CHILDREN TO BE COUNTED.**—(1) (A) The number of children to be counted for purposes of this section, other than for subsection (a) (3) (D), is the aggregate of—

"(i) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2) (A),

"(ii) the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2) (B), subject to subparagraph (E) of this paragraph, and

"(iii) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

"(B) For the purpose of division (ii) of subparagraph (A) of this paragraph the number of children aged five through seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2) (B) shall be reduced by one-third for fiscal year 1979; except that such reduction shall not be applicable with respect to determinations made under section 117 (b) of the number of children to be counted under this subsection.

"(2) (A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

"(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current cri-

teria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.

“(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

“(d) PROGRAM FOR INDIAN CHILDREN.—(1) From the amount allotted for payments to the Secretary of Interior under clause (B) (i) in the second sentence of subsection (a) (1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

“(2) The amount allotted for payments to the Secretary of the Interior under clause (B) (ii) in the second sentence of subsection (a) (1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 3 of this part and that the Department of the Inte-

PUBLIC LAW 95-561—NOV. 1, 1978

rior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of subpart 3 of this part and sections 171 and 172.

"TREATMENT OF EARNINGS FOR PURPOSES OF AID TO FAMILIES WITH
DEPENDENT CHILDREN

"Sec. 112. Notwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first \$85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

"Subpart 2—Special Grants

"SPECIAL INCENTIVE GRANTS

"Sec. 116. (a) ELIGIBILITY.—(1) Each local educational agency that is eligible to receive a payment under section 111 for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if it is located in a State which has in effect for that fiscal year a State program meeting the requirements of paragraph (2) under which financial assistance is provided to meet the special education needs of educationally deprived children.

"(2) A State program meets the requirements of this subsection if, under State law—

"(A) the program meets the requirements of section 131(c); and

"(B) not less than 50 per centum of the funds expended under the program in any school district of any local educational agency in the State in the fiscal year preceding any fiscal year in which the State receives a payment under this subpart is expended in school attendance areas of such agencies having high concentrations of children from low-income families.

"(b) AMOUNT OF GRANTS.—(1) Except as provided in paragraph (3), the aggregate amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be 50 per centum of the amount of State funds expended, in the most recent fiscal year for which data are available, under a State program meeting the requirements of paragraph (2) of subsection (a) of this section.

"(2) The amount of the additional grant for each local educational agency in a State under this section for any fiscal year shall bear the same ratio to the amount allocated to such State under subsection (c) of this section as the amount allocated to such local educational agency under section 111 of this title for such fiscal year bears to the aggregate amount allocated to all local educational agencies in the State under section 111 for such fiscal year.

"(3) The aggregate amount which the local educational agencies in a State shall be eligible to receive under this section for any fiscal year shall not exceed 10 per centum of the aggregate amount which all local

PUBLIC LAW 95-561—NOV. 1, 1978

educational agencies in such State are eligible to receive under section 111 of this title for such fiscal year.

"(4) Each State which desires to receive payments under this section shall develop a system for determining the data required by subparagraph (2)(B) of subsection (a) of this section relating to the percentage of State funds expended in school attendance areas having high concentrations of children from low-income families and required by paragraph (1) of this subsection relating to the amount of State funds expended under the State program referred to in that paragraph. The State shall submit to the Commissioner such information as the Commissioner may request concerning that system.

"(c) PAYMENTS; USE OF FUNDS.—(1) Except as provided in paragraph (3), the Commissioner shall pay to each State for each fiscal year the aggregate amount to which the local educational agencies in such State are entitled under subsection (b) after any ratable reductions under subsection (d).

"(2) The total amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be added to the amount paid to such State under section 191 for such year. From the amount paid to it under this subsection, the State shall distribute to each local educational agency of the State the amount of its additional grant as determined under subsection (b)(2).

"(3) Whenever the expenditures made by a State in accordance with subsection (a) in a fiscal year equal or exceed expenditures in the preceding fiscal year, the amount paid to such State under this section shall, subject to subsection (d), not be less than the amount paid to such State under this section in the preceding fiscal year, and the total of any increases required under this paragraph shall be derived by proportionately reducing the amount paid to States which were not entitled to a payment under this section in the preceding fiscal year, except that the amount paid to a State under this section for any fiscal year shall not exceed the maximum amount to which such State is entitled for such fiscal year under paragraph (1) of subsection (b).

"(4) The amount paid to a local educational agency under this part shall be used by such agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to all other requirements in subpart 3 of this part.

"(d) RATABLE REDUCTIONS.—If the sums appropriated pursuant to subsection (e) for a fiscal year are not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under this section, the amount to be paid such agencies shall be ratably reduced to the extent necessary to bring such payments within the limits of the amounts so appropriated. In case additional funds become available for making payments under this section for that year, such reduced amounts shall be increased on the same basis that they were reduced.

"(e) APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section such sums as may be necessary for fiscal year 1980 and for the three succeeding fiscal years.

"GRANTS FOR LOCAL EDUCATIONAL AGENCIES IN COUNTIES WITH ESPECIALLY HIGH CONCENTRATIONS OF CHILDREN FROM LOW-INCOME FAMILIES

"SEC. 117. (a) PURPOSE.—It is the purpose of this section to provide additional assistance to local educational agencies in counties with

especially high concentrations of children from low-income families to enable local educational agencies in such counties to provide more effective programs of instruction, especially in the basic skills of reading, writing, and mathematics, to meet the special educational needs of educationally deprived children.

"(b) ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS.—(1) Each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this title for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

"(A) the number of children counted under section 111(c) of this title for local educational agencies in such county for the preceding fiscal year exceeds five thousand, or

"(B) the number of children counted under section 111(c) exceeds 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year,

except that no such State shall receive less than one-quarter of 1 per centum of the sums appropriated under subsection (d) for such section for such fiscal year.

"(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Commissioner shall determine the product of—

"(A) the number of children in excess of five thousand counted under section 111(c) for the preceding fiscal year or the number of children counted under that section in excess of 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county for that preceding fiscal year, whichever is greater, and

"(B) the quotient resulting from the division of the amount determined for those agencies under section 111(a)(2) of this title for the fiscal year for which the determination is being made divided by the total number of children counted under section 111(c) for that agency for the preceding fiscal year.

"(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount appropriated under subsection (d) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

"(4) For the purposes of this section, the Commissioner shall determine the number of children counted under section 111(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the entitlement for such county is determined under section 111.

"(5) Funds allocated to counties under this part shall be allocated by the State educational agency, pursuant to regulations established by the Commissioner, among the several local educational agencies whose school districts lie (in whole or in part) within the county on the basis of the current distribution in the county of children aged five to seventeen, inclusive, from low-income families (using a poverty level selected by the State educational agency consistent with

PUBLIC LAW 95-561—NOV. 1, 1978

the purposes of this title) as determined on the basis of the available data which such State educational agency determines best to reflect the current distribution in the county of children aged five to seventeen, inclusive, from low-income families, except that in determining the number of such children in any local educational agency in which less than 20 per centum of the children are from low-income families, each such child shall be counted as a fraction in which the numerator is the percentage of low-income children in the school district of that agency and the denominator is 20.

"(c) PAYMENTS; USE OF FUNDS.—(1) The total amount to which the counties in a State are entitled under this section for any fiscal year shall be added to the amount paid to that State under section 191 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

"(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to the other requirements in subpart 3 of this part.

"(d) APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section \$400,000,000 for fiscal year 1979, and such sums as may be necessary for each of the four succeeding fiscal years.

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"NONINSTRUCTIONAL DUTIES

"Sec. 134. Notwithstanding any provision of subpart 3 of this part, personnel paid entirely by funds made available under this title may be assigned to certain limited, rotating, supervisory duties not related to classroom instruction, the benefits of which are not limited to participating children under this title. Such duties may include only those to which similarly situated personnel not hired with funds made available under the title are assigned at the same school site, and for which such similarly situated personnel are paid, and may not exceed the same proportion of total time as similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.

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PUBLIC LAW 95-561--NOV. 1, 1978

"PART E--PAYMENTS

"PAYMENT METHODS

"Sec. 191. The Commissioner shall, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

"AMOUNT OF PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

"Sec. 192. From the funds paid to it pursuant to section 191 each State educational agency shall distribute to each local educational agency of the State which is eligible to receive a grant under this title and which has submitted an application approved pursuant to section 191 the amount for which such application has been approved, except that the amount shall not exceed the amount determined for that agency under this title.

"ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

"Sec. 193. (a) **ADJUSTMENT ALLOCATION.**--If the sums appropriated for any fiscal year for making the payments provided in this title other than amounts appropriated for subpart 2 of part A are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this title for such year, the allocations to such agencies shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 per centum of its allocation for such year.

"(b) **ADDITIONAL FUNDS ALLOCATION.**--In case additional funds become available for making payments under this title for that year, allocations that were reduced pursuant to subsection (a) shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State and (2) State educational agencies referred to in subpart 1 of part

PUBLIC LAW 95-561—NOV. 1, 1978

B must file applications. If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 111 (a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

"PAYMENTS FOR STATE ADMINISTRATION

"Sec. 194. (a) Except as provided in subsection (b), the Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title, except that the total of such payments in any fiscal year shall not exceed—

"(1) 1.5 per centum of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under this title; or

"(2) \$225,000, or \$50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands,

whichever is the greater, except that any amount paid by reason of clause (1) or (2) in excess of the limitations on such payments in effect prior to the effective date of the Education Amendments of 1978 shall be used exclusively for monitoring, audit resolution, enforcement, or similar compliance activities and shall supplement and not supplant funds otherwise available from non-Federal sources for such purposes.

"(b) The provisions of this section shall apply in any fiscal year in which the provisions of section 510(b) (2) are not met.

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PUBLIC LAW 95-561—NOV. 1, 1978

"LIMITATION ON GRANT TO PUERTO RICO

"Sec. 197. Notwithstanding the provisions of part A or of subpart 1, 2, or 3 of part B of this title, the amount paid to the Commonwealth of Puerto Rico under this title for any fiscal year shall not exceed 150 per centum of the amount received by Puerto Rico under this title in the preceding fiscal year. Any excess over such amount shall be used to ratably increase the allocations under subpart 1 of part A of the other local educational agencies whose allocations do not exceed the maximum amount for which they are eligible under section 111.

"DEFINITIONS

"Sec. 198. (a) Except as otherwise provided, for purposes of this title:

"(1) The term 'average daily attendance' means attendance determined in accordance with State law, except that notwithstanding any other provision of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

"(2) The term 'average per pupil expenditure' means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(3) The term 'Commissioner' means the United States Commissioner of Education.

"(4) The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

"(5) The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

"(6) The term 'current expenditures' means expenditures for free public education, 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 not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this title or parts B and C of title IV of this Act.

"(7) The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law, and the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(8) The term 'equipment' includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

"(9) The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

"(10) 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 or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(11) The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(12) The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

"(13) The term 'school attendance area' means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

"(14) The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"(15) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(16) The term 'State' means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.



Ninety-eighth Congress of the United States of America

AT THE FIRST SESSION

*Began and held at the City of Washington on Monday, the third day of January,
one thousand nine hundred and eighty-three*

An Act

To make certain technical amendments to improve implementation of the Education Consolidation and Improvement Act of 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

STATE PROGRAM DESIGN

SECTION 1. (a) Section 555(b) of the Education Consolidation and Improvement Act of 1981 (Public Law 97-35; 20 U.S.C. 3801 et seq.) (hereafter in this Act referred to as "the Act") is amended to read as follows:

"(b) PROGRAM DESIGN.—State agency programs shall be designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children (as described in subparts 1, 2, and 3, respectively, of part B of title I of the Elementary and Secondary Education Act of 1965) in accordance with section 554(a)(2) and the other applicable requirements of this chapter. The Secretary shall continue to use the definitions of 'agricultural activity', 'currently migratory child', and 'fishing activity' which were in effect on June 30, 1982, in regulations prescribed under subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965. No additional definition of 'migratory agricultural worker' or 'migratory fisherman' may be applied after the date of enactment of this subsection to such subpart 1."

(b) Section 555 of the Act is amended by adding at the end thereof the following new subsection:

"(e) EVALUATION.—Each State educational agency shall—

"(1) conduct an evaluation of the programs assisted under this chapter at least every two years and shall make public the results of that evaluation; and

"(2) collect data on the race, age, and gender of children served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter."

APPLICATIONS

SEC. 2. (a) Section 556(b) of the Act is amended by inserting "or" at the end of paragraph (IXA), by striking out "or" at the end of paragraph (IXB), and by striking out paragraph (IXC).

(b) Section 556 of the Act is amended by adding at the end thereof the following:

"(c) EXEMPTION FROM TARGETING.—The requirements of subsection (b)(1) shall not apply in the case of a local educational agency with a total enrollment of less than one thousand children, but this subsection does not relieve such an agency from the responsibility to serve children under the assurances set forth in subsection (b)(2)."

(c) Clause (2) of section 556(b) of the Act is amended by striking all that follows "areas," in such clause and inserting in lieu thereof "requires, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;"

(d) Clause (4) of section 556(b) of the Act is amended by inserting before the semicolon a comma and the following: "and that the results of such evaluation will be considered by such agency in the improvement of the programs and projects assisted under this chapter; and".

FLEXIBILITY TO CONTINUE TITLE I TYPE EXPENDITURES

SEC. 3. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(d) LOCAL EDUCATIONAL AGENCY DISCRETION.—Notwithstanding subsection (b)(1) of this section, a local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of this chapter as set forth in this subsection, as follows:

"(1) A local educational agency may designate any school attendance area in which at least 25 per centum of the children are from low-income families as an eligible school attendance area.

"(2) A local educational agency may, with the approval of the State educational agency, designate as eligible (and serve) school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this provision shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the local educational agency.

"(3) Funds received under this chapter may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

"(4) If an eligible school attendance area or eligible school was so designated in accordance with subsection (b)(1)(A) in either of two preceding fiscal years, it may continue to be so designated for a single additional fiscal year even though it does not qualify in accordance with subsection (b)(1)(A).

"(5) With approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this chapter, but (A) the number of children attending private elementary and secondary schools who receive services

under this chapter shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this chapter shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

"(6) A child who, in any previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this title for the current year.

"(7) Educationally deprived children who begin participation in a program or project assisted under this chapter who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this chapter, may continue to participate in a program or project funded under this chapter for the remainder of such year.

"(8) The local educational agency is not required to use funds under this chapter to serve educationally deprived children in greatest need of assistance if such children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this chapter.

"(9) In the case of any school serving an attendance area that is eligible to receive services under this chapter and in which not less than 75 per centum of the children are from low-income families, funds received under this chapter may be used for a project designed to upgrade the entire educational program in that school in the same manner and only to the same extent as permitted under section 133(b) of the Elementary and Secondary Education Act of 1965 (but without regard to paragraph (4) of such section).

"(10) Public school personnel paid entirely by funds made available under this chapter may be assigned limited, rotating, supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. Such duties may not exceed the same proportion of total time as is the case with similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less."

PARENTAL INVOLVEMENT

SEC. 4. Section 556 of the Act is further amended by adding at the end thereof the following new subsection:

"(e) PARENTAL INVOLVEMENT.—For the purposes of complying with the assurances given pursuant to subsection (b)(3) with respect to consultation with parents of participating children, (1) a local educational agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this chapter, and (2) if parents desire further activities, the local educational agency may, upon request, provide reasonable support for such activities."

AREAS FOR SERVICES TO PRIVATE SCHOOLCHILDREN

SEC. 5. Section 557(a) of the Act is amended by inserting "(1)," immediately after "556(b)".

APPLICATION OF NONSUPPLANTING RULE TO STATES

SEC. 6. Section 558(b) of the Act is amended—

(1) by inserting "State educational agency or other State agency in operating its State level programs or a" before "local educational agency" in the first sentence; and

(2) by striking out "a local educational agency shall not be required" in the second sentence and inserting in lieu thereof "no State educational agency, other State agency, or local educational agency shall be required".

EXCLUSIONS OF SPECIAL PROGRAM FUNDS

SEC. 7. Section 558(d) of the Act is amended—

(1) by striking out "if such programs are consistent with the purposes of this chapter" and inserting in lieu thereof "including compensatory education for educationally deprived children (which meets the requirements of section 131(c) of the Elementary and Secondary Education Act of 1965)"; and

(2) by adding at the end thereof the following new sentence: "For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

"(1) bilingual education for children of limited English proficiency,

"(2) special education for handicapped children or children with specific learning disabilities, and

"(3) certain State phase-in programs as described in section 131(d) of the Elementary and Secondary Education Act of 1965."

OVERLAP IN COUNTY BOUNDARIES

SEC. 8. Section 558(e) of the Act is amended by striking out "In any State" and inserting in lieu thereof "Notwithstanding section 111(a)(3)(C) of the Elementary and Secondary Education Act of 1965, in any State".

RESTRICTION OF EXPENDITURES TO MEETING EDUCATIONAL NEEDS

SEC. 9. (a) Section 561(b) of the Act is amended by inserting before the period at the end thereof the following: "and because they are the most likely to be able to design programs to meet the educational needs of the students in their own districts".

(b) Section 564(a) of the Act is amended—

(1) by striking out "and" at the end of paragraphs (5) and (6);

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) provides assurance that, apart from technical and advisory assistance and monitoring compliance with this chapter, the State educational agency has exercised and will exercise no influence in the decisionmaking processes of local educational

agencies as to the expenditures made pursuant to its application under section 566; and".

(c) Section 566(c) of the Act is amended by adding at the end thereof the following: "In exercising such discretion, it shall be the responsibility of each local educational agency to ensure that each expenditure of funds under this chapter is for the purpose of meeting the educational needs within the schools of that local educational agency."

PHASE-OUT AND TRANSITION EXPENSES

Sec. 10. Section 562(c) of the Act is amended by adding at the end thereof the following: "Until September 30, 1983, such funds may also be used to assist in phasing out programs described in section 561(a) and in promoting an orderly transition to operations under this chapter."

STATE ALLOTMENTS

Sec. 11. The first sentence of section 563(a) is amended by striking out "not to exceed".

AUDIT REQUIREMENT FOR SMALL LOCAL EDUCATIONAL AGENCIES

Sec. 12. Section 564 of the Act is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding section 1745 of this Act, local educational agencies receiving less than an average \$5,000 each year under this chapter need not be audited more frequently than once every five years."

REQUIREMENT FOR STATE CERTIFICATION OF LOCAL EDUCATIONAL AGENCY APPLICATIONS

Sec. 13. Section 566(a) of the Act is amended by striking out everything preceding paragraph (1) and inserting in lieu thereof the following:

"Sec. 566. (a) A local educational agency may receive its allocation of funds under this chapter for any year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—"

SCHOOL LEVEL PROGRAMS

Sec. 14. Section 573(a) of the Act is amended by striking out "chapter" in the first sentence and inserting in lieu thereof "subchapter".

STATE RULEMAKING

Sec. 15. Section 591 of the Act is amended by adding at the end thereof the following new subsection:

"(d) Nothing in this subtitle shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to local educational agency programs or projects funded under this subtitle, except as related to State audit and financial responsibilities, or (2) to encourage, preempt, or prohibit

regulations issued pursuant to State law which are not in conflict with the provisions of this subtitle. The imposition of any State rule or policy relating to the administration and operation of programs funded by this subtitle (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement."

WITHHOLDING OF PAYMENTS

Sec. 16. Section 592(a) of the Act is amended—

- (1) by striking out "on the record" in the first sentence; and
- (2) by adding at the end thereof the following new sentence:
"A transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person."

JUDICIAL REVIEW

Sec. 17. Section 593(b) of the Act is amended by inserting "and a local educational agency" after "A State educational agency".

APPLICATION OF GENERAL EDUCATION PROVISIONS ACT

Sec. 18. (a) Section 596 of the Act is amended to read as follows:

"APPLICATION OF OTHER LAWS

"Sec. 596. (a) Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this subtitle.

"(b) The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this subtitle with respect to the programs authorized by this subtitle:

"(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 591(a) of this subtitle.

"(2) Section 426(a) of such Act is superseded by section 591(b) of this subtitle.

"(3) Section 427 of such Act is superseded by section 556(b)(3) of this subtitle.

"(4) Section 430 of such Act is superseded by sections 556(a) and 564(b) of this subtitle.

"(5) Section 431A of such Act is superseded by section 558(a) of this subtitle.

"(6) Section 453 of such Act is superseded by section 592 of this subtitle.

"(7) Section 455 of such Act is superseded by section 593 of this subtitle with respect to judicial review of withholding of payments.

"(c) Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this subtitle and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this subtitle."

(b) Section 406A(a) of the General Education Provisions Act, as added by the Education Amendments of 1974 (relating to responsibility of States to furnish information), is amended—

- (1) by striking out paragraphs (3) and (4);
- (2) by inserting "and" at the end of paragraph (2); and
- (3) by redesignating paragraph (5) as paragraph (3).

CONFORMING AND TECHNICAL AMENDMENTS TO TITLE I OF ESEA

SEC. 19. (a) Title I of the Elementary and Secondary Education Act of 1965 is amended—

(1) in section 142(a) by striking out "subpart 3 of part A, other than sections 122, 123, and 126(d) thereof" in paragraph (3) and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 of the Education Consolidation and Improvement Act of 1981"; and

(2) in sections 147 and 152(a), by striking out "subpart 3 of part A, other than sections 122, 123, 125, 126(d), and 126(e) thereof" and inserting in lieu thereof "section 556 (other than subsection (b)(1)) and section 558 (other than subsection (c)) of the Education Consolidation and Improvement Act of 1981".

(b) The amendments made by subsection (a) shall apply only with respect to funds for use under the Education Consolidation and Improvement Act of 1981.

EXTENSION OF AUTHORIZATION FOR TITLE VII OF ESEA

SEC. 20. Section 528 of the Omnibus Budget Reconciliation Act of 1981 is amended—

(1) by striking out "and" at the end of paragraph (13);

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph: "(15) title VII of the Elementary and Secondary Education Act of 1965."

CONFORMING AMENDMENTS

SEC. 21. (a) Section 565(a) of the Act is amended by striking out "nonpublic" and inserting in lieu thereof "private, nonprofit".

(b) The first sentence of section 1003(a)(1) of the Elementary and Secondary Education Act of 1965 is amended by inserting after "Act" a comma and the following: "or the Education Consolidation and Improvement Act of 1981".

ASSESSMENT OF COMPENSATORY EDUCATION

SEC. 22. Chapter 1 of the Act is amended by adding at the end thereof the following new section:

"NATIONAL ASSESSMENT OF COMPENSATORY EDUCATION ASSISTED UNDER THIS CHAPTER

"SEC. 559. (a) The Secretary shall conduct a national assessment of compensatory education assisted under this chapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and assessments of the impact of (1) services delivered, (2) recipients of services, (3) background and training of teachers and staff, (4) allocation of funds (to school sites), (5) coordination with other programs, (6) effectiveness of programs on student's basic and higher order academic skills,

school attendance, and future education, and (7) a national profile of the way in which local educational agencies implement activities described under section 556(b). The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1986, and a final report shall be prepared and submitted to the Congress not later than January 1, 1987.

"(b) Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the Department of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate."

IMPACT AID

Sec. 23. Section 5(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) is amended by adding at the end thereof the following: "If any legislation enacted after March 31, 1983, affects the determination of amounts of payments made on the basis of entitlements established under sections 2, 3, and 4 by placing any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 3 in the schools of a local educational agency, such restriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments). Treating such an administrative school district as a local educational agency under the preceding sentence shall not result, during fiscal year 1984, 1985, or 1986, in an increase of more than 10 per centum in the amount of funds paid to such State above the amount which would otherwise be paid to such State for such fiscal year."

NATIONAL CENTER FOR EDUCATION STATISTICS

Sec. 24. (a) Section 515(b) of the Omnibus Education Reconciliation Act of 1981 is amended by inserting "(g)(2)" after "section 406".

(b) The National Center for Education Statistics shall not terminate the study of the condition of education for Hispanic Americans unless specifically required or authorized to do so by law.

EFFECTIVE DATE

Sec. 25. (a) Except as provided in subsection (b), the amendments made by this Act to the Education Consolidation and Improvement Act of 1981 and title I of the Elementary and Secondary Education Act of 1965 shall be effective July 1, 1983.

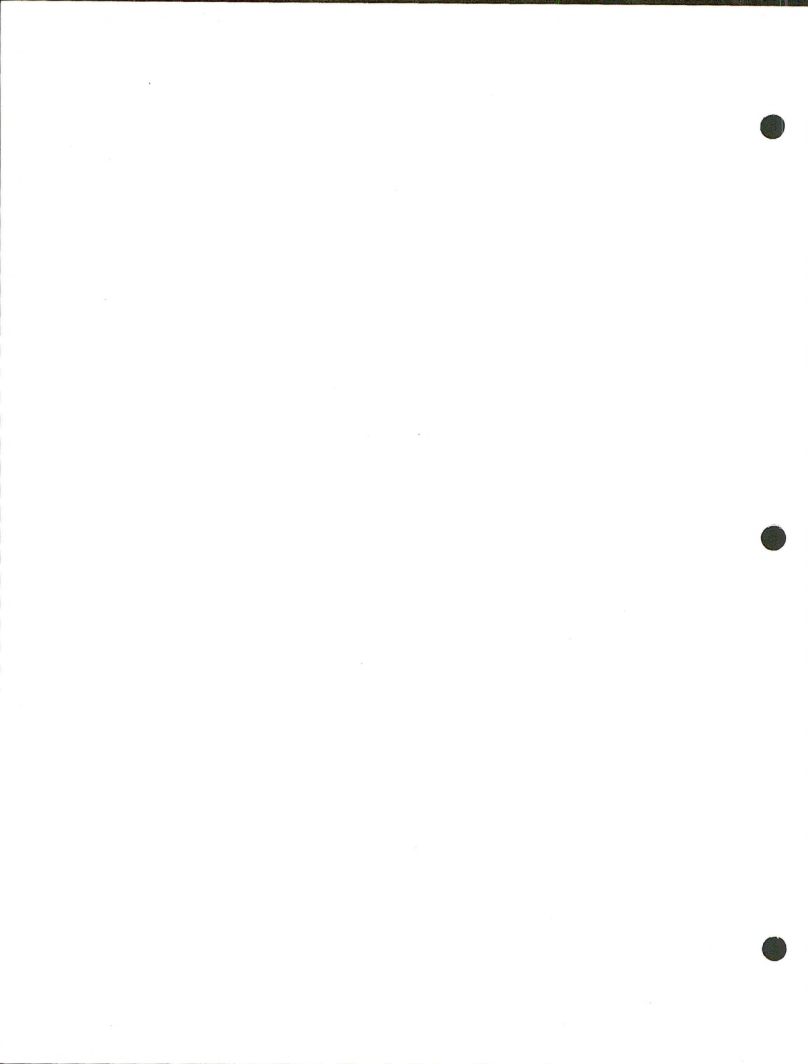
(b) With respect to the period beginning July 1, 1982, and ending June 30, 1983, no recipient of funds under the Education Consolidation and Improvement Act of 1981 shall be held to have expended

H. R. 1035—9

such funds in violation of the requirements of such Act if such funds are expended either in accordance with such Act as in effect prior to the date of enactment of this Act or in accordance with such Act as amended by this Act.

Speaker of the House of Representatives.

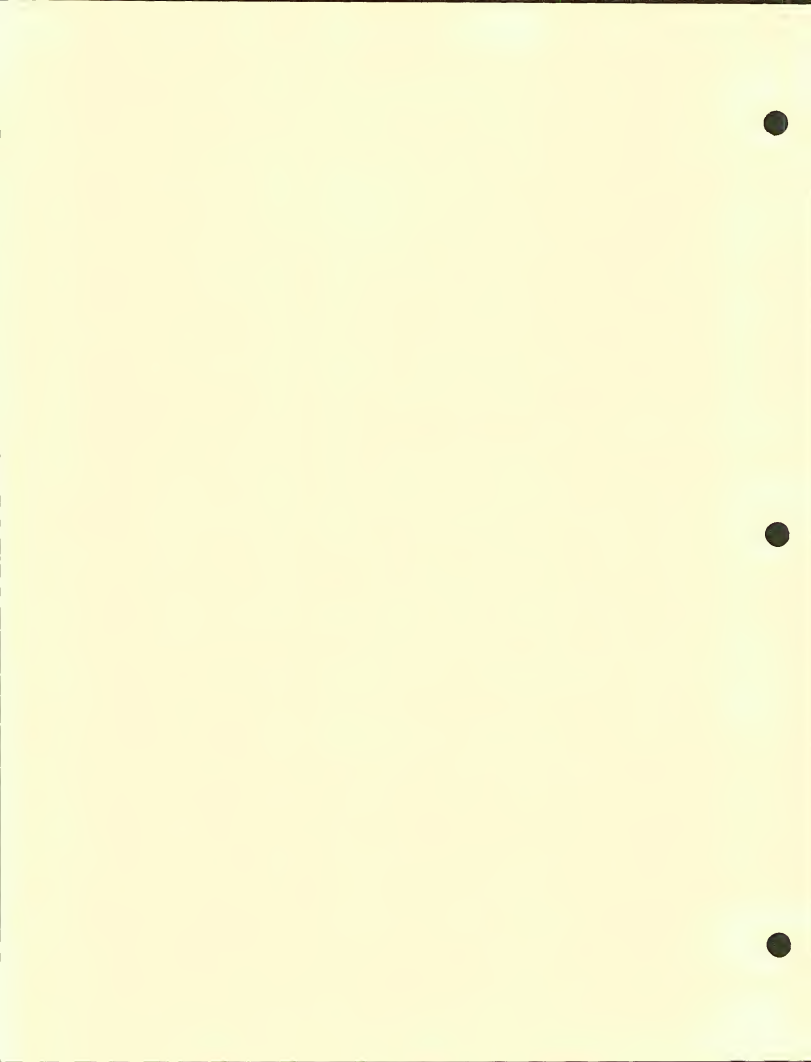
*Vice President of the United States and
President of the Senate.*



APPENDIX B

CHAPTER 1 FEDERAL REGULATIONS

(November 19, 1982)



federal register

Friday
November 19, 1982

Part V

Department of Education

**Office of Elementary and Secondary
Education**

**Chapter 1 of the Education Consolidation
and Improvement Act of 1981; Financial
Assistance to Local Educational Agencies
to Meet Special Educational Needs of
Disadvantaged Children**

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 76, 78, 200, and 201

Chapter 1 of the Education Consolidation and Improvement Act of 1981—Financial Assistance to Local Educational Agencies To Meet Special Educational Needs of Disadvantaged Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: Under Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Department provides financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children on the basis of allocations calculated under Title I of the Elementary and Secondary Education Act of 1965. The Secretary issues final regulations implementing that portion of Chapter 1 that provides financial assistance to local educational agencies to meet the special educational needs of educationally deprived children in attendance areas with high concentrations of children from low-income families. These regulations replace the final regulations published on July 29, 1982.

Users of these regulations should be aware that the Secretary is issuing proposed regulations under 34 CFR Part 204 which contain general provisions applicable to all agencies receiving Chapter 1 funds. The provisions in Part 204, if published in final form as currently proposed, will supersede certain sections in these regulations.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the Federal Register except § 200.56 which contains information collection requirements under review by OMB. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a later date the Secretary will publish a notice in the Federal Register stating the effective date of § 200.56.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Fagan, Director, Division of Grants, Policy, and Administration, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3836, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9877.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of

1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children, on the basis of allocations calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control.

The programs authorized by Chapter 1 provide financial assistance to—

- Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children;
- State agencies for projects designed to meet the special educational needs of handicapped children;
- State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions;
- State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishermen; and
- The Secretary of the Interior to meet the special educational needs of Indian children.

These regulations apply only to that portion of Chapter 1 that provides financial assistance to LEAs. The Secretary proposes to issue separate regulations to govern the other Chapter 1 programs.

On July 29, 1982, the Secretary issued final regulations governing financial assistance to LEAs under Chapter 1 (47 FR 32856). The final regulations in this document revise 34 CFR Part 200 published on July 29 to read as described below. The revised regulations reflect the Secretary's decision that the General Education Provisions Act (GEPA) generally applies to Chapter 1. This decision is discussed below in the "Application of other statutes and regulations" section.

B. Overview of these regulations

These regulations relate to—

- Applying for Chapter 1 Funds for Grants to Local Educational Agencies (Subpart A).

- Allocation of Chapter 1 Funds for Grants to Local Educational Agencies (Subpart B).
- Project Requirements (Subpart C).
- Fiscal Requirements (Subpart D).
- Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools (Subpart E).
- Due Process Procedures (Subpart F).

C. Summary of regulatory provisions

1. Applying for Chapter 1 Funds for Grants to Local Educational Agencies.

Subpart A contains definitions of several key terms and explains the procedures for applying for Chapter 1 funds. As indicated in § 200.10, a State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children must have on file with the Secretary assurances that meet the requirements in Section 435 of GEPA pertaining to fiscal control and fund accounting procedures. Sections 200.12-200.13 describe the procedures for submission of an LEA's project application for approval by an SEA. Section 200.14 provides that an SEA shall approve an LEA's application if that application meets the requirements in Section 556 of Chapter 1. Section 590(a) of Chapter 3 makes applicable the parts of Section 436 of GEPA that require LEA assurances with respect to fiscal control and fund accounting. The Secretary has decided that an undue administrative burden would be placed on LEAs and SEAs were separate assurances on these items required for LEAs to receive Chapter 1 allocations for FY 1983. Accordingly, the Secretary has determined that an LEA's initial Chapter 1 project application, once approved by the SEA, is deemed to meet the applicable provisions of Section 436 of GEPA. For all succeeding Chapter 1 applications, however, LEA's must submit the specific assurances required by the applicable provisions in Section 436 of GEPA.

2. Allocation of Chapter 1 Funds for Grants to Local Educational Agencies.

Subpart B describes the method of allocating Chapter 1 funds to LEAs for basic grants, special incentive grants, and concentration grants. Sections 200.45-200.46 specify procedures for the reallocation, under certain circumstances, of Chapter 1 funds by SEAs and the Secretary.

3. Project Requirements.

Although the Chapter 1 statute relates most of the basic project design characteristics found in Title I, it reflects the congressional intent to simplify the requirements. Subpart C contains the

requirements that apply to the design and operation of local Chapter 1 projects.

These requirements relate to—

- Selection of attendance areas (§ 200.49).
- Annual needs assessment (§ 200.50).
- Sufficient size, scope, and quality of project (§ 200.50).
- Prohibition against using Chapter 1 funds to provide general aid (§ 200.52).
- Consultation with parents and teachers (§ 200.53).
- Evaluation (§ 200.54).
- Allowable costs (§ 200.55).
- Recordkeeping requirements (§ 200.56).
- Audits and access to records (§ 200.57).
- Compromise of audit claims (§ 200.58).
- SEA rulemaking and other responsibilities (§ 200.59).

It should be emphasized that the provisions in Subpart C reflect the new flexibility provided by Chapter 1. For example, under § 200.63, an LEA is required to consult with parents and teachers of children being served, but is no longer required to have parent advisory councils. Although § 200.54 requires an LEA to evaluate its Chapter 1 project, it is not required to use any particular evaluation models.

4. Fiscal Requirements.

Subpart D contains the fiscal requirements that apply to LEAs that receive Chapter 1 funds. The provisions in this subpart relate to—

- Maintenance of effort (§§ 200.60–200.61).
- Supplement, not supplant (§ 200.62).
- Comparability of services (§ 200.63).
- Availability of funds (§ 200.64).

Chapter 1 retains the underlying principles of equity that were reflected in the fiscal requirements of Title I. However, Chapter 1 has significantly streamlined and modified those requirements so as to reduce the burden on LEAs and provide greater flexibility in determining compliance. The final regulations reflect these changes.

Under § 200.60, SEAs determine an LEA's compliance with the maintenance of effort requirement. Section 200.60(a) allows a ten percent leeway in meeting the maintenance of effort requirement by requiring that the LEA's fiscal effort for the preceding fiscal year be not less than 90 percent of that effort for the second preceding year. In addition, § 200.61 permits an SEA, rather than the Secretary, to waive the maintenance of effort requirement for one fiscal year if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial

resources of the LEA. The Conference Report indicates that Congress considers declining resources as a result of severe economic conditions, natural disaster, or similar circumstances as grounds for a waiver. However, the report also indicates that tax initiatives or referenda are not to be considered grounds for a waiver. 127 Cong. Rec. 15645 (daily ed. July 29, 1981).

Section 200.62 provides that an LEA may use Chapter 1 funds only to supplement, and to the extent practical, increase the level of funds that would, in the absence of Chapter 1 funds, be made available from non-Federal sources for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant non-Federal funds. However, as indicated in § 200.62(b), in determining compliance with this supplement, not supplant requirement, an LEA may now exclude State and local funds expended for special programs designed to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1. Section 200.62(c) specifically provides that an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with the supplement, not supplant requirement.

Section 200.63 provides that State and locally-funded services in project areas must be at least comparable to services in nonproject areas. If all attendance areas are selected as project areas, State and locally funded services must be substantially comparable in each project area. However, as indicated in § 200.63(e), an LEA is deemed to have met the comparability requirement if it has filed with the SEA a written assurance that it has established: (1) A districtwide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies. Section 200.63(d) permits an LEA, in determining compliance with the comparability requirement, to exclude State and local funds expended for special programs designed to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1. In addition, § 200.63(c) provides that unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year are not included as a factor in determining compliance with the comparability requirement.

Section 200.64 implements Section 412(b) of GEPA, specifically made applicable by Section 596(b) of the ECLIA. Section 200.64 provides that an SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

5. Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools.

Chapter 1 makes extensive provision for the participation of educationally deprived children in private schools. Subpart E clarifies the following areas regarding the participation of these children: responsibility of LEAs to provide Chapter 1 services; factors used in determining equitable participation; use of public school employees on other than public school premises; and public supervision and control of funds and equipment.

6. Due Process Procedures.

Subpart F contains specific procedures to afford due process protections to SEAs and LEAs concerning—

- Bypass determinations under Section 557(b) of Chapter 1.
- Final audit determinations.
- Determinations to withhold funds.
- Cease and desist complaints.

The bypass procedures in §§ 200.80–200.85 specify procedures for an affected SEA or LEA to challenge a determination by the Secretary to implement a bypass.

Sections 200.90–200.106 provide SEAs with procedures for challenging adverse final audit determinations, decisions to withhold funds, and cease and desist complaints. Under these regulations, these proceedings will be conducted before the Education Appeal Board. However, proceedings regarding final audit determinations and cease and desist complaints will be conducted in accordance with the practice and procedure of the Education Appeal Board whereas proceedings regarding the withholding of funds will be conducted in accordance with the provisions of the Administrative Procedure Act.

D. Additional guidance

Consistent with the Administration's efforts to reduce regulatory burden while increasing State and local flexibility, these regulations address a limited number of issues. As a result, these regulations do not prescribe specific methods for implementing each of the changes that Chapter 1 makes in previous Title I requirements (e.g., changes in requirements concerning

comparability of services, selection of project areas, needs assessment, and parental involvement). To the extent feasible, the Secretary will give deference to an SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with the Chapter 1 statute, legislative history, and regulations.

Although the Secretary chooses not to impose any additional regulatory requirements concerning Chapter 1 program design, the Secretary is aware that many State and local officials have requested guidance regarding implementation of Chapter 1 programs. As a result, the Secretary is preparing a final document designed to provide further nonregulatory guidance to assist State and local officials in implementing Chapter 1. This guidance will be binding on all officials of the Department. It will not be binding, however, on SEAs or LEAs. It will clearly indicate that State and local officials are free to develop—indeed, are encouraged to develop—alternative approaches that are consistent with the statute and regulations but may be more in keeping with their particular needs and circumstances.

E. Application of other statutes and regulations

1. Recipients of funds under Chapter 1 are recipients of Federal financial assistance and therefore must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance. Consequently, those statutes, as well as the regulations that implement them, apply to Chapter 1 programs. The applicable civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 1 funds must comply with the provisions of that Act.

2. The preamble of the regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 1. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 1 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden of SEAs and LEAs in carrying out their Chapter 1 responsibilities.

In light of all comments received the Secretary has now reconsidered this determination following publication of

the regulations on July 29. In reconsidering the matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 1 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions stated below, the Secretary adopts the interpretation that GEPA is applicable to Chapter 1. The Department will carry out its administrative role under Chapter 1 in light of that determination.

Even though GEPA generally applies to Chapter 1, some specific provisions of GEPA are inapplicable as a matter of law because they are specifically made inapplicable by the ECIA, because they are superseded by specific provisions of the ECIA, or for other reasons explained below. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 1 program. After a careful reconsideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 1 as a matter of law:

(a) Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(b) Section 425 of GEPA, 20 U.S.C. 1231b-2, provides complex procedures regarding certain actions by an SEA that affect applicants or recipient under an applicable program. Section 425 also provides for Federal review of an SEA's action under that section. The Secretary believes that this provision was not intended to apply to Chapter 1. Section 425 only applies to programs in which assistance is provided "in accordance with a State plan approved by the Secretary." Chapter 1 is not such a program. Further, Section 425 of GEPA is clearly inconsistent with Section 552 of Chapter 1 which provides: "The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children * * * to do so in a manner which will * * * free the schools of unnecessary Federal supervision, direction, and control."

(c) Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231(a), is superseded by Section 591(b) of the ECIA.

(d) Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to

parental participation where the Secretary determines that such participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 1 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Section 556(b)(3) of Chapter 1, and the Secretary regards this section as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

(e) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Section 556 (Application by local education agency) of Chapter 1.

(f) Section 431A of GEPA (relating to maintenance of effort determinations), 20 U.S.C. 1232e-1, is inapplicable by its terms and, in any event, is superseded by Section 558(a) of Chapter 1 relating to the same topic.

(g) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA application) do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds).

The provision in Section 434 of GEPA which applies to Chapter 1 is in paragraph (u)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary is considering the issuance of an amendment to 34 CFR § 74.62 addressing the requirement of an audit plan in § 434(a)(2) of GEPA. This amendment would apply to Chapter 1 as well as other education programs.

Section 435 of GEPA applies to Chapter 1 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and fund accounting procedures. Section 436 of GEPA applies to Chapter 1 with regard to similar assurances in paragraphs (b)(2) and (b)(3).

(h) Section 437(b) of GEPA (relating to access to records), 20 U.S.C. 1232f(b), is superseded by Section 1744 of the Omnibus Budget Reconciliation Act of 1981.

(i) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(j) The judicial review provisions of Section 593 of the ECIA are controlling with respect to judicial review of

withholding actions under Section 592 of the EClA. Therefore, Section 455 of CEPA, 20 U.S.C. 1234d, is superseded to the extent that it applies to withholding actions under Chapter 1.

3. Sections 1741 (distribution of block grant funds), 1742 (reports on the proposed use of funds and public hearings), 1743 (transition provisions), and 1745 (State audit requirements) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 1. However, Section 1744 regarding access to records by the Comptroller General does apply, and its provisions have been incorporated in § 200.57 of this part.

4. The Education Department General Administrative Regulations (EDGAR), with the exception noted in paragraph 5 below, do not apply to programs under Chapter 1. EDGAR includes 34 CFR Part 74, which implements OMB Circulars A-21, A-87, A-102, and A-110, and 34 CFR Part 76, which deals with State-administered programs. Rather than complying with the provisions contained in these parts, States may apply equivalent procedures of their own for financial management and control of their programs. However, States continuing to comply with the provisions in 34 CFR 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 435 and 436 of CEPA that apply to Chapter 1. The parts of EDGAR that do not apply to Chapter 2 also include 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) and Part 78 (Education Appeal Board).

5. 34 CFR 74.62 relating to non-Federal audits applies to Chapter 1. This section implements the audit requirements contained in Attachment P to OMB Circular A-102.

Public Participation

During the 60-day comment period, over 300 letters containing more than 1200 individual comments were received. Comments were also received in the course of briefing sessions conducted by the Department for State and local officials. A summary of significant comments and responses to them are contained in the appendix to these regulations. Responses have been revised as appropriate to reflect the Secretary's interpretation regarding the applicability of CEPA. The appendix will not appear in the Code of Federal Regulations.

The Department has carefully considered all comments received and has made changes warranted by the comments. The appendix summarizes these changes. In addition, since publication of the July 29 regulations, the

Secretary has made a number of changes in the citations of legal authority and other technical amendments to reflect the Secretary's decision that CEPA generally applies to Chapter 1. Because these changes are only technical, no further public comment is being requested. In any case, the issue of CEPA applicability has been fully debated in the rulemaking process just completed, and further comment is therefore unnecessary under 5 U.S.C. 553.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291 and are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 1. However, the regulations will not have a significant economic impact on the small LEAs affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising the LEAs and administering the program. Program funds may be used for LEA administrative expenses. For these reasons, the regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

34 CFR Part 76

Grant programs—education, Grants administration, Intergovernmental relation, State administered programs.

34 CFR Part 78

Administrative practice and procedure, Grant programs—education, Grants administration.

34 CFR Part 200

Education, Education of disadvantaged, Elementary and

secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, State-administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies and No. 84.012, Educationally Deprived Children—State Administration)

Dated: November 9, 1982.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 200 is revised to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

Sec.

- 200.1 Purpose.
- 200.2 Applicability of regulations in this part.
- 200.3 Definitions.
- 200.4 Acronyms that are frequently used.
- 200.5 Amount of funds available for chapter 1 grants.
- 200.6-200.9 [Reserved]

Application Procedure

- 200.10 State assurances.
- 200.11 Payments for State administration.
- 200.12 LEAs that may receive chapter 1 funds.
- 200.13 Submission of LEA project applications to the SEA.
- 200.14 SEA approval of applications.
- 200.15-200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

- 200.20 Eligibility of LEAs for basic grants.
- 200.21 Determination by the secretary of basic grants.
- 200.22 Allocation of county aggregate amounts by SEAs.
- 200.23 Exceptions to county aggregate amounts.
- 200.24-200.29 [Reserved]

Special Incentive Grants

- 200.30 Eligibility for special incentive grants.
- 200.31 Amount of special incentive grants.

- Sec.
200.32 Method of making special incentive grants.
200.33 Use of special incentive grant funds.
200.34-200.39 [Reserved]

Concentration Grants

- 200.40 States to receive concentration grant funds.
200.41 Determinations of State and county concentration grants.
200.42 Determinations of LEA allocations.
200.43 Method of awarding concentration grant funds.
200.44 Use of concentration grant funds

Reallocation

- 200.45 Reallocation of chapter 1 funds by SEAs.
200.46 Reallocation of chapter 1 funds by the Secretary.
200.47-200.48 [Reserved]

Subpart C—Project Requirements

- 200.49 Selection of attendance areas.
200.50 Annual needs assessment.
200.51 Sufficient size, scope, and quality of project.
200.52 Prohibition against using chapter 1 funds to provide general aid.
200.53 Consultation with parents and teachers.
200.54 Evaluation.
200.55 Allowable costs.
200.56 Recordkeeping requirements.
200.57 Audits and access to records.
200.58 Compromise of audit claims.
200.59 SEA rulemaking and other responsibilities.

Subpart D—Fiscal Requirements

- 200.60 Maintenance of effort.
200.61 Waiver of the maintenance of effort requirement.
200.62 Supplement, not supplant.
200.63 Comparability of services.
200.64 Availability of funds.
200.65-200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

- 200.70 Responsibility of LEAs.
200.71 Factors used in determining equitable participation.
200.72 Funds not to benefit a private school.
200.73 Use of public school employees.
200.74 Equipment and supplies.
200.75 Construction.
200.76-200.79 [Reserved]

Subpart F—Due Process Procedures

Procedures for Bypass

- 200.80 Bypass—General.
200.81 Notice by the secretary.
200.82 Bypass procedures.
200.83 Appointment and functions of a hearing officer.
200.84 Hearing procedures.
200.85 Post hearing procedures.
200.86-200.89 [Reserved]

Other Due Process Procedures

- 200.90 General.
200.91 Jurisdiction.
200.92 Definitions.
200.93 Eligibility for review.

- Sec.
200.94 Written notice.
200.95 Filing an application for review of a final audit determination or a withholding hearing.
200.96 Review of the written notice.
200.97 Acceptance of the application.
200.98 Rejection of the application.
200.99 Intervention.
200.100 Practice and procedure.
200.101 The Panel's decision.
200.102 Opportunity to comment on the Panel's decision.
200.103 The Secretary's decision.
200.104 Cause and desist hearing.
200.105 Cause and desist written report and order.
200.106 Enforcement of a cause and desist order.

Authority: Secs. 552-558, 591-598 of Pub. L. 97-35, 95 Stat. 464-469, 480-482 (20 U.S.C. 3801-3807, 3871-3879), unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

General

§ 200.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to local educational agencies (LEAs) for projects designed to meet the special educational needs of—

- Educationally deprived children selected in accordance with Section 556 of Chapter 1; and
- Children in local institutions for neglected or delinquent children. (Sec. 552, 20 U.S.C. 3801; Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 200.2 Applicability of regulations in this part.

(a) The regulations in this part apply to projects for which the Secretary provides financial assistance to LEAs under Chapter 1.

(b) The regulations do not apply to Chapter 1 projects operated by State agencies for handicapped children, neglected or delinquent children, or migratory children of migratory agricultural workers or migratory fishermen.

(Secs. 552-558, 20 U.S.C. 3801-3807)

§ 200.3 Definitions.

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a), the following definitions apply to this part: "Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school

reside. However, if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age. "Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another twelve-month period normally used by the State educational agency (SEA) for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Preschool children" means children who are—

(1) Below the age and grade level at which the LEA provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Private," as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"Project area" means an attendance area in which a high concentration of children from low-income families reside, and that is selected by an LEA under Section 556(b) of Chapter 1, without regard to the locality of the project itself, as an area from which children are to be selected to participate in a Chapter 1 project.

"Public," as applied to an agency, organization, or institution, means under the administrative supervision or control

of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1985, as amended.

(c) Additional definitions pertaining to the due process procedures in § 200.90-200.106 are contained in § 200.92 of these regulations.

(d) Any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title I.

(e) The definitions in 34 CFR part 77 (definitions in EDGAR that apply generally to education programs) do not apply to programs covered by this part. (Secs. 552-558; 20 U.S.C. 3801-3807; Sec. 595, 20 U.S.C. 3875)

§ 200.4 Acronyms that are frequently used.

The following acronyms are used frequently in this part:

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(Secs. 552-558, 20 U.S.C. 3801-3807; Sec. 595, 20 U.S.C. 3875)

§ 200.5 Amount of funds available for Chapter 1 grants.

(a) *Grants to SEAs.* The Secretary annually notifies an SEA of the amount of funds the SEA is eligible to receive for the next fiscal year for—

(1) Allocation to LEAs under paragraph (b) of this section; and

(2) State administration of Chapter 1 programs.

(b) *Grants to LEAs.* The SEA, on the basis of county allocations provided by the Secretary or, if necessary, on the basis of other data, shall annually—

(1) Determine, in accordance with § 200.21-200.23, 200.31, and 200.42, the amount of Chapter 1 funds that each LEA is eligible to receive under this part for the next fiscal year; and

(2) Notify each LEA of the amount determined under paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§ 200.6-200.9 [Reserved]

Application Procedure

§ 200.10 State assurances.

(a) A State that wishes to receive Chapter 1 funds for LEA projects designed to meet the special educational needs of educationally deprived children shall file with the Secretary assurances that meet the requirements in Section 435 (b)(2) and (b)(5) of the General Education Provisions Act

(CEPA) relating to fiscal control and fund accounting procedures.

(b) When an SEA files the assurances required in paragraph (a) of this section, the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

(Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.11 Payments for State administration.

The Secretary pays each State an amount to be spent by it for the proper and efficient performance of its duties under Chapter 1, provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Section 554 (b) and (d) of Chapter 1.

(Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d))

§ 200.12 LEAs that may receive Chapter 1 funds.

An LEA that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the LEA has on file with the SEA a Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and
(b) Has been approved by the SEA.

(Sec. 556, 20 U.S.C. 3805)

§ 200.13 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit to the SEA an application for a Chapter 1 project to be conducted during a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The LEA's Chapter 1 project application must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The assurances required under Section 556(b) of Chapter 1; and

(3) The assurances required by Section 436(b)(2) and (b)(3) of CEPA.

(c) *Annual updating of information in the Chapter 1 application.* An LEA shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the LEA has maintained its fiscal effort as required by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(d) *Further updating of information in the application.* When there are substantial changes in the number or needs of the children to be served or the services to be provided, the LEA shall submit a description of those changes to the SEA.

(Sec. 556, 20 U.S.C. 3805)

§ 200.14 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve an LEA's application for Chapter 1 funds, if that application meets the requirements in Section 556 of Chapter 1.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements. (Sec. 556, 20 U.S.C. 3805)

§ 200.15-200.19 [Reserved]

Subpart B—Allocation of Chapter 1 Funds for Grants to Local Educational Agencies

Basic Grants

§ 200.20 Eligibility of LEAs for basic grants.

(a) Each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible for a basic Chapter 1 grant for a fiscal year if—

(1) The Secretary determines, on the basis of satisfactory available data, that there are at least 10 children counted under Section 111(c) of Title I (Children to be counted) in the school district of the LEA; or

(2) The Secretary does not have available satisfactory data on a school district basis, but the school district served by the LEA is located, in whole or in part, in a county in which the Secretary determines there are at least 10 children counted under Section 111(c) of Title I.

(b) The Secretary allocates funds appropriated for basic Chapter 1 grants among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands on the basis of their respective needs for Chapter 1 funds, and to the Secretary of the Interior for programs for Indian children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.21 Determination by the Secretary of basic grants.

(a) If satisfactory census data by LEA are available from the Department of Commerce, the Secretary determines the amount of the basic Chapter 1 grant that each LEA in a State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—is eligible to receive for a fiscal year under the method in Sections 111(a)(2)(A) (relating to amounts when data are available) and 111(c) of Title I.

(b)(1) If satisfactory census data by LEA are not available from the Department of Commerce, the Secretary determines the county aggregate amount of basic Chapter 1 grant funds that all LEAs in a county are eligible to receive under the method in Sections 111(a)(2)(B) (relating to amounts when data by LEA are not available and 111(c) of Title I.

(2) The county aggregate amount referred to in paragraph (b)(1) of this section includes an amount based on the number of children aged 5 through 17 who—under the criteria in Section 111(c)(2)(B) of Title I (relating to determining numbers of children)—are living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, but who are not counted under Subpart 3 of Part B of Title I (Programs for neglected or delinquent children operated by State agencies) for purposes of a grant to a State agency.

(c) If the amount appropriated for basic grants for any fiscal year exceeds the amount appropriated for basic grants in fiscal year 1979, the Secretary—under Section 111(a)(3)(D) of Title I (relating to allocating amounts over the amounts available for fiscal year 1979)—allocates an amount equal to one-half of the excess amount to SEAs on the basis of data from the 1975 Survey of Income and Education conducted by the Bureau of the Census.

(d) If the funds appropriated by Congress for any fiscal year are not sufficient to pay the full amount that all LEAs are eligible to receive under basic Chapter 1 grants, the Secretary ratably reduces, using the procedures in Section 193 of Title I (Adjustments where necessitated by appropriations), the amount available to each LEA or county.

(Sec. 554, 20 U.S.C. 3803)

§ 200.22 Allocation of county aggregate amounts by SEAs.

Except as provided in § 200.23, an SEA shall allocate the county aggregate amounts, determined by the Secretary under § 200.21, by using the following procedures:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based—

(i) On the number of children, aged 5 through 17, in the LEA's district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of

Part B of Title I (Programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one of which was in the month of October of the preceding fiscal year; or

(ii) On the most recent reliable data available at the time of the determination, if the data referred to in paragraph (a)(1)(i) of this section are not available before January of the calendar year in which the Secretary's determination under § 200.21 is made.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on children in local institutions for neglected or delinquent children; and

(ii) Assign that portion of the LEA's grant to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State or local public agency if that agency agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate that portion of the LEA's grant that is based on children in local institutions for neglected or delinquent children to any other agency.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) *Allocations based on the distribution of children from low-income families.* (1) *General rule.* After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount to LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(2) *Special circumstances.* The SEA shall adjust the allocations that it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to that LEA from the county aggregate amount for each county in which that district is located provided the aggregate number of children in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children from the school district of another LEA or serves different children within the same geographical area as another LEA, the SEA may adjust the allocations of those LEAs, among them, in a manner that it determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations of those LEAs to reflect the number of children from low-income families for whom each remaining LEA is providing a free public education; or

(B) Permit an LEA to submit a previously approved project application to carry out the approved project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of Chapter 1 funds generated by fewer than 10 children.

(Sec. 554, 20 U.S.C. 3803)

§ 200.23 Exceptions to county aggregate amounts.

In any State in which a large number of LEAs overlap county boundaries, the SEA may make allocations of basic grants and special incentive grants directly to LEAs without regard to counties, if such allocations were made during fiscal year 1982, except that—

(a) Precisely the same factors are to be used to determine the amount as were used to compute the county aggregate amount under § 200.21(b); and

(b) An LEA dissatisfied with the determination is to be afforded an opportunity for a hearing on the matter by the SEA.

(Sec. 556(e), 20 U.S.C. 3807(e))

§ 200.24–200.29 (Reserved)

Special Incentive Grants

§ 200.30 Eligibility for special incentive grants.

(a) An LEA that is eligible to receive a basic Chapter 1 grant for any fiscal year shall be entitled to an additional grant under Section 116 of Title I (relating to special incentive grants) if the LEA is located in a State that has in effect for that fiscal year a State program that meets the requirements in Section 131(c) of Title I (which describes certain State and local compensatory education programs that are similar to Title I and Section 116(a)(2)(B) of Title I (relating to

the percentage of State funds expended in low-income areas).

(b)(1) An SEA that desires to have its LEAs be eligible to receive an additional grant shall develop a system for determining the eligibility data required by Section 116(b)(4) of Title I and the amount of State funds expended under the State program referred to in paragraph (a) of this section.

(2) Upon request, the SEA shall submit to the Secretary information on the system developed in paragraph (b)(1) of this section.

(Sec. 554, 20 U.S.C. 3803)

§ 200.31 Amount of special incentive grants.

The amount of special incentive grants which the LEAs in a State will receive for any fiscal year is determined under the procedures in Section 116(b) and (c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.32 Method of making special incentive grants.

The Secretary includes that amount of special incentive grant funds that a State will receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.33 Use of special incentive grant funds.

An LEA that receives special incentive grant funds shall use those funds to carry out activities described in the approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

§§ 200.34-200.39 [Reserved]

Concentration Grants

§ 200.40 States to receive concentration grant funds.

A State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under Chapter 1 for any fiscal year receives concentration grant funds from the amount of concentration grant funds available for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.41 Determinations of State and county concentration grants.

(a) The Secretary determines the amount of concentration grant funds that each county and State is eligible to receive by using the procedures in Section 117 of Title I (relating to the amount of the concentration grant).

(b) Each State that receives concentration grant funds receives at least one-quarter of one percent of the total concentration grant funds available for the fiscal year.

(1) A county that meets the statutory eligibility criteria and is located in a State that receives the minimum allocation of concentration grant funds is allocated the same proportion of the total concentration grant allocation as an eligible county that is located in a State that receives more than the minimum allocation. After each county has been allocated its proportionate share, the Secretary allocates to the SEA any concentration grant funds that remain unallocated.

(2) If no county in a State that receives the minimum allocation of concentration grant funds meets the statutory eligibility criteria, the Secretary allocates the total amount of the minimum allocation of concentration grant funds to the SEA.

(3) The SEAs that receive the minimum allocation of concentration grant funds may distribute the amount that has been allocated to the SEA under (b) (1) and (2) of this section—

(i) Among only those counties that receive basic grants and have high concentrations of children from low-income families. The SEA shall use the best available data on the current distribution of children from low-income families for selecting these counties; or

(ii) Among all counties in the State that receive basic grant funds based on the total number of children counted in each county for purposes of the basic grant statutory formula under the criteria in Section 111(c) of Title I.

(Sec. 554, 20 U.S.C. 3803)

§ 200.42 Determination of LEA allocations.

(a) The SEA shall distribute concentration grant funds among the LEAs in each county that receives those funds in accordance with § 200.41, on the basis of the current distribution within each of those counties of children aged 5 through 17. In making this distribution, the SEA shall use either of the following procedures, as applicable:

(1) Each LEA in which 20 percent or more of the children are counted as being from low-income families under the Chapter 1 basic grant formula receives a portion of the county's concentration grant allocation based on the number of children counted under the basic grant formula.

(2) Each LEA in which less than 20 percent of the children are counted as being from low-income families under the basic grant formula receives a portion of the county's concentration grant allocation based on (A) the

number of children counted under the Chapter 1 basic grant formula multiplied by (B) a fraction in which the numerator is the percentage of children in the LEA that are counted under the basic grant formula and the denominator is 20.

(Sec. 554, 20 U.S.C. 3803)

§ 200.43 Method of awarding concentration grant funds.

The Secretary includes the amount of concentration grant funds that a State is entitled to receive during a particular fiscal year in the amount of Chapter 1 funds paid to that State for that fiscal year.

(Sec. 554, 20 U.S.C. 3803)

§ 200.44 Use of concentration grant funds.

An LEA that receives concentration grant funds shall use those funds to carry out activities that are described in an approved project application for Chapter 1 funds that the LEA submits to the SEA under § 200.13.

(Sec. 554, 20 U.S.C. 3803)

Reallocation

§ 200.45 Reallocation of chapter 1 funds by SEAs.

(a) During each fiscal year, an SEA shall—

(1) Determine which, if any, LEAs have received allocations of Chapter 1 funds that exceed the amount required to—

(i) Operate their Chapter 1 projects effectively during the current fiscal year; and

(ii) Provide a prudent and justifiable reserve of Chapter 1 funds for operating their Chapter 1 projects effectively during the next fiscal year; and

(2) Notify each LEA identified under paragraph (a)(1) of this section of—

(i) The amount of that LEA's Chapter 1 funds that the SEA is considering reallocating to other LEAs under paragraph (b) of this section; and

(ii) The opportunity for that LEA to amend its Chapter 1 application to include approvable proposals for use of the excess funds.

(b)(1) If the LEA fails to amend properly its Chapter 1 application in response to the opportunity provided under paragraph (a) of this section, the SEA shall reallocate the excess Chapter 1 funds to LEAs that have the greatest need for such funds for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the allocation provisions in Section 111(a) of Title I as a result of factors like population shifts and changing economic circumstances.

(2) The SEA shall notify the Secretary of those reallocations.

(Sec. 554, 20 U.S.C. 3803)

§ 200.46 Reallocation of Chapter 1 funds by the Secretary.

If excess amounts of Chapter 1 funds remain after an SEA has completed the process in § 200.45, the Secretary distributes those excess funds among other States on the basis of need.

(Sec. 554, 20 U.S.C. 3803)

§ 200.47-200.48 [Reserved]

Subpart C—Project Requirements

§ 200.49 Selection of attendance areas.

An LEA that receives Chapter 1 funds shall operate Chapter 1 projects that are—

- (a) Conducted in attendance areas of the LEA having the highest concentrations of low-income children;
- (b) Located in all attendance areas of the LEA if the LEA has a uniformly high concentration of low-income children; or
- (c) Designed to utilize part of the Chapter 1 funds for services that promise to provide significant help for all educationally deprived, low-income children served by the LEA.

(Sec. 556(b)(1), 20 U.S.C. 3805(b)(1))

§ 200.50 Annual needs assessment.

An LEA that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs that—

- (a) Identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools;
- (b) Permits the selection of those educationally deprived children in the greatest need of special assistance; and
- (c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

§ 200.51 Sufficient size, scope, and quality of project.

An LEA that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.52 Prohibition against using chapter 1 funds to provide general aid.

An LEA may use chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children, identified in

accordance with Section 556(b)(2) of Chapter 1, and who are included in an application for assistance approved by the SEA.

(Sec. 552, 20 U.S.C. 3801; Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

§ 200.53 Consultation with parents and teachers.

(a) An LEA that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with parents and teachers of the children being served, including parents and teachers of children in private schools.

(b) To meet the consultation requirement in paragraph (a) of this section, an LEA may, but is not required to, establish and use parent advisory councils.

(Sec. 556(b)(3), 20 U.S.C. 3805(b)(3); 127 Cong. Rec. H5945 (daily ed. July 29, 1981))

§ 200.54 Evaluation.

An LEA that receives Chapter 1 funds shall, at least once every three years, evaluate its Chapter 1 project in terms of its effectiveness in achieving the goals set for it. This evaluation must include—

(a) Objective measurements of educational achievement in basic skills; and

(b) A determination of whether improved performance is sustained over a period of more than one year.

(Sec. 556(b)(4), 20 U.S.C. 3805(b)(4))

§ 200.55 Allowable costs.

(a) An LEA may use Chapter 1 funds only to meet the costs of project activities that—

- (1) Are designed to meet the special educational needs of educationally deprived children identified under Section 556(b)(2) of Chapter 1;
- (2) Are included in an application approved by an SEA under § 200.14; and
- (3) Comply with all applicable Chapter 1 requirements, including the assurances required under Section 556(b) of Chapter 1.

(b) The project activities referred to in paragraph (a) of this section may include the activities in Section 555(c) of Chapter 1.

(Sec. 555(c), 20 U.S.C. 3804(c))

§ 200.56 Recordkeeping requirements.

(a) An SEA or LEA that receives Chapter 1 funds shall use fiscal control and fund accounting procedures that will ensure proper disbursement of an accounting for Chapter 1 funds.

(b) The SEA or LEA shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of

the cost provided from non-chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under § 200.54.

(c) All records required under this section must be retained—

(1) For five years after completion of the activity for which the funds were used;

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits or reviews concerning the Chapter 1 project have been finally resolved.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b); 20 U.S.C. 3805(b); Sec. 598(a), 20 U.S.C. 3876(a); Sec. 437(a) of GEPA, 20 U.S.C. 1232(a))

§ 200.57 Audits and access to records.

(a) *Federal responsibilities.* (1) For the purpose of evaluating and reviewing the use of Chapter 1 funds—

(i) The Inspector General of the Department, authorized Department officials, and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(A) Are related to programs assisted with Chapter 1 funds; and

(B) Are in the possession, custody, or control of SEAs or LEAs; and

(ii) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(2) An SEA shall repay to the Department the amount of Chapter 1 funds determined by the audit not to have been spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in 34 CFR 74.62.

(2)(i) An LEA shall repay to the SEA the amount of Chapter 1 funds determined by the State not to have been spent in accordance with applicable law.

(ii) If the SEA recovers funds under paragraph (2)(i) of this section during the period in which the misspent Chapter 1 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 1 funds and—

(A) Reallocate those funds to eligible LEAs—other than the agency that was found to have misspent the funds—under the procedures in § 200.45; or

(B) Return the funds for proper use to the LEA from which they were received.

(iii) If the Chapter 1 funds that an SEA recovers under paragraph (b)(2)(i) of this section are no longer available for obligation under the terms of Section 412(b) of CEPA, the SEA shall return those funds to the Department.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 558(b), 20 U.S.C. 3805(b); Sec. 452 of CEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 1243 note; Sec. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. 95-452 (5 U.S.C. App.); Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 (42 U.S.C. 4212))

§ 200.58 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromises to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation involved;

(d) Whether the practices of the SEA or LEA that resulted in the audit finding have been corrected;

(e) Whether the SEA or LEA is in all other respects in compliance with Chapter 1; and

(f) The extent to which the SEA or LEA agrees to use non-Federal funds to supplement Chapter 1 programs.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 558(b), 20 U.S.C. 3805(b); Sec. 452 of CEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.*; 4 CFR Part 103)

§ 200.59 SEA rulemaking and other responsibilities.

(a) *General responsibilities of an SEA.* An SEA is responsible for ensuring that its LEAs comply with all applicable statutory and regulatory provisions pertaining to Chapter 1.

(b) *SEA rulemaking.* To carry out its responsibilities, an SEA may, in accordance with State law, adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(1) Chapter 1;

(2) The regulations in this part; or

(3) other applicable Federal statutes and regulations.

(Sec. 556, 20 U.S.C. 3805; Sec. 591, 20 U.S.C. 3871)

Subpart D—Fiscal Requirements

§ 200.60 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 200.61, an LEA may receive its allocation of funds under Chapter 1 for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year for which funds are available.

Example. For funds first made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.61 is not appropriate, the SEA shall reduce the LEA's allocation of funds under Chapter 1 in the exact proportion to which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. In fiscal year 1983, an LEA fails to maintain effort because its fiscal effort in 1981 is less than 90 percent of its fiscal effort in 1980; then, in the following fiscal year (1984), the LEA's fiscal effort in the second preceding year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980). (Sec. 558(a), 20 U.S.C. 3807(a))

§ 200.61 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of

effort requirement in § 200.60 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the LEA; or

(iii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example. An LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances; then, in the following fiscal year, the LEA's fiscal effort in the second preceding fiscal year (1981) could be considered to be no less than 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a)(3), 20 U.S.C. 3807(a)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 200.62 Supplement, not supplant.

(a) Except as provided in paragraph (b) of this section, an LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) An LEA may exclude, for the purpose of determining compliance with the supplement, not supplant requirement in paragraph (a) of this section, State and local funds spent in carrying out special programs to meet the special educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(c) In order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section, an LEA shall not be

required to provide Chapter 1 services outside the regular classroom or school program.

(Sec. 558(b), 20 U.S.C. 3807(b); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.63 Comparability of services.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, an LEA may receive Chapter 1 funds only if it uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving Chapter 1 funds.

(b) Except as provided in paragraphs (c) and (d) of this section, if an LEA selects all its school attendance areas as project areas, the LEA may receive Chapter 1 funds only if it uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(c) Unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year shall not be included as a factor in determining compliance with the comparability of services requirements in paragraphs (a) and (b) of this section.

(d) An LEA may exclude, for the purpose of determining compliance with the comparability requirements in paragraphs (a) and (b) of this section, State and local funds spent in carrying out special programs to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1.

(e) An LEA shall be deemed to have met the comparability requirements in paragraphs (a) and (b) of this section if it has filed with the SEA a written assurance that it has established—

(1) A districtwide salary schedule;

(2) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(3) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

(Sec. 558(c), 20 U.S.C. 3807(c); Sec. 558(d), 20 U.S.C. 3807(d))

§ 200.64 Availability of funds.

(a) An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding fiscal year.

(c)(1) Chapter 1 funds are obligated when an SEA or LEA—

(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 1 funds allocated for a particular fiscal year as supporting those specific programmatic or administrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs is not the obligation of those funds.

(Sec. 596, 20 U.S.C. 3878; Sec. 412(b) of GEPA, 20 U.S.C. 1225(b))

§§ 200.65-200.69 [Reserved]

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

§ 200.70 Responsibility of LEAs.

(a)(1) In consultation with private school officials, an LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with special educational services and arrangements as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70-200.75 and Section 557(a) of Chapter 1.

(2) If the LEA decides to serve educationally deprived, low-income children under Section 556(b)(1)(C) of Chapter 1, the LEA shall also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children in accordance with the requirements in §§ 200.70-200.75 and Section 557(a) of Chapter 1.

(b) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(c) The LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools.

(d)(1) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations.

(2) This employment or contract must be under the control and supervision of the public agency.

(e) In its application for Chapter 1 funds, the LEA shall make provision for

services to educationally deprived children attending private elementary and secondary schools.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(5), 20 U.S.C. 3805(b)(5); Sec. 557(a), 20 U.S.C. 3800(a); Sec. 591(a), 20 U.S.C. 3871(a); Sec. 594(a), 20 U.S.C. 3876(a))

§ 200.71 Factors used in determining equitable participation.

(a) *Equal expenditures.* Expenditures for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the LEA.

(b) *Services on an equitable basis.* The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(Sec. 557(a), 20 U.S.C. 3806(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 200.72 Funds not to benefit a private school.

(a) An LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools.

(b) An LEA shall use Chapter 1 funds to meet the special educational needs of children in private schools, but not for—

(1) The needs of the private schools; or

(2) The general needs of the children in the private schools.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.73 Use of public school employees.

An LEA may use Chapter 1 funds to make public employees available in other than public facilities—

(a) To the extent necessary to provide equitable Chapter 1 services designed for children in a private school; and

(b) If those services are not normally provided by the private school.

(Sec. 557(a), 20 U.S.C. 3806(a))

§ 200.74 Equipment and supplies.

(a) To meet the requirements of Section 557(a) of Chapter 1, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with Chapter 1 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA. (Sec. 557(a), 20 U.S.C. 3806(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 200.75 Construction.

No Chapter 1 funds may be used for repairs, minor remodeling, or construction of private school facilities. (Sec. 557(a), 20 U.S.C. 3806(a))

§§ 200.76-200.79 [Reserved]

Subpart F—Due Process Procedures

Procedures for Bypass

§ 200.80 Bypass—General.

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or
(2) Has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools.

(b) If the Secretary implements a bypass, the Secretary waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Chapter 1 services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allocations of Chapter 1 funds provided to the affected LEA and SEA. In arranging for these services, the Secretary consults with appropriate public and private school officials. (Sec. 557(b), 20 U.S.C. 3806(b))

§ 200.81 Notice by the Secretary.

(a) Before taking any final action to implement a bypass, the Secretary

provides the affected LEA and SEA with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the LEA and SEA to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the LEA and SEA that they have at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and may request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA and SEA by certified mail with return receipt requested.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.82 Bypass procedures.

Sections 200.83-200.85 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.83 Appointment and functions of a hearing officer.

(a) If an LEA or SEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery, or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, SEA, and representatives of the private school children of the time and place of the hearing.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.84 Hearing procedures.

(a) At the hearing, a transcript is taken. The LEA, SEA, and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, SEA, representatives of the private school children, or Department of Education officials.

(Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§ 200.85 Post hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(b) The LEA, SEA, and representatives of the private school children each may submit written comments on the decision to the Secretary within 30 days from the receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision. (Sec. 557(b)(4)(A), 20 U.S.C. 3806(b)(4)(A))

§§ 200.86-200.89 [Reserved]

Other Due Process Procedures

§ 200.90 General.

Sections 200.91-200.106 contain rules for the conduct of proceedings arising under Chapter 1 regarding—

(a) The review of final audit determinations;

(b) Withholding hearings; and

(c) Cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234(a); Sec. 454 of GEPA, 20 U.S.C. 1234(c))

§ 200.91 Jurisdiction.

Under Chapter 1, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings; and

(c) Conduct cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234(a); Sec. 454 of GEPA, 20 U.S.C. 1234(c))

§ 200.92 Definitions.

For the purposes of §§ 200.90-200.106, the following definitions apply: "Appellant" means an SEA that requests—

(a) A review of a final audit determination; or

(b) A withholding hearing.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized Department official disallowing expenditures made by a recipient under Chapter 1.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel consisting of at least three members of the Board designated by the Board Chairperson to sit in any case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, the notice of an intent to withhold funds, or the cease and desist complaint; or

(c) Any person, group, or agency that files an acceptable application to intervene.

"Recipient" means the named party or entity that initially received Federal funds under Chapter 1.

"Withholding" means stopping payment of Federal funds under Chapter 1 to a recipient and stopping the recipient's authority to charge costs under Chapter 1 for the period of time the recipient is in violation of a requirement.

[Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c]

§ 200.93 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

- (a) A final audit determination;
- (b) An intent to withhold funds; or
- (c) A cease and desist complaint.

[Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c]

§ 200.94 Written notice.

(a) *Written notice of a final audit determination.* (1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 1.

(2) In the written notice, the authorized Department official—

(i) Lists the disallowed expenditures made by the recipient;

(ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;

(iii) Cites the requirements that are the basis for the alleged failure to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written Notice of an intent to withhold funds.*

(1) An authorized Department official issues a written notice to a recipient under Chapter 1 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 1. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

[Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a; Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a)]

§ 200.95 Filing an application for review of a final audit determination or a withholding hearing.

(a) An appellant seeking review of a final audit determination or a

withholding hearing shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives written notice.

(b) In the application, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

[Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b)]

§ 200.96 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination or the intent to withhold funds after an application is received under § 200.95 to ensure that the written notice meets the applicable requirements in § 200.94.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 200.94, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the recipient of that decision.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application within 30 calendar days of the date it receives the modification.

[Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b)]

§ 200.97 Acceptance of the application.

If the appellant files an application that meets the requirements of § 200.95, the Board Chairperson—

(a) Issues, within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the Federal Register prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and parties an initial hearing record that includes—

(1) The written notice;

(2) The appellant's application; and

(3) Other relevant documents, such as audit reports.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.98 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 200.95, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

- (1) Collect the expenditures disallowed in the final audit determination; or
- (2) Withhold funds.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.99 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

- (1) A statement of the applicant's interest; and
- (2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 451(a), (c) of GEPA, 20 U.S.C. 1234(a), (c))

§ 200.100 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a

final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78.

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 556.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

§ 200.101 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, or an intent to withhold funds, within 180 days after receiving the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.102 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 200.101 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within 7 days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.103 The Secretary's decision.

(a) The Panel's decision in § 200.101 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60

days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(d) The final decision of the Secretary is the final decision of the Department.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 200.104 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234a(b))

§ 200.105 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(c), (d) of GEPA, 20 U.S.C. 1234a(c), (d))

§ 200.106 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the

cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 1 without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(e) of GEPA, 20 U.S.C. 1234(e))

PART 74—ADMINISTRATION OF GRANTS

2. Section 74.4 is amended by revising paragraph (a) to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section or where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants.

(2) With the exception of 34 CFR 74.62, which applies to Chapter 1, this part does not apply to the programs authorized under Chapter 1 and Subchapters A through C of Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(3) Unless expressly made applicable by ED, this part does not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for profit organization, or individual.

PART 76—STATE-ADMINISTERED PROGRAMS

3. Section 76.1 is amended by revising paragraph (c) to read as follows:

§ 76.1 Programs to which Part 76 applies.

(c) The regulations in Part 76 do not apply to the programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981.

PART 78—EDUCATION APPEAL BOARD

4. Section 78.42 is amended by revising paragraphs (b) and (c) to read as follows:

§ 78.42 Applicability to other laws and regulations.

(b) Except as provided in paragraph (c), other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

(c) In conducting hearings concerning expenditures under the Education Consolidation and Improvement Act of 1981, the Board applies the regulations in—

(1) 34 CFR 200.90–200.106 for expenditure under Chapter 1; and

(2) 34 CFR 298.41–298.57 for expenditures under Subchapters A through C of Chapter 2.

(Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

PART 201—[REMOVED]

5. Part 201 is removed.

Note.—This Appendix will not appear in the Code of Federal Regulations.

Appendix—Comments and Responses from NPRM

Subpart A—Applying for Chapter 1 Funds for Grants to Local Educational Agencies

§ 200.1 Purpose.

Comment. One commenter questioned why this section included a reference to children in local institutions for neglected or delinquent children when the declaration of policy in the law does not.

Response. No change has been made. Section 554(a) of Chapter 1 incorporates Section 111 of Title I, which indicates clearly that these children may be served under the program.

§ 200.2 Applicability of regulations in this part.

Comment. One commenter recommended that this section be expanded to specify which provisions from Title I have been incorporated into Chapter 1.

Response. No change has been made. This section is intended only to specify the programs to which 34 CFR Part 200 applies, not which statutory provisions apply to those programs. The information requested by the commenter is contained in the preamble to these regulations, as well as in Section 554 of the Chapter 1 statute. Moreover, the final version of the nonregulatory guidance that the Department is preparing will contain all pertinent sections of the Title I statute.

§ 200.3 Definitions.

Comment. One commenter recommended clarifying whether the definition of "children" means under age 21, up to age 21 or through age 21.

Response. A change has been made. The words "not above age 21" in the definition of "children" have been changed to "up to age 21" to include only those individuals who have not yet reached their twenty-first birthday.

Comment. In the preamble to the proposed regulations, the Secretary requested comments on whether the historical definition of "educationally deprived children" should continue to be used. Nearly every comment received in response to that request recommended that the definition of "educationally deprived children" not be changed.

The commenters indicated a concern that a change in the definition would result in services being provided to a different population than has been served under Title I. The commenters felt that such a change would be contrary to congressional intent as stated in the declaration of policy for Chapter 1. The few commenters who recommended changing the historical definition felt it was too broad and should be restricted to exclude certain types of children, such as those with severe learning disabilities, severe emotional problems, or those whose educational attainment is only moderately below that appropriate for their age.

Response. No change has been made. None of the suggested alternatives were adopted because of the overwhelming support for continuing to use the historical definition and because the alternatives would have made the selection of participants under Chapter 1 more restrictive than under Title I, which appears to be contrary to congressional intent.

Comment. One commenter suggested substituting the term "educationally needy" for "educationally deprived."

Response. No change has been made. The term "educationally deprived" has been used since the inception of Title I in 1965. Changing the term now could be interpreted incorrectly as indicating a significant change in meaning.

Comment. One commenter recommended that this section be amended to include all definitions in Section 595(a) of the ECLIA.

Response. No change has been made. The intent of the Secretary is to provide clear and concise regulations. However, the Department is preparing a final version of the nonregulatory guidance which will include copies of the statute, including the definitions in Section 595(a), and the regulations.

Comment. Several commenters questioned the inclusion of a definition of "preschool children" since these children are not mentioned in the statute.

Response. No change has been made. Preschool children were permitted to be served under Title I. Nothing in Chapter 1 indicates a desire to limit the children who are eligible for services only to

those children of school age. As a result, the definition in the regulations is necessary to ensure that if a Chapter 1 project serves preschool children, they are children who can benefit from an organized instructional program provided in a school or instructional setting.

Comment. One commenter recommended including in this section a definition of the term "private school."

Response. A change has been made. A definition of "private" has been added to § 200.3(b). In addition, Section 595(a)(7) of the ECIA defines "elementary school" and "secondary school" for purposes of Chapter 1. This definition governs a determination by an LEA as to whether a particular private institution is a private school for the purposes of Chapter 1.

Comment. One commenter felt the term "Fiscal Year" was unclear and confusing and recommended deleting from its definition the phrase "or another twelve-month period normally used by the State educational agency for reporting." The same commenter recommended adding to the list of definitions the terms "program year" and "carryover period."

Response. No change has been made. Allowing the use of the same fiscal year that the State normally uses for recordkeeping eases the paperwork burden on SEAs and applicant agencies without being inconsistent with any Chapter 1 requirement. The terms "program year" and "carryover period" are not used in the Chapter 1 statute or regulations and, for that reason, have not been defined.

Comment. Several commenters questioned why the regulations use the term "attendance area" when the statute uses the term "school attendance areas." A commenter also questioned why the definition referred to "public school" rather than simply a "school" as did the definition of "school attendance area" in Section 198 of Title I. The commenter also questioned the necessity of the final sentence of the definition.

Response. No change has been made. Because the term "attendance area" is used in Section 556(b)(1) of Chapter 1, it is also used in these regulations. The term has the same meaning as the term "school attendance area" had under Title I. The term "public school" was used in the definition of "attendance area" in § 200.3(b) because that was the understood meaning from Section 198(a)(12) of Title I and because private schools do not have attendance areas that have significance for Chapter 1 purposes. The final sentence of the definition of "attendance area" is

included so that LEAs operating under open enrollment policies can determine which attendance areas are eligible for Chapter 1 services. Under open enrollment, students are permitted to attend any school they chose.

Comment. Two commenters recommended that the definition of "project area" be changed to "all attendance areas served with Chapter 1 funds."

Response. No change has been made. The definition of the term "project area" is consistent with the definition in Section 198(a)(12) of Title I, which is incorporated into Chapter 1.

Comment. One commenter questioned the justification and the effects of the change in the definitions of "institution for neglected children" and "institution for delinquent children" from the way those terms were defined under Title 1.

Response. No change has been made. The definitions do not require that these institutions be designed to serve at least ten children as was required under Title I. Rather, the definitions permit SEAs greater flexibility to define institutions for neglected or delinquent children. This change is intended to allow additional institutionalized children to receive Chapter 1 services.

Comment. One commenter questioned whether § 200.3(d), which states that certain terms have the same meaning under Chapter 1 as under Title I, conflicts with Sections 554(b) (2) (B) and 554(c) of Chapter 1.

Response. No change has been made. No conflict with Section 554 of Chapter 1 is intended. Section 200.3(d) merely restates Section 595(b) of the ECIA. This section is consistent with Section 554(b) (2) (B) which incorporates, for Chapter 1 purposes, those definitions in Section 198 of Title I that are applicable to Chapter 1. In addition, § 200.3(d) is consistent with Section 554(c), which makes inapplicable to Chapter 1 any sections of Title I not specifically made applicable, because § 200.3(d) only deals with terms in applicable sections of Title I.

Comment. Two Commenters questioned why this section was written so as to require a user to consult documents other than these regulations in order to find all applicable definitions.

Response. No change has been made. Because these regulations are designed to be clear and concise, they are not intended to include a complete set of all Federal requirements and definitions that apply to Chapter 1. When issued in final form, the nonregulatory guidance will contain copies of relevant statutes.

§ 200.5 Amount of funds available for Chapter 1 grants.

Comment. One Commenter questioned what was meant by the reference in § 200.5(b) to the use of "other data" by the SEA in determining LEA allocations. The commenter recommended that the term be clarified.

Response. No change has been made. The term "other data" is used with reference to allocations made when LEA's overlap county boundaries and, for that reason, county aggregate amounts alone cannot be used to make LEA allocations.

§ 200.10 State assurances.

Comment. One Commenter questioned why this section did not require that State assurances comply with the applicable parts of Section 434 of the General Education Provisions Act (GEPA) since Section 596 of Chapter 3 makes part of that section applicable to Chapter 1.

Response. A change has been made. The provision in Section 434 of GEPA which applies to Chapter 1 is in paragraph (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary is considering the issuance of an amendment to EDGAR addressing the requirement of an audit plan in Section 434(a)(2) of GEPA. This amendment would apply to Chapter 1 as well as other education programs.

Comment. Two Commenters questioned why this section did not specifically state that only paragraphs (b)(2) and (b)(5) of Section 435 of GEPA apply to Chapter 1. One commenter questioned the authority of the Secretary to require SEAs to submit assurances. Another commenter questioned how frequently SEAs must submit the assurances.

Response. A change has been made. Section 596(a) of the ECIA made applicable to Chapter 1 those portions of Section 435 of GEPA that pertain to fiscal control and fund accounting procedures. Section 200.10 has been revised to indicate that only the assurances in paragraph (b)(2) and (b)(5) of Section 435 of GEPA apply to Chapter 1. In addition, paragraph (b) has been added to indicate that once an SEA has filed the assurances required in § 200.10(a), the assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

Comment. One commenter recommended that the phrase "properly submitted," as used in paragraph (a), be clarified in the regulations.

Response. A change has been made. Paragraph (a) of § 200.10, which included the term "properly submitted," has been eliminated.

Comment. One Commenter recommended that the regulations state that an SEA must both comply with the assurances required by this section and keep records demonstrating its compliance.

Response. No change has been made. Section 200.56 contains the recordkeeping requirements applicable both to SEAs and applicant agencies.

Comment. One Commenter questioned why the Secretary interpreted Section 598 of Chapter 1 as making only paragraph (a)(2) of GEPA applicable. The commenter felt that Sections 434(b)(2) and (3) which authorize withholding of funds by an SEA also relate to fiscal control and should therefore apply.

Response. No change has been made. The Secretary interprets the terms "fiscal control" and "fund accounting" to refer only to activities that relate to the manner in which accountability is maintained for the expenditure of Chapter 1 funds. Withholding of funds by an SEA is essentially an enforcement activity not directly related to accountability for program funds.

§ 200.111 Payments for State administration.

Comment. One commenter recommended revising this section to include the substance of Section 554(b) and (d) of Chapter 1 and Section 194 of Title I.

Response. No change has been made. The regulations are not designed to be used independent of the statute, but to be read along with it. The nonregulatory guidance, when issued in final form, will contain a copy of the relevant statutory provisions to which the reader may refer.

Comment. Several commenters questioned the inclusion of the phrase "for the proper and efficient performance of its duties."

Response. No change has been made. That phrase is taken from Section 194 of Title I, which is made applicable to Chapter 1 by Section 554(b)(1)(D) of Chapter 1.

§ 200.113 Submission of LEA project applications to the SEA.

Comment. Several commenters recommended that this section be revised to require LEA applications and annual updates to include various specific assurances and other information related to the planning, implementation, and evaluation of projects.

Response. No change has been made. In the interest of preserving maximum flexibility for SEAs and LEAs, the Secretary has decided not to specify information to be included in an LEA application beyond that which is required by Section 556 of Chapter 1. An SEA may decide what specific information it needs to determine that an LEA's assurances are satisfactory.

Comment. One commenter recommended that this section be revised to include both the assurances in Section 556(b) of Chapter 1 and language that specifically authorizes SEAs to require additional information beyond what is listed in Section 556(b).

Response. No change has been made. Because the regulations are designed to be used in conjunction with the Chapter 1 statute, the Secretary has decided not to repeat in the regulations the statutory assurances set forth in Section 556(b) of Chapter 1. Each SEA, in accordance with its rulemaking authority in § 200.59, may determine what, if any, additional information it needs to approve LEA applications.

Comment. One commenter recommended that paragraph (c) be revised to require an LEA to submit an amendment to its application whenever major changes are made in activities to be conducted under the application.

Response. A change has been made. Paragraph (d) has been added to § 200.13 to require an LEA to amend its Chapter 1 application when there are substantial changes in the number or needs of the children to be served or the services to be provided.

Comment. One commenter recommended that applications be required on an annual basis, rather than every three years with annual updates.

Response. No change has been made. Section 556 of Chapter 1 provides that SEAs may approve an application for a period not to exceed three years.

§ 200.14 SEA approval of applications.

Comment. One commenter questioned why paragraph (b), "Effect of SEA approval," was included.

Response. No change has been made. That paragraph is intended to make it clear that LEAs may not use SEA approval of an application to justify noncompliance with Chapter 1 requirements.

Comment. One commenter recommended that the regulations be revised to state specifically that an SEA is responsible for monitoring LEAs' compliance with the application assurances in Section 556 of Chapter 1.

Response. No change has been made. This section is intended to address application approval by the SEA only.

The statute does not require the Secretary to issue regulations relating to monitoring by the SEA, and the Secretary believes that this matter is best left to State determination.

Comment. One commenter recommended that this section indicate whether an SEA may disapprove the annual updates required by paragraph (c).

Response. No change has been made. The standards that apply to SEA approval of local applications apply also to annual updates.

Subpart B—Allocation of Chapter 1 funds for Grants to Local Educational Agencies

§ 200.20 Eligibility of LEAs for basic grants.

Comment. One commenter noted that this section restates paragraphs (b)(1) and (b)(2) of Section 111 of Title I, but does not implement paragraph (b)(3) of that section. The commenter questioned the omission of a reference to Section 111(b)(3) since that section directs the Secretary to develop certain criteria in the regulations.

Response. No change has been made. The criteria required by Section 111(b)(3) are set forth in § 200.22(b)(2)(i) which directs SEAs to make, on a proportionate basis, a separate allocation to an LEA in more than one county from each county in which the LEA is located.

Comment. One commenter interpreted paragraph (a)(2) of this section as precluding the award of Chapter 1 grants to LEAs with fewer than 10 children. The commenter stated that Chapter 1 authorized no such provision.

Response. No change has been made. This section defines LEAs which are eligible for Chapter 1 grants in accordance with Section 111(b) of Title I, made applicable to Chapter 1 by Section 554(a).

§ 200.21 Determination by the Secretary of basic grants.

Comment. One commenter questioned why this section set out the procedure for counting children in local institutions for neglected or delinquent children but not low-income children.

Response. No change has been made. The Secretary determines the number of low-income children based on data from the Bureau of the Census. The count of children in local institutions is based on an annual survey done by each institution and approved and submitted by SEAs. For this reason, the regulations specify how the count is determined.

Comment. One commenter questioned why paragraph (c) of this section specified only how to allocate one-half of any available Chapter 1 funds that are in excess of amounts available for basic grants in fiscal year (FY) 1979.

Response. A change has been made. The provision is paragraph (c) restates the provisions of Section 111(a)(3)(D) of Title I. A clarifying change in the regulatory language of § 200.21(c) has been made. For any amounts that are available for Chapter 1 LEA basic grants in excess of the amount available for FY 1979, one-half will be allocated as prescribed by § 200.21(c) and the other one-half according to the formula used to allocate funds not in excess of amounts available for FY 1979.

Comment. One commenter recommended deletion of paragraph (a) because the Secretary does not make sub-county allocations.

Response. No change has been made. The Secretary would determine the amount of LEA grants if satisfactory census data were available from the Bureau of the Census. However, because satisfactory census data are only available by county, the Secretary determines allocations only for LEAs whose districts are coterminous with counties.

Comment. One commenter recommended that this section be revised to eliminate the provision in paragraph (b)(1) that allows the Secretary to determine county aggregate grant amounts on a basis of other than satisfactory census data when those data are not available.

Response. A change has been made. That provision is intended to restate Section 111(a)(2)(B) of Title I which is made applicable to Chapter 1 by Section 554 of Chapter 1. Section 200.21 (a) and (b) have been clarified. See Section 111(c) of Title I requiring the Secretary to use satisfactory data to determine the children to be counted.

§ 200.22 Allocation of county aggregate amounts by SEAs.

Comment. One commenter questioned the rationale for first allocating funds generated by children in institutions, and then distributing funds based on the number of low-income children.

Response. No change has been made. Section 111(a)(3) of Title I indicates that funds generated by children in institutions for neglected or delinquent children may, in certain cases, be transferred to agencies other than the LEA of the school district in which the institution is located. In order to make such a transfer of funds, it is necessary first to determine what portion of an LEA's allocation is based on the number

of neglected or delinquent children in institutions.

Comment. Two commenters recommended adding clarifying language to this section specifying criteria to be used by an SEA in the event it must adjust LEA allocations under either paragraph (b)(2)(ii) or (b)(2)(iii).

Response. No change has been made. Section 111(a)(3)(B) of Title I provides only that an SEA is to make these adjustments in such a manner as the SEA determines will best carry out the purposes of the program. By establishing criteria that SEAs would have to use, the Secretary would be limiting authority accorded the SEA by the statute and reducing SEA flexibility in a manner inconsistent with the purpose of Chapter 1.

Comment. One commenter recommended revising this section to specify that any portion of an LEA's allocation that is generated by children in local institutions and remaining at the end of a project year will be expended for other authorized Chapter 1 purposes.

Response. No change has been made. An LEA that receives Chapter 1 funds generated by children in local institutions must provide services to the children in the institutions. It is not necessary that an LEA determine the exact cost of providing Chapter 1 services to children in local institutions. As long as the SEA is satisfied that the LEA has assessed the needs of and is providing adequate services for the institutionalized children, the LEA is entitled to its full allocation of funds based on the number of children in the institutions and need not account for those funds separately.

Comment. One commenter questioned why the month of October was used in conducting the survey of children in local institutions for neglected or delinquent children. The commenter recommended January as a more representative month.

Response. No change has been made. Section 111(c)(2)(B) of Title I requires the use of the October caseload to count these children.

§ 200.23 Exceptions to county aggregate amounts.

Comment. Several commenters recommended that paragraph (a) be revised to allow SEAs to make allocations without regard to county boundaries using "to the extent possible" (rather than "precisely") the same factors that were used to compute county aggregate amounts.

Response. No change has been made. Section 558(e) of Chapter 1 requires that "precisely" the same factors be used.

§ 200.41 Determinations of State and county concentration grants.

Comment. One commenter questioned the statutory authority for the provisions in paragraphs (b)(1), (b)(2), and (b)(3).

Response. No change has been made. Section 117(b)(1) of Title I requires that each State receive no less than one quarter of one percent of the total funds available for concentration grants. Because some States do not have enough eligible counties to distribute all their concentration grant funds according to the statutory formula, criteria were developed for the distribution of concentration grant funds in those States. Those criteria are contained in § 200.41(b)(1)-(b)(3).

§ 200.45 Reallocation of Chapter 1 funds by SEAs.

Comment. One commenter questioned why this section does not contain criteria to be used by an SEA in determining which LEAs have excess funds and in redistributing any excess determined to exist. Another commenter recommended that this section set a date by which an LEA must be notified that the SEA is considering reallocating a portion of the LEA's funds.

Response. No change has been made. In keeping with the overall purpose of maximizing flexibility, returning authority to the States, and eliminating Federal control and supervision, the Secretary has decided not to regulate on these matters, but to leave the determinations up to individual SEAs.

Comment. Several commenters recommended revising paragraph (b)(1) to provide that the determination of which LEAs have the greatest need for extra funds be made by the SEA. The commenters also recommended deletion of the language requiring that the determination be based on redressing inequities and the hardships inherent in the application of the basic formula for distributing funds to LEAs.

Response. No change has been made. The determination referred to is made by the SEA. The language the commenter recommended deleting restates Section 194(b) of Title I, which is made applicable to Chapter 1 by Section 554(b) of Chapter 1.

Comment. One commenter objected that this section allowed an SEA only one opportunity to reallocate, after which funds that could otherwise be made available to other LEAs in the State revert to the Secretary for allocation to other States. The commenter recommended revising the section to allow an SEA to develop State procedures for reallocation.

Response. No change has been made. The procedures set out in this section do not limit an SEA to a one-time reallocation. Rather, an SEA has the flexibility to determine its own procedures for reallocation.

Comment. One commenter recommended that §§ 200.45 and 200.46 be revised to make reallocation by the SEA and the Secretary optional. The commenter objected that the section required reallocation even though the statute places no restrictions on the amount of funds an LEA may carry over, and that it requires the use of, but fails to explain, the term "prudent and justifiable reserve."

Response. No change has been made. Section 194 of Title I requires reallocation both by the SEA and the Secretary. The language in § 200.45 allowing LEAs to retain a prudent and justifiable reserve of Chapter 1 funds protects an LEA's right to carry over funds without limiting an SEA's authority and responsibility to reallocate excess Chapter 1 funds.

Subpart C—Project Requirements.

§ 200.49 Selection of attendance areas.

Comment. Several commenters recommended that LEAs be allowed to serve some, but not necessarily all, children eligible under the option set forth in § 200.49(c).

Response. No change has been made. The use of the word "all" in § 200.49(c) reflects the statutory language. Further clarification will be provided in the next regulatory guidance.

Comment. Several commenters recommended that § 200.49 be revised to include standards for determining "highest concentration" and "uniformly high concentration" as those terms are used in this section. Commenters also recommended the use of school data rather than attendance area data, and the selection and application of different types of data to determine eligibility under this section.

Response. No change has been made. In accordance with Section 591(b), matters relating to the details of planning, developing, implementing, and evaluating programs are to be left to the States, with the Secretary providing consultation and, upon request, technical assistance, information and suggested guidance. The matters on which commenters sought further regulations are better left to State and local discretion.

As noted in the preamble to these regulations, however, the Secretary does recognize that many State and local program personnel have requested guidance regarding the implementation

of Chapter 1 programs. As a result, consistent with Section 591(b), the issues raised by many commenters on this and other sections in these regulations were addressed in the nonregulatory guidance issued by the Secretary in draft form, and will be included when that guidance is issued in final form.

Comment. One commenter recommended that this section be revised to provide that the selection of project areas be based, in part, on an educational needs assessment and that the number of areas served not exceed the number for which the LEA can provide services of sufficient size, scope, and quality.

Response. No change has been made. The statute makes selection of project areas a matter of local discretion. LEAs may consider data on educational deprivation when selecting project areas from eligible attendance areas. The nonregulatory guidance addresses this issue in the chapter on needs assessment. Similarly, LEAs must comply with the size, scope, and quality requirement in Section 556(b)(3) of Chapter 1. In some cases, the number of project areas an LEA serves will be limited because the LEA does not have enough Chapter 1 funds to provide services meeting the size, scope, and quality provision in all eligible attendance areas.

Comment. One commenter recommended that language be added to this section specifically authorizing SEAs to adopt rules and guidelines related to the designation and selection of eligible attendance areas. The commenters also recommended that the section explain what interpretations are unacceptable.

Response. No change has been made. The general authority for State rulemaking in § 200.59 is sufficiently comprehensive to cover attendance area selection.

Comment. One commenter questioned whether schoolwide projects were authorized under this or any other section.

Response. No change has been made. Nothing in the Chapter 1 statute expressly authorizes the use of Chapter 1 funds for schoolwide projects.

Comment. A large number of commenters recommended that paragraph (c) be expanded to clarify and provide guidelines on the option offered under that paragraph. Many commenters recommended that only educationally deprived low-income children be eligible.

Response. A change has been made. Section 555(c) of Chapter 1 makes clear that funds made available under

Chapter 1 may only be used to provide "programs and projects . . . which are designed to meet the special educational needs of educationally deprived children." This applies to services provided to children under § 200.49(c). Therefore, § 200.49(c) has been clarified to indicate that the children served under that option must also be educationally deprived.

Comment. Several commenters recommended adding language to this section to clarify that an LEA need not exercise the option offered in paragraph (c) and that, if that option is taken, the LEA must expend the rest of its Chapter 1 allocation under either paragraph (a) or (b). Other commenters recommended that the regulations establish a percentage limit on the amount of an LEA's funds that may be used under § 200.49(c).

Response. No change has been made. The statute and the regulations, by joining paragraphs (b) and (c) with the conjunction "or," already do what several of the commenters have requested. The Secretary believes that State and local educational agencies are better able to determine the amount of funds, if any, that should be used under paragraph (c).

Comment. One commenter, interpreting the regulations as not allowing LEAs to concentrate Chapter 1 services at particular grade levels, recommended that this section be revised to restore that flexibility.

Response. No change has been made. The language in the regulations does not prohibit the practice of selecting grade spans to be served and providing services at those levels. Additional clarification on this point will be provided in the nonregulatory guidance.

§ 200.50 Annual needs assessment.

Comment. A large number of commenters questioned the legal authority and programmatic justification for adding the phrase "but does not require" to the provision stating that an LEA's needs assessment must permit the selection of those educationally deprived children in greatest need of special assistance.

Response. A change has been made. The phrase "but does not require" has been removed. By inserting the phrase in the proposed regulations, the Secretary sought to make clear that flexibility included in the Title I statute—for example, allowing certain children, such as those receiving services from other sources, to be bypassed in selecting students for participation in Title I programs—is available under Chapter 1. However, commenters have pointed out

that the phrase "but does not require" is an addition to the statutory language, and could be read to allow services to be provided to children with lesser needs, while leaving more severely educationally deprived children with no services from any source. In addition, the Secretary believes that the addition of the phrase removes flexibility from the States in the operation of Chapter 1 programs in that it could be read to preclude SEAs from regulating on the issue.

Comment. One commenter recommended that this section be revised to require LEAs to identify and establish goals and objectives, involve parents in the needs assessment, and use needs assessment data to update applications.

Response. No change has been made. For reasons stated previously, the Secretary believes that these matters are better left to State and local discretion.

Comment. One commenter recommended that language be added to this section requiring an LEA to allocate its Chapter 1 funds on the basis of the number and needs of the children to be served.

Response. No change has been made. The Chapter 1 statute and regulations require that projects be based on an educational needs assessment and concentrate on the special educational needs of the children to be served.

Comment. One commenter recommended adding to this section language expressly prohibiting the use of Chapter 1 funds for projects that are not designed to meet the special educational needs of educationally deprived children.

Response. A change has been made. Section 200.52 has been added to express this requirement.

Comment. One commenter recommended deleting the reference in § 200.50(a) to children in private schools.

Response. No change has been made. The reference to children in private schools is consistent with Section 557(a) of Chapter 1, which requirements that LEA projects include services for eligible private school students and that such projects meet the requires of Section 558(b)(2) (relating to needs assessment of Chapter 1). The reference in § 200.50(a) is included as a convenience to users of the regulations.

Comment. One commenter recommended adding to this section language expressly authorizing an LEA to continue to serve a child who qualified for services in the previous year and is still educationally deprived, though above the LEA's cut-off criteria for selection of participants.

Response. No change has been made. The Secretary believes that the regulations should include as little detail as necessary, thus maximizing State and LEA flexibility. The language in the regulations does not preclude the option recommended by the commenter.

Comment. One commenter recommended that this section specify which steps in the needs assessment may be paid for with Chapter 1 funds and which may not.

Response. No change has been made. It is the responsibility of the SEA, within the constraints imposed by Section 555(c) of Chapter 1 and § 200.55 of these regulations, to determine what costs are allowable under Chapter 1.

Comment. Two commenters questioned whether use of the term "educational needs" in § 200.50(c) was intended to preclude LEAs from identifying and designing services to meet non-educational needs such as health, social, and nutritional needs.

Response. No change has been made. The language in the regulations is not intended to preclude an LEA from providing support services which relate to meeting educational needs under an application approved by the SEA.

Comment. One commenter recommended that language be added to this section requiring an individualized educational plan to be prepared for each Chapter 1 participant.

Response. No change has been made. Nothing in the Chapter 1 statute or its legislative history authorizes the Secretary to require such a plan. Moreover, the requirement would be inconsistent with the intent of Chapter 1 to continue financial assistance based on Title I but to do so with less Federal supervision and control.

Comment. Several commenters recommended that language be added to the regulations specifying what types of data LEAs must use in conducting needs assessments.

Response. No change has been made. The Secretary believes that such specificity would be inconsistent with the intent of Chapter 1.

§ 200.53 Consultation with parents and teachers.

Comment. A large number of commenters made various recommendations that language be added to this section to clarify and provide guidance for the implementation of the parent consultation requirement. Many commenters recommended that the regulations include standards for determining whether an LEA has complied with the consultation requirement. Suggested standards included requirements that the

consultation be meaningful, systematic, and ongoing. A number of commenters recommended that the regulation guarantee parental access to records. Other commenters recommended that the regulations require LEAs to establish parent advisory councils such as those required under Title I.

Response. No change has been made. The Secretary has declined to establish additional requirements or criteria not stated in the statute regarding consultation. The Secretary believes that Chapter 1 was designed to afford SEAs and LEAs greater discretion in this area by avoiding, for example, a requirement that local parent advisory councils be established. The precise steps needed to achieve parent and teacher consultation are, in the Secretary's view, best left to local determination. The Secretary, however, agrees with the congressional conferees that parental and teacher involvement is an important component of Title I programs and wishes to make clear that it is an option of LEAs to continue using parent advisory councils to comply with the consultation requirement. See 127 Cong. Rec. H5645 (daily ed. July 29, 1981).

Comment. One commenter questioned the authority for requiring that LEAs consult with teachers and parents of children in private schools.

Response. No change has been made. Section 557(a) of Chapter 1 requires that LEAs provide services to eligible children in private schools and that these services meet the requirements of, among others, Section 558(b)(3) of Chapter 1. Section 558(b)(3) requires consultation with teachers and parents.

Comment. Several commenters recommended that this section be revised to provide expressly that LEAs may use Chapter 1 funds to support parental involvement activities.

Response. No change has been made. Section 555(c) of Chapter 1 states that LEAs may use Chapter 1 funds for "expenditures authorized under Title I . . ." Because LEAs were authorized to use program funds for certain expenditures related to Title I parent involvement activities, those same expenditures are allowable under Chapter 1.

§ 200.54 Evaluation.

Comment. One commenter questioned why this section specified three years as the maximum period over which an LEA must evaluate its Chapter 1 project.

Response. No change has been made. The three year period was selected because it is consistent with the LEA application cycle.

Comment. One commenter recommended that this section be revised to require LEAs to use evaluation data in planning future projects.

Response. No change has been made. For reasons stated previously, the Secretary believes that this matter is best left to State and local discretion. The use of evaluation data in planning future projects is appropriate, however, and nothing in these regulations is intended to discourage the practice.

Comment. One commenter, noting that Section 556(b) of Chapter 1 requires LEAs to provide information to SEAs for program evaluation purposes, questioned why the regulations did not clarify this requirement.

Response. No change has been made. The requirement cited by the commenter is incorporated by reference in § 200.14(a) which requires LEA applications to meet the requirements in Section 556 of Chapter 1.

Comment. Several commenters questioned why the regulations did not include the statutory language requiring LEAs to evaluate their Chapter 1 projects "in terms of their effectiveness in achieving the goals set for them."

Response. A change has been made. The language has been added to § 200.54.

Comment. One commenter recommended adding language to this section specifying LEAs' reporting responsibility and SEAs' analysis, technical assistance, and reporting responsibilities relative to evaluation. A number of commenters recommended that language be added to this section requiring LEA evaluation data to be recorded in a common standard of measurement to allow data to be aggregated by State and nationally.

Response. No change has been made. By establishing evaluation standards, the Secretary would be limiting authority afforded to SEAs and LEAs under Chapter 1, thereby reducing flexibility in a manner inconsistent with the purpose of Chapter 1. There is nothing to prevent SEAs, however, from adopting a common standard of measurement in order to allow data to be aggregated by State and nationally.

§ 200.55 Allowable costs.

Comment. Several commenters questioned why this section did not include the itemized list of allowable expenditures, or the reference to "other expenditures authorized under Title I" contained in Section 555(c) of Chapter 1. The commenter also felt the regulations should clarify the latter reference.

Response. No change has been made. Because users of these regulations will

normally have a copy of the Chapter 1 statute available, the Secretary felt it was unnecessary to repeat that statutory language.

Comment. A number of commenters questioned whether non-instructional duties were authorized under Chapter 1 as an "expenditure authorized under Title I."

Response. No change has been made. As indicated in the draft nonregulatory guidance, non-instructional duties are allowable under Chapter 1 on the same basis that they were allowable under Title I.

§ 200.56 Recordkeeping requirements.

Comment. A number of commenters recommended that language be added to this section clarifying what specific records are required by this section, and particularly what is meant by the reference in § 200.56(b)(2) to "other records needed to facilitate an effective audit and that show compliance with Chapter 1 requirements."

Response. No change has been made. As Indicated in the preamble, each State is left to develop its own procedures for assuring accountability for Chapter 1 funds and program requirements.

Comment. One commenter questioned why this section treated LEAs and SEAs the same with respect to recordkeeping requirements. The commenter noted that the statute treats them separately.

Response. No change has been made. The statute requires both LEAs and SEAs to keep such records as may be required for fiscal audit and program evaluation. The Secretary has decided not to prescribe more specific recordkeeping requirements for SEAs. An SEA may, however, under its application approval authority in Section 556(b) of Chapter 1, prescribe specific recordkeeping requirements for its LEAs.

Comment. Several commenters questioned why this section required that records be kept only three years when the statute of limitations in GEPA is five years. One commenter pointed out that this will result in LEAs keeping FY 1981 and 1982 Title I records longer than FY 1983 Chapter 1 records.

Response. No change has been made. Consistent with Section 437(a) of GEPA, § 200.56(c) has been revised to require that records be retained for five years after completion of the activity for which the funds were used.

Comment. One commenter recommended deletion of the reference in § 200.56(b)(1) to records that show the share of costs provided from non-Chapter 1 sources.

Response. A change has been made. In cases where a single project is funded

from more than one source, it is not possible to conduct an effective audit unless there are records showing the share of costs provided from each source.

Comment. One commenter questioned whether the reference in § 200.56(b)(1) to "funds from other sources" referred to State and local funds used to pay portions of costs covered under an indirect cost plan.

Response. No change has been made. "Funds from other sources" as used in this section does not refer to State and local funds used to pay for services covered for Chapter 1 in an indirect cost plan. SEAs and LEAs may continue to use indirect cost plans under Chapter 1 on the same basis as they did under Title I, except that departmental approval is not required.

§ 200.57 Audits and access to records.

Comment. One commenter questioned why the citation of authority for this section included a part but not all of Title XVII of the Omnibus Budget Reconciliation Act.

Response. No change has been made. The citation of authority for § 200.57 is to Section 1744 of the Omnibus Budget Reconciliation Act of 1981. Certain sections of Title XVII of that Act apply only to block grant funds. Chapter 1 is not a block grant program. However, Section 1744 applies to both block grant funds as well as "other grant programs established or provided for by . . ." the Omnibus Budget Reconciliation Act. Hence, Section 1744 applies to Chapter 1.

Comment. Two commenters questioned the statutory authority for making Attachment P to OMB Circular A-102 applicable to Chapter 1. The commenters also questioned which requirements in Attachment P pertained to Chapter 1.

Response. A change has been made. The Secretary has amended EDGAR by adding a new section 74.62 which implements the audit requirements contained in Attachment P. These requirements apply to Chapter 1 programs. Authority to require audits is derived from several sources: Sections 555(d) and 556(b) of the EICIA; Section 452 of GEPA, Section 1744 of the Omnibus Budget Reconciliation Act of 1981; Sections 3, 4, and 6 of the Inspector General Act of 1978; and Section 202 of the Intergovernmental Cooperation Act of 1968.

Comment. Several commenters recommended adding language to this section to specify that parents and the general public also must be provided access to records.

Response. No change has been made. The statutory language authorizing this section is intended to ensure access to records by independent auditors and State and Federal officials evaluating and reviewing Chapter 1 programs. For this reason, this section does not list parents or the general public among those who must be provided access to records.

Comment. Two commenters recommended deletion of the word "any" from paragraph (a) where it is used to modify the terms "books, accounts, records, correspondence or other documents." The commenters felt that its inclusion was unnecessary and overly intrusive.

Response. No change has been made. The phrase "any books, accounts, records, correspondence, or other documents" is taken directly from Section 1744 of Title XVII.

§ 200.58 *Compromise of audit claims.*

Comment. One commenter questioned the citations of authority for this section, noting that Section 555(d) of Chapter 1 does not address this issue.

Response. No change has been made. Section 555(d) contains authority for the Secretary to conduct audits. The Secretary has included these standards for carrying out his authority under the Federal Claims Collection Act, 31 U.S.C. 951 et seq.; 4 CFR Part 103, to compromise claims arising in connection with those audits. See also Sections 591(a)(1) and (2) of the EICIA.

Comment. One commenter recommended revising this section to provide that the Secretary may not compromise an audit claim unless the Secretary is satisfied that the agency has met the conditions in paragraphs (d), (e), and (f). That is, the agency must have corrected the practices that resulted in the finding, it must in all other respects be in compliance with Chapter 1 requirements, and it must agree to use non-Federal funds to supplement Chapter 1 programs.

Response. No change has been made. The factors listed in paragraphs (a) through (f) are merely points for the Secretary to consider. In the interest of maintaining flexibility in the compromise of audit claims, the Secretary wishes to avoid imposing rigid requirements.

Comment. One commenter recommended adding language to this section providing that an SEA shall recover from non-Federal sources all funds determined to have been misspent under an audit.

Response. A change has been made. Paragraph (d) has been added to § 200.57 permitting an SEA to recover

funds determined by an audit to have been misspent.

§ 200.59 *SEA rulemaking and other responsibilities.*

Comment. Several commenters questioned the statutory authority for SEA rulemaking.

Response. No change had been made. Section 556(b) of Chapter 1, which deals with applications by LEAs, provides that the SEA will approve an application from an LEA only if it contains certain assurances that are "satisfactory to the SEA." Sections 555(c) and 556(a) of Chapter 1 also state the SEA's approval authority. Sections 557 and 558 impose important administrative duties on the SEA under Chapter 1. Thus, taken as a whole, Chapter 1 is regarded as a State-administered program. The State rulemaking authority in § 200.59 is designed to implement these statutory provisions and is consistent with pertinent case law.

Comment. One commenter recommended adding language to this section to prohibit an SEA from either requiring any practice not expressly required by the statute or regulations or prohibiting any practice that is authorized by the statute or regulations.

Response. No change has been made. A categorical prohibition on this point is not required by the statute and would unduly restrict the SEA's administration of a State-administered program.

Comment. One commenter recommended that the phrase "or an appropriate entity thereof" be deleted from this section. The commenter felt that only the SEA should be authorized to make State rules.

Response. A change has been made. The phrase "or an appropriate entity thereof" has been deleted. When SEAs are legally empowered by the State to make rules, they may do so in order to carry out their responsibilities. This does not preclude other State agencies, with the legal authority to do so, from issuing regulations related to the Chapter 1 program.

Comment. One commenter questioned whether this section authorizes SEAs to enter into compliance agreements with applicant agencies.

Response. No change has been made. There is no specific authority in Chapter 1 authorizing SEAs to enter into compliance agreements with LEAs.

Subpart D—Fiscal Requirements

§ 200.60 *Maintenance of effort.*

Comment. One commenter questioned why the regulations use the language "an SEA shall pay an LEA its allocation * * *" rather than the statutory language "an LEA may receive funds * * *"

Response. A change has been made. The language of the statute has been incorporated into the regulations.

Comment. One commenter objected to the language in § 200.60(b)(2) that not accurately reflecting the statutory language regarding the level of expenditures to be considered when determining maintenance of effort two and more years after a failure to maintain effort.

Response. No change has been made. The only reference in the statute to this issue is a prohibition, in Section 556(a)(2), against using "such lesser amount" in computing future maintenance of effort. "Such lesser amount" clearly refers to an amount which falls below the 90 percent standard, not to amounts which meet or exceed the 90 percent standard. The regulations accurately reflect this in § 200.60. It is true that the language in the regulations permits agencies to meet the maintenance of effort requirement while using progressively lower levels of effort each year, as long as they do not drop by more than ten percent each year. The Secretary does not believe that it would be equitable to allow agencies which never fall below the 90 percent level to decrease fiscal effort indefinitely while holding an agency that once failed to maintain effort to a particular level, below which it could never drop without either a waiver or penalty.

Comment. One commenter objected to the language in paragraph (b)(2) that the SEA "may" consider an LEA's effort to be 90 percent of its expenditures for the third preceding year. The commenter felt that the use of the term "may" implied that an SEA may also consider an LEA's effort to be less than 90 percent of its effort for the third preceding year.

Response. A change has been made. To make clear that the 90 percent is the minimum requirement, the sentence has been changed to read "to be no less than 90 percent." Section 200.61(b)(2), relating to waivers, has also been changed to conform with the new language of § 200.60 (b)(2).

Comment. One commenter recommended that maintenance of effort be computed in constant dollars.

Response. No change has been made. The Secretary does not believe that the statute affords authority to measure maintenance of effort in terms of "constant" rather than "inflated" dollars.

§ 200.61 *Waiver of the maintenance of effort requirement.*

Comment. One commenter objected to the use of the term "full entitlement" in

paragraph (b)(1) of this section, noting that it could be incorrectly interpreted to refer to an LEA's allocation prior to adjustments necessitated by appropriations (ratable reductions).

Response. A change has been made. To clarify this paragraph, it has been reworded to state that the SEA "shall not reduce the amount of Chapter 1 funds the LEA is otherwise entitled to receive."

Comment. One commenter recommended revising this section by adding language to paragraph (a)(2) to expressly provide that, except for tax initiatives and referenda, the determination of whether particular circumstances are exceptional and uncontrollable is at the complete discretion of the SEA. Another commenter suggested that the criteria for granting a waiver be expanded to include prudent use of local funds, reduced tax revenues, and reduction in State support.

Response. No change has been made. Subject to the Chapter 1 statute and legislative history, the SEA has the responsibility of determining whether to grant maintenance of effort waivers.

Comment. Two commenters recommended that this section be revised to allow tax initiatives or referenda to be considered exceptional and uncontrollable when they cause drastic reductions in the level of services an agency can provide.

Response. No change has been made. In the conference report accompanying Chapter 1, the conferees expressly stated that they "do not consider tax initiatives or referenda as exceptional or uncontrollable circumstances." 127 Cong. Rec. H5945 (daily ed. July 29, 1981).

§ 200.62 Supplement, not supplant.

Comment. A number of comments were received requesting guidance in interpreting the supplement, not supplant requirement. Several commenters recommended that this section be revised to include tests for determining compliance with the supplement, not supplant requirement.

Two commenters recommended adding language to the section expressly prohibiting LEAs from using Chapter 1 funds to provide services otherwise required by law, programs of bilingual education, English as a second language programs, or programs for handicapped children. The commenters also recommended that the regulations expressly state that State and local funds expended for programs of the types listed above may not be excluded for the purpose of determining compliance with the supplement, not

supplant and comparability requirements. Two additional commenters recommended adding language to paragraph (c) stating that Chapter 1 services provided within the regular classroom must be supplemental and that an LEA that provides Chapter 1 services within the regular classroom must retain some type of records showing that the services are supplementary and are provided only to children eligible and properly selected for Chapter 1 services.

Response. No change has been made. The Department's draft nonregulatory guidance offers extensive, though not exclusive, standards for determining compliance with the supplement, not supplant requirement. It is anticipated that information on this issue will also be included in the final document. Under these circumstances, the Secretary does not feel that the inclusion of Federal standards for supplement, not supplant are necessary in the regulations.

Comment. Two commenters recommended that the regulations clarify what is meant in paragraph (b) by "programs * * * consistent with the purposes of Chapter 1." That term is used in both this section and in § 200.63 (Comparability of services) as a standard for determining whether funds may be excluded in determining compliance with the supplement, not supplant and comparability requirements.

Response. No change has been made. The term can be understood by referring to the declaration of policy in Section 552 of Chapter 1. That section provides that Chapter 1 programs are to address the special needs of educationally deprived children. In order to be consistent with the purposes of Chapter 1, a program would have to be designed and implemented on the basis of the factors mentioned in Section 552 of Chapter 1.

Comment. One commenter objected to the provision in § 200.62(h) allowing the exclusion of State and local funds for certain special programs. The commenter felt that excluding these funds would reduce the level of services Chapter 1 participants would otherwise receive.

Response. No change has been made. Section 558(b) of Chapter 1 specifically authorizes the exclusion of these funds.

Comment. One commenter recommended that the supplement, not supplant requirement be waived for secondary schools so that these children could be provided Chapter 1 services in place of regular State and locally funded services.

Response. No change has been made. Without waiving the supplement, not

supplant requirement for secondary schools, the draft nonregulatory guidance illustrates how Chapter 1 programs can be operated in secondary schools in compliance with the supplement, not supplant requirement. The Secretary expects that this flexibility will also be contained in the final document.

§ 200.63 Comparability of services.

Comment. One commenter questioned why the regulations use the term "attendance area" where the statute uses the term "area."

Response. No change has been made. The terms "area" and "school attendance area" are both used in Section 558(c) of Chapter 1. Based on the context in which the terms are used and the history of the comparability provision, it is clear that both the terms "area" and "school attendance area" mean "attendance area" as that term is defined in § 200.3.

Comment. Several commenters recommended that language be added to the regulations explaining what standards will be used by auditors to determine whether an LEA has complied with the comparability requirement. The commenters specifically recommended that definitions be provided for such terms as "comparable," "substantially comparable," "unpredictable changes," "equivalence among schools in teachers, administrators, and auxiliary personnel," and "equivalence among schools in the provision of curriculum materials and instructional supplies."

Response. No change has been made. An SEA has the responsibility of ensuring that LEAs in its State implement the comparability provisions as those provisions are interpreted by the SEA. As long as an SEA's interpretation is not inconsistent with the language of the statute and regulations, it will not be challenged in final audit determinations. The Secretary does not believe that a single mandatory interpretation in the regulations would further most effectively the intent of the comparability provision. The Department's draft nonregulatory guidance does, however, offer acceptable, though not exclusive, means of determining compliance with the comparability provision. It is anticipated that similar guidance will also be contained in the final document.

Comment. One commenter recommended that language be added to the regulations expressly stating that the comparability assurances must be implemented and records maintained documenting the implementation.

Response. No change has been made. Implicit in the concept of a required assurance is the requirement that the assurance be implemented. That this is true for comparability is borne out by the statement in Section 558(c)(2)(C) of Chapter 1 that certain changes after the beginning of the school year are not considered in determining comparability. It would not have been necessary to exclude these certain changes unless general conditions after the beginning of the school year to be considered in determining compliance.

Comment. One commenter recommended that language be added to this section specifying procedures for excluding State and local funds for certain special programs in determining compliance with the comparability provisions.

Response. No change has been made. An LEA is free to implement the exclusion using whatever procedures the LEA or SEA establishes. Because these may differ among States, it would not be appropriate to require all States to use a single procedure.

Comment. One commenter recommended that regulations require an LEA to file comparability assurances annually.

Response. No change has been made. Section 558(c)(2) of Chapter 1 only appears to require an LEA to file one-time assurances. These will continue in effect unless the LEA submits revised assurance.

Comment. One commenter recommended adding language specifying the SEA's responsibility with respect to LEAs' compliance with the comparability requirements.

Response. No change has been made. The SEA's responsibility in this regard is no different than with respect to any other required assurance. The SEA is responsible for ensuring that LEAs comply with the comparability requirement.

Comment. One commenter recommended that the regulations be revised to require LEAs to continue to determine comparability on the same basis as under Title I, except that they may exclude high cost students.

Response. No change has been made. Although the basic comparability requirement in Chapter 1 is almost identical to that of Title I, the means of complying with it can be different. Chapter 1 states that LEAs shall be deemed to be in compliance with the comparability requirement by filing certain assurances. An SEA, however, may accept other means of demonstrating comparability, including

use of the method that was used under Title I.

Subpart E—Participation in Chapter 1 Programs of Educationally Deprived Children in Private Schools

Comment. A number of commenters recommended that language be added to the regulations to clarify the issue of which, if any, civil rights requirements should apply to private schools whose students receive Chapter 1 services.

Response. No change has been made. The applicability of Title VI of the Civil Rights Act of 1964 is set forth in the Office for Civil Rights "Report on Nonpublic Schools Participating in Federal Programs," published at 41 FR 35553 (Aug. 23, 1976), and remains in effect. Issues pertaining to the applicability of other civil rights requirements as they relate to the participation of children in private schools are under study and, as appropriate, will be clarified in Chapter 1 nonregulatory guidance or by other means.

§ 200.70 Responsibility of LEAs.

Comment. Two commenters questioned why the regulations require that private school children must reside in project areas to be eligible to receive Chapter 1 services.

Response. A change has been made. With the exception of services offered under Section 558(b)(1)(C), public school students must reside in a project area to receive Chapter 1 services. The provisions governing Chapter 1 services for children in private schools are intended to ensure that Chapter 1 services are provided to those children who would have been served had they attended the public school serving the attendance area in which they reside. Accordingly, services to private school children must be provided with regard to area of residence, unless the LEA chooses to serve all students under Section 558(b)(1)(C). This approach is consistent with that followed under Section 130 of Title I (20 U.S.C. 2740) in which Section 557 of Chapter 1 is based. However, if an LEA serves educationally deprived, low-income public school children under Section 558(b)(1)(C) of Chapter 1, the LEA must also serve such children in private schools. Section 200.71(b) reflects this situation.

Comment. One commenter questioned why this section required that private school students' opportunity to participate take into account their number and needs. The commenter noted that the statute requires that expenditures for such children take those factors into account.

Response. No change has been made. The requirement that private school students' opportunity to participate in Chapter 1 projects be based on the number and needs of such children is implicit in the requirement that Chapter 1 services be based on an assessment of educational need.

Comment. One commenter questioned the statutory authority for paragraph (d), which requires that Chapter 1 services for private school students be provided by either public employees or by a contractor independent of the private school and any religious organization.

Response. No change has been made. That provision is based on Section 436(b)(2) of GEPA, made applicable to Chapter 1 by Section 596(a) of the ECIA. Section 436(b)(2) requires that control of funds provided to an LEA under Chapter 1 be in a public agency and that a public agency administer those funds. The requirement that a contractor be independent of the private school and any religious organization is intended to ensure maintenance of the requisite public control.

Comment. One commenter recommended adding language to this section expressly requiring LEAs to consult with private school officials in planning and implementing Chapter 1 projects.

Response. A change has been made. Language has been added to require consultation with private school officials. The Secretary believes that this change is needed to ensure that Section 557(a) of Chapter 1 will be carried out effectively.

Comment. One commenter recommended that the regulations be revised to clarify LEAs' responsibilities for children who reside in one district and attend a private school located in another district.

Response. No change has been made. As indicated in § 200.70(a), the responsibility for providing Chapter 1 services to an eligible child rests with the LEA in whose district the child resides. If it is not feasible for an LEA to provide services either in a private school outside its own district or to have children attending such schools brought back into its district to receive services, the LEA should consider entering into an agreement with the LEA in whose district the private school is located.

§ 200.71 Factors used in determining equitable participation.

Comment. One commenter questioned whether paragraph (a) required a dollar-to-dollar comparison of services for public and private school children.

Response. No change has been made. Section 557 of Chapter 1 requires expenditures be equal, taking into account the number of children and their educational needs. Therefore some type of dollar comparison is involved. An SEA may provide guidance to its LEAs regarding how, in accordance with Section 557(a) of Chapter 1 and § 200.71(a) of these regulations, the comparison is to be made.

Comment. Two commenters questioned the authority for the equitable services requirement in paragraph (b).

Response. No change has been made. Section 557(b)(2) of Chapter 1 requires the Secretary to implement a bypass if an LEA has substantially failed to provide for the participation "on an equitable basis" of educationally deprived children in private schools. If the standard for a bypass is failure to provide services on an equitable basis, then it follows that an LEA is required to provide such services. In addition, Section 557(a) of Chapter 1 refers to equal expenditures for services to private school children and to services being provided "to the extent consistent with the number of educationally deprived children." The Secretary believes this language also requires that Chapter 1 services be provided to private school children on an equitable basis.

Comment. Several commenters recommended that paragraph (b) of this section be revised to clarify whether services for private school children must be provided at the same grade levels and in the same instructional areas as services for children in public schools.

Response. No change has been made. In general, an LEA will provide services for private school children in the same instructional areas and grade levels as in the public schools. An LEA considers the needs of all educationally deprived children in eligible areas, including those attending private schools, in designing its Chapter 1 project. If the needs of the children in private schools are different than those of the children in public schools, the LEA should consider that in designing its project. An LEA designs a project based on its needs assessment and provides project services to participants that meet the LEA's selection criteria. This applies to all participants, those in public and those in private schools alike.

Comment. One commenter questioned why the language requiring that Chapter 1 services be of sufficient size, scope, and quality was repeated in this section when § 200.52 applies to all Chapter 1 projects.

Response. No change has been made. That language is included in § 200.71 to emphasize its applicability to services for private school children. The standard is also used, in part, to determine whether private school children are receiving services on an equitable basis.

Comment. One commenter questioned the omission of standards and criteria for determining whether private school children are receiving Chapter 1 services on an equitable basis.

Response. No change has been made. Equitable participation is measured against the services provided to children attending public schools. Because of the wide variety in types of services provided by different LEAs, the Secretary has determined that a single set of standards for determining equitable participation would not be practical.

Comment. One commenter recommended that language be added to this section limiting the amount of Chapter 1 funds an LEA must expend to provide services for private school children.

Response. No change has been made. The statute requires expenditures for private school children to be equal, taking into account the number and needs of such children, to expenditures for public school children.

§ 200.72 Funds not to benefit a private school.

Comment. One commenter recommended revising paragraphs (a) and (b) to clarify that the private school children who may receive services must be educationally deprived.

Response. No change has been made. Section 200.70 of the regulations specifically limits services to "educationally deprived children residing in project areas."

Comment. One commenter questioned how an LEA can ensure that Chapter 1 funds are used to provide services to private school children that supplement the level of services the children would otherwise receive without becoming unduly entangled with the private schools.

Response. No change has been made. An LEA must design its Chapter 1 project so that the services provided to private school children are limited to those which meet the special educational needs of eligible private school children; the services must not benefit the private school. Chapter 1 participants attending private schools should be selected on a basis identical or comparable to that used to select children attending public schools. As long as these conditions are met, the

LEA's Chapter 1 services comply with § 200.72.

Comment. One commenter questioned whether an LEA could allow Chapter 1 personnel to perform non-instructional duties in private schools.

Response. No change has been made. Section 200.72(b) prohibits the use of Chapter 1 funds to meet the needs of a private school or the general needs of children in a private school. Performance of non-instructional duties, the benefits of which are not limited to Chapter 1 participants, are prohibited by this language.

§ 200.73 Use of public school employees.

Comment. One commenter recommended adding language to this section explaining under what circumstances private school personnel may be employed part-time by an LEA to provide Chapter 1 services.

Response. No change has been made. Such an arrangement would be allowable as long as the SEA is satisfied that the LEA is able to supervise effectively the employee and to maintain administrative direction and control of that portion of its project.

§ 200.74 Equipment and supplies.

Comment. One commenter questioned the authority for this section, particularly paragraphs (b) through (e).

Response. No change has been made. The Secretary believes that the provisions in § 200.74 are reasonable and necessary to ensure that LEAs maintain adequate administrative control over Chapter 1 funds and property as required by Section 436(b)(2) of GEPA. In addition, the provisions in § 200.74 are necessary to carry out the general purpose of Section 557 of Chapter 1 to provide equitable services to private school children but not to provide funds or services to private schools.

Comment. One commenter recommended that language be added to this section to provide guidelines concerning the use of equipment and supplies in private schools.

Response. No change has been made. The Secretary believes that LEAs and SEAs are able to comply with the requirement without additional Federal regulation.

§ 200.75 Construction.

Comment. One commenter questioned the statutory authority for prohibiting the use of Chapter 1 funds for the construction of private school facilities.

Response. No change has been made. Section 436(b)(2) of GEPA requires LEAs

to maintain administrative control over Chapter 1 funds and title to property acquired with Chapter 1 funds. It would not be possible to comply with that requirement if Chapter 1 funds were used to construct private school facilities.

Subpart F—Due Process Procedures

§ 200.80 Bypass—General.

Comment. One commenter questioned why paragraph (a)(2) of this section uses the phrase "failed to provide services" when the statute uses the term "failed to provide for participation."

Response. No change has been made. The statutory language has been incorporated into the regulations.

Comment. One commenter questioned why the regulations do not contain criteria for determining whether an LEA has substantially failed to provide for the participation of educationally deprived children attending private schools.

Response. No change has been made. That determination would be based on a close examination of the particular circumstances in an LEA. Because the nature of these circumstances could vary greatly among LEAs, the Secretary does not believe that meaningful criteria could be developed to apply to all possible circumstances. Note that § 200.81 does require the Secretary to detail the reasons for an intended bypass in a written notice to the LEA before taking any final action to implement a bypass.

Comment. One commenter, noting that Section 557(b)(3)(B) of Chapter 1 authorized the Secretary to withhold funds pending final resolution of an investigation that could result in a bypass, recommended that strict time limits be placed on all steps in the bypass procedure. This would protect an LEA that was ultimately not bypassed from having funds withheld for a lengthy period of time.

Response. No change has been made. The Secretary will process all bypass proceedings as expeditiously as possible. It is expected that the Secretary will only very infrequently, if ever, exercise his withholding authority pending final action on a bypass.

Comment. One commenter recommended that language be added to the regulations limiting the amount of Chapter 1 funds that an LEA would have to contribute to pay for a bypass. The commenter felt that this amount should not exceed the amount, on a per pupil basis, expended on Chapter 1 participants from public schools.

Response. No change has been made. The statute requires that the actual cost

of a bypass action be paid for with Chapter 1 funds from the allocations of the affected State or LEA.

Comment. One commenter questioned why paragraph (b) did not include a reference to the statutory requirement that the Secretary consult with appropriate public and private school officials in arranging for Chapter 1 services under a bypass.

Response. A change has been made. That requirement has been added to § 200.80(b).

§ 200.81 Notice by the Secretary.

Comment. One commenter felt that the language in the regulations did not accurately reflect the statutory language which states that the Secretary will take no final action on a bypass until the affected SEA and LEA have had 45 days from when they received written notice from the Secretary to submit written objections to the Secretary's written notice.

Response. A change has been made. Section 200.81(a)(3) has been modified to indicate that an LEA and an SEA have at least 45 days from receipt of the written notice to respond to the Secretary's intended bypass.

§ 200.82 Bypass procedures.

Comment. Several commenters recommended that language be added to the regulations stating that the burden of proof in any bypass or other due process procedure would be on the Secretary rather than the affected SEA or LEA.

Response. No change has been made. Section 557(b)(4)(A) of Chapter 1 indicates that the Secretary shall not take final action on a bypass without affording the LEA or SEA an opportunity to show cause why that action should not be taken. At this stage, the burden of proof, therefore, would be on the LEA or SEA to show cause. The Secretary would not propose to take action to implement a bypass at all, however, unless he was presented with substantial evidence that such action was warranted.

§ 200.83 Appointment and functions of a hearing officer.

Comment. One commenter questioned what the statutory authority was for § 200.83-200.85.

Response. No change has been made. The Secretary believes that the provisions contained in these sections are reasonably necessary both to ensure compliance with Section 557(b) of Chapter 1 and to protect the due process rights of SEAs and LEAs.

Comment. One commenter recommended revising this section to provide that the hearing officer has the

authority to conduct and require discovery.

Response. No change has been made. The bypass provisions contained in Section 557(b) of Chapter 1 were originally enacted as part of the Education Amendments of 1978. As the House Report accompanying these amendments indicated, it was the intent of Congress that the bypass authority be exercised "in a manner which will assure a prompt resolution of complaints from representatives of nonpublic school children . . ." Accordingly, the Commissioner was directed "to adopt and publicize systematic procedures for the prompt processing of complaints." H.R. Rep. No. 1137, 95th Cong., 2d Sess. 33 (1978). In keeping with this congressional mandate to devise prompt and expedited bypass procedures, the Secretary has decided that to permit the hearing examiner to conduct discovery would result in time-consuming delays in the proceedings.

§ 200.90 General.

Comment. A number of commenters recommended that sections be added to the regulations containing complaint resolution procedures and due process procedures for situations other than bypass, withholding, and final audit determinations. The commenters felt that procedures should be set out so that if parents and the general public raise questions about Chapter 1 projects, they can be assured that their concerns will be taken up. Several commenters recommended that LEAs be covered under these sections and that they also be given appeal rights, to the Department, of SEA determinations regarding application disapproval and State audits.

Response. A change has been made. The statute does not authorize the Secretary to prescribe complaint resolution procedures for SEAs and LEAs. That such statutory authority existed under Title I and was not included in Chapter 1 further supports the decision not to prescribe procedures here. The Secretary does not believe that requiring SEAs to defend their application approval and audit determinations to the Department is in keeping with the general intent of reducing the Federal role in the Chapter 1 program. Finally, LEAs are not covered by these sections because withholding and final audit determinations are made with respect to SEAs, not LEAs. Several sections, however, have been changed or added to provide due process procedures for cease and desist complaints. *See, e.g.,* § 200.90 [general], 200.91 [jurisdiction],

200.92 (definitions), 200.93 (eligibility for review), 200.94 (written notice), 200.104 (cease and desist hearing), 200.105 (cease and desist written report and order), and 200.106 (enforcement of a cease and desist order). As noted in § 200.94, cease and desist complaints unlike final audit determinations and withholdings, which are issued by the Assistant Secretary for Elementary and Secondary Education—will only be issued by the Secretary. Before the Secretary issues a complaint, he will make every reasonable effort to discuss the circumstances giving rise to the complaint with the SEA and afford the SEA an opportunity to explain its position.

Comment. One commenter recommended that all references in §§ 200.90–200.106 to final audit determinations be deleted. The commenter did not believe that the Secretary has the authority to make audit findings under Chapter 1.

Response. No change has been made. Section 452 of GEPA specifically authorizes the Secretary to make final audit determinations and to afford review of these determinations by the Education Appeal Board. In addition, Section 202 of the Intergovernmental Cooperation Act of 1968, Section 555(d) of Chapter 1, and Section 4(a)(1) of the Inspector General Act of 1978 authorize the Department to perform audits of Chapter 1 programs.

Comment. One commenter recommended deletion of all provisions relating to the involvement of the Education Appeal Board with Chapter 1.

Response. No change has been made. The Secretary has determined that Sections 451–452 and 454–456 of GEPA are applicable to Chapter 1. As a result, the Secretary believes that the provisions contained in §§ 200.90–200.106 are appropriate means of implementing these statutory requirements and protecting SEAs' due process rights. The Secretary shares the concern of commenters that lengthy and time-consuming proceedings, with attendant burden, be avoided, particularly under the ECIA. On the other hand, the Secretary does not believe that administrative efficiency would be served by establishing a parallel and duplicative appeal mechanism for appeals under the ECIA. Instead the Secretary has decided to use the EAB mechanism, with which considerable experience has been gained since 1974, while streamlining its

procedures and applying new techniques to ensure more expeditious proceedings.

Comment. One commenter recommended that specific timeframes be attached to all steps in the procedures in §§ 200.90–200.106.

Response. No change has been made. Specific time limits for many steps are already included in the regulations. Due to significant variations in scope and complexity of issues raised in these proceedings, further specific timeframes would not allow the flexibility necessary for orderly conclusion of the procedures.

Comment. One commenter questioned whether the Secretary could enter into a compliance agreement with an SEA under the procedures contained in §§ 200.90–200.106.

Response. No change has been made. The Chapter 1 statute does not afford the Secretary the authority to enter into compliance agreements.

§ 200.92 Definitions.

Comment. One commenter questioned whether the definition of the term "recipient" as "the named party or entity that initially received Federal funds under Chapter 1" meant that only an SEA was a recipient and LEAs were not therefore responsible for complying with civil rights requirements that apply to recipients of Federal funds.

Response. No change has been made. The definitions in § 200.92 apply only for purposes of the due process provisions in §§ 200.90–200.106. For those purposes, only an SEA is considered a recipient. However, both SEAs, LEAs, and State applicant agencies are considered recipients of Federal funds under Federal civil rights statutes and regulations.

§ 200.99 Intervention.

Comment. One commenter recommended that this section be revised to specify whether a panel will temporarily postpone its proceedings upon receiving an application for intervention.

Response. No change has been made. An application for intervention received after a panel has begun its proceedings would be processed as expeditiously as possible and, if accepted, considered in the final decision.

§ 200.103 The Secretary's decision.

Comment. One commenter recommended that language be added to

the regulations stating that the Secretary's decision is subject to judicial review under Section 593 of Chapter 3.

Response. No change has been made. Because judicial review is a procedure that is not under the administration of the Department, the Secretary has decided not to include it in the regulations.

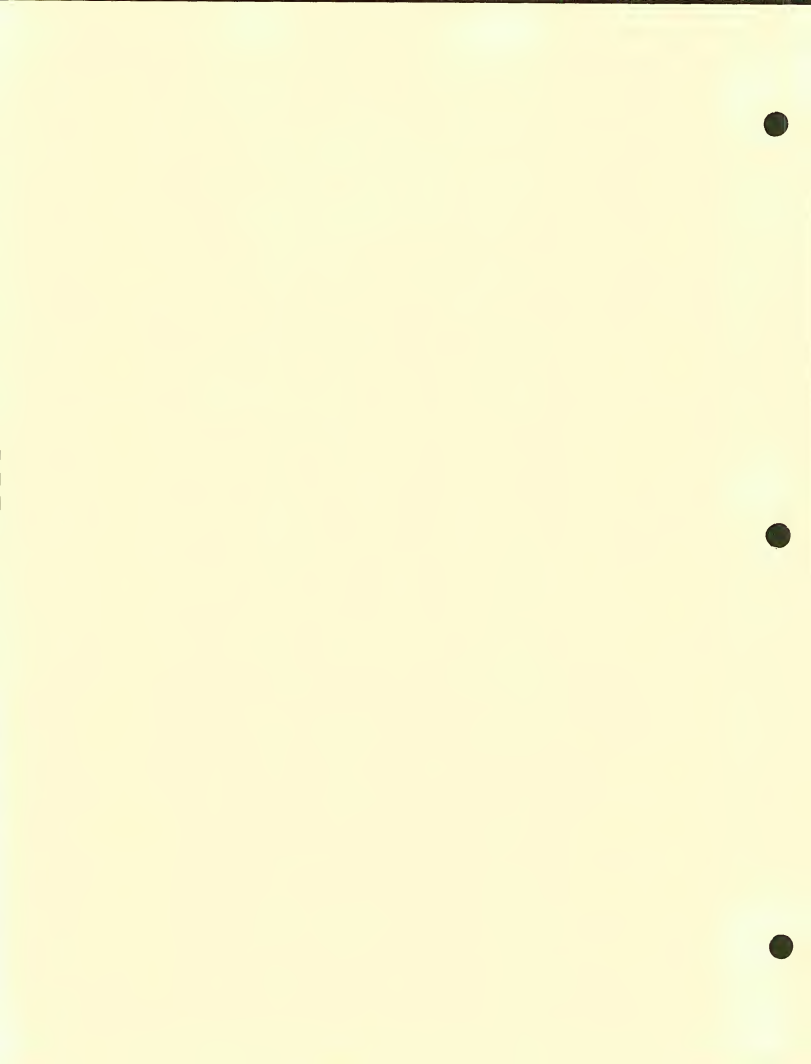
Applicability of Other Statutes: General Education Provisions Act

Comment. The preamble to the Chapter 1 NPRM indicates that it had been determined that the General Education Provisions Act (GEPA), 20 U.S.C. 1221–1234e, is not applicable to Chapter 1 except for those sections of GEPA specifically made applicable by Section 596 of the ECIA. A considerable number of commenters objected to this interpretation, contending that GEPA was generally applicable to Chapter 1, and urged the Secretary to revise his interpretation.

Response. A change has been made. Both the NPRM and the preamble to the final Chapter 1 regulations published on July 29, 1982 indicated that, except for the sections of GEPA that were specifically made applicable by Section 596 of the ECIA, the provisions of GEPA did not apply to Chapter 1. This determination was made because Section 596 of the ECIA is ambiguous on the issue of GEPA applicability and because of the concern that Chapter 1 be kept as free as possible from the imposition of detailed and sometimes conflicting requirements in GEPA that would decrease the flexibility and increase the burden of SEAs and LEAs in carrying out their Chapter 1 responsibilities.

In light of comments subsequently received, the Secretary has now reconsidered this determination. In reconsidering this matter, the Secretary has been concerned that continuing controversy over the issue of GEPA applicability to Chapter 1 would impair the smooth and efficient implementation of the program. Therefore, subject to the exceptions described in the preamble to these regulations, the Secretary adopts the interpretation that GEPA is applicable to Chapter 1. The Department will carry out its administrative role under Chapter 1 in light of that determination.

APPENDIX C
FEDERAL NON-REGULATORY GUIDANCE
FOR CHAPTER 1



C H A P T E R 1

NONREGULATORY GUIDANCE TO ASSIST STATE EDUCATIONAL AGENCIES
IN ADMINISTERING FEDERAL FINANCIAL ASSISTANCE TO LOCAL
EDUCATIONAL AGENCIES FOR PROJECTS DESIGNED TO MEET THE
SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN
UNDER CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND
IMPROVEMENT ACT OF 1981

The guidance contained in this document is binding on all officials of the U.S. Department of Education. It is not binding, however, on State or local educational agencies. While State educational agencies may wish to consider the guidance in this document in developing their own guidelines and standards, they are free to develop--indeed, are encouraged to develop--alternative approaches that are consistent with the statute, regulations, and legislative history but may be more in keeping with particular needs and circumstances.

U.S. DEPARTMENT OF EDUCATION

June 1983



PREFACE

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). Funds for use under Chapter 1 became available on July 1, 1982.

Simply stated, Chapter 1--

- o Continues to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children under the same formula that governed the allocation of Title I funds;
- o Retains the same basic purposes of Title I; and
- o Contains shorter and less detailed requirements than Title I.

The programs authorized by Chapter 1 provide financial assistance to--

- o Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children;
- o State agencies (SAs) for projects designed to meet the special educational needs of handicapped children;
- o State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions;
- o State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishermen;
- o State educational agencies for projects designed to improve the interstate and intrastate coordination of educational programs available for migratory students; and
- o The Secretary of the Interior to meet the special educational needs of Indian children.

In the November 19, 1982 final regulations for Chapter 1 programs operated by LEAs, the Secretary of Education stated that:

Consistent with the Administration's efforts to reduce regulatory burden while increasing State and local flexibility, these regulations address a limited number of issues. As a result, these regulations do not prescribe specific methods for implementing each of the changes that Chapter 1 makes in previous Title I requirements (e.g., changes in requirements concerning comparability of services, selection of project areas, needs assessment, and parental involvement). To the extent feasible, the Secretary will give deference to an SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with the Chapter 1 statute, legislative history, and regulations.

The Secretary went on to indicate that he is aware that many officials have requested guidance regarding implementation of Chapter 1 programs. As a result, he has decided to issue this document to assist SEAs in administering the Chapter 1 program for LEAs. It is important to recognize that this document deals only with that portion of Chapter 1 that provides financial assistance to LEAs.

Since SEAs have the responsibility for reviewing and approving LEA applications for Chapter 1 funds, the nonregulatory guidance in this document is addressed primarily to SEAs. The LEAs should rely on these interpretations only to the extent that they have been adopted by the SEA. The interpretations and policies contained in this document are binding on all officials of the U.S. Department of Education (including the Inspector General). They are not binding, however, on SEAs or LEAs. This document does not impose any requirements beyond those in the Chapter 1 statute and regulations. While SEAs may wish to consider this nonregulatory guidance in developing their own guidelines and standards, they are free to develop--indeed, are encouraged to develop--alternative approaches. The SEAs should be aware, however, that in preparing this document the Department sought to interpret the statute as broadly as possible.

In other words, this document contains acceptable--but not exclusive--guidance as to the Chapter 1 requirements. It is the Department's expectation that the document will assist SEAs in deciding how to administer the Chapter 1 program for LEAs. The Department welcomes suggestions concerning how future editions of the document may be improved.

<u>Section</u>	<u>Page</u>
1 Purpose of Chapter 1 Program for LEAs.....	1
2 Definitions.....	1-2
3 State Assurances.....	2-3
4 Payments for State Administration.....	3
5 LEA Project Applications.....	4
6 Allocation of Funds.....	4-6
7 Selection of Attendance Areas.....	6-9
8 Annual Assessment of Educational Needs.....	10-12
9 Sufficient Size, Scope, and Quality.....	12
10 Prohibition Against Using Chapter 1 Funds to Provide General Aid.....	13
11 Consultation with Parents and Teachers.....	13-14
12 Evaluation.....	15
13 Allowable Costs.....	16-17
14 Recordkeeping.....	17-18
15 Audits and Access to Records	18
16 Compromise of Audit Claims.....	19
17 SEA Rulemaking and Other Responsibilities.....	19
18 Maintenance of Effort.....	20-23
19 Supplement, not Supplant.....	23-30
20 Comparability of Services.....	31-34
21 Participation by Children in Private Schools.....	34-38
22 Due Process Procedures.....	38-39
23 Services in Local Institutions for Neglected or Delinquent Children.....	39-41
24 Application of Other Statutes and Regulations.....	41-43

APPENDIX A - Statutory Requirements

APPENDIX B - Regulatory Requirements

APPENDIX C - Subpart H, 34 CFR Part 74

SECTION 1

PURPOSE OF CHAPTER 1 PROGRAM FOR LEAS

Statutory Requirement

Section 552 of Chapter 1 (Appendix A, page 1)

Regulatory Requirement

Section 200.1 of the regulations (Appendix B, page 5)

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SECTION 2

DEFINITIONS

Definitions that apply to the Chapter 1 program for LEAs are contained in the following documents:

1. Section 595 of the Education Consolidation and Improvement Act of 1981 (ECIA). (See Appendix A, pages 8-9.) This section defines the following terms:

- construction
- elementary school
- equipment
- free public education
- local educational agency
- parent
- school facilities
- secondary school
- Secretary
- State
- State educational agency

2. Section 198 of Title I of the Elementary and Secondary Education Act of 1965, as amended. (See Appendix A, pages 40-41.) As provided in Section 595(b) of the ECIA, any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of the ECIA has the same meaning as that term was given in Title I, in effect prior to October 1, 1981. Thus, the following terms defined in Section 198 of Title I apply:

- average daily attendance
- average per pupil expenditure
- county
- current expenditures

3. Section 200.3(b) of the regulations implementing the Chapter 1 program for LEAs. (See Appendix B, pages 5-6.) This section defines the following terms:

attendance area
Chapter 1
children
educationally deprived children
fiscal year
institution for delinquent children
institution for neglected children
preschool children
private
project area
public
Title I

4. Section 200.92 of the regulations implementing the Chapter 1 program for LEAs. (See Appendix B, pages 12-13.) This section contains additional definitions pertaining to the due process procedures in §§200.90-200.106 of the regulations.

The definitions in 34 CFR Part 77 (definitions in the Education Department General Administrative Regulations (EDGAR) that apply generally to education programs) do not apply to the Chapter 1 program for LEAs. (See §200.3(e) of the regulations, Appendix B, page 6.)

* * * * *

SECTION 3

STATE ASSURANCES

Statutory Requirement

Section 596(a) of the ECIA (Appendix A, page 9); Section 435 of the General Education Provisions Act (GEPA) (Appendix A, page 18)

Regulatory Requirement

Section 200.10 of the regulations (Appendix B, page 6)

Discussion

As stated in Section 596 of the ECIA, Section 435 of GEPA only applies to the Chapter 1 program to the extent that it relates to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds). The applicable portions of Section 435 of GEPA are subsections (b)(2) and (b)(5), which are included on page 18 of Appendix A.

An SEA meets these requirements if it submits to the Secretary a document that indicates that it will comply with these assurances in administering funds provided under Chapter 1. An SEA need only submit these assurances for the first year the SEA participates in the Chapter 1 program. Such assurances will remain in effect for the duration of the SEA's participation in Chapter 1.

Unlike Title I, Chapter 1 does not require an SEA to submit a State application in order to receive Chapter 1 funds for its LEAs.

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SECTION 4

PAYMENTS FOR STATE ADMINISTRATION

Statutory Requirement

Section 194(a) of Title I (Appendix A, page 39), as amended by Section 554(d) of Chapter 1 (Appendix A, page 2)

Regulatory Requirement

Section 200.11 of the regulations (Appendix B, page 6)

Discussion

Section 554(d) of Chapter 1 reduces the payment for State administration to a maximum of 1 percent of the State's allocation under Chapter 1. The minimum payment for State administration (\$225,000 for a State or \$50,000 for an insular area) remains unchanged from the minimum payment under Title I.

* * * * *

SECTION 5

LEA PROJECT APPLICATIONS

Statutory Requirement

Section 556 of Chapter 1 (Appendix A, pages 2-3); Section 436 of GEPA (Appendix A page 18)

Regulatory Requirements

Sections 200.13-200.14 of the regulations (Appendix B, page 6)

Discussion

Section 556(a) of Chapter 1 provides that an LEA may receive a grant under Chapter 1 for any fiscal year if it has on file with the SEA an application which describes the programs and projects to be conducted with grant funds for a period of not more than three years, and the application has been approved by the SEA. In addition, Section 556(b) requires the LEA to include certain assurances in its application to the SEA. The LEA's application must also contain the assurances required by Section 436(b)(2) and (b)(3) of GEPA regarding fiscal control and fund accounting procedures.

In connection with its role in approving an LEA's application, the SEA may require the LEA to provide information that the SEA needs in order to carry out its responsibilities under Section 556 of Chapter 1. An SEA's approval of an LEA's application extends only to the project described in that application. Each SEA has the discretion to prescribe the format for LEA applications, and to determine what specific information LEAs must present as part of their applications. The SEA, however, may not use the application process to impose requirements that are inconsistent with the requirements under Chapter 1 or other applicable Federal statutes and regulations. Section 200.13(c) requires an LEA to update annually certain aspects of its application to the SEA. Section 200.13(d) requires further updating of information whenever there have been substantial changes in the number of children being served or the services being provided.

* * * * *

SECTION 6

ALLOCATION OF FUNDS

Statutory Requirement

Section 554(a) and (b) of Chapter 1 (Appendix A, pages 1-2)

Regulatory Requirements

Sections 200.20-200.46 of the regulations (Appendix B, pages 6-9)

Discussion

Grants for LEAs under Chapter 1 will be determined on the same basis as they were determined under Title I. The following is a summary of the allocation process:

1. Basic Grants

As stated in §200.20(a) of the regulations, each LEA in a State is eligible to receive Chapter 1 funds for a fiscal year if there are at least 10 children from low-income families in the LEA. Because the Secretary does not currently have data to determine allocations for LEAs, the Secretary uses the procedure described in §200.21 of the regulations, and determines the county aggregate amount of basic Chapter 1 grant funds that all LEAs in each county are eligible to receive. The SEAs then allocate the county aggregate amounts using the procedures in §200.22 of the regulations. In general, after making allocations based on children in local institutions for neglected or delinquent children, the SEA allocates the remaining county aggregate amount to LEAs in a county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs. Section 200.22(b)(2) of the regulations provides for adjustments to the allocations where (1) a school district of an LEA overlaps a county boundary; (2) an LEA serves a substantial number of children from the school district of another LEA; and (3) an LEA's school district is merged, or consolidated, or a portion of the district is transferred to another LEA. Section 200.23 of the regulations also provides exceptions to the county aggregate amounts in any State in which a large number of LEAs overlap county boundaries.

2. Special Incentive Grants

Sections 200.30-200.33 of the regulations contain provisions concerning the allocation of special incentive grants. In summary, an LEA that is eligible to receive a basic Chapter 1 grant for a fiscal year may be entitled to a special incentive grant under Section 116 of Title I if the LEA is located in a State that has in effect for that fiscal year a State compensatory education program (1) that meets the requirements of Section 131(c) of Title I; and (2) under which not less than 50 percent of the funds expended in any LEA in the State is spent in low-income areas.

3. Concentration Grants

As stated in §200.40 of the regulations, a State that is eligible for a grant under Chapter 1 for any fiscal year may receive concentration grant funds from the amount of such funds available for that year. In general, these grants are designed to provide additional Chapter 1 services in LEAs which have especially high concentrations of children from low-income families. Sections 200.41-200.42 describe the procedures for determining the amounts of concentration grants. Section 200.43 explains how concentration grants are awarded, and §200.44 indicates that concentration grant funds must be used to carry out activities described in the LEAs' approved Chapter 1 project applications.

* * * * *

SECTION 7

SELECTION OF ATTENDANCE AREAS

Statutory Requirement

Section 556(b)(1) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.49 of the regulations (Appendix B, page 9)

Discussion

Like Title I, Chapter 1 requires an LEA to conduct its projects to serve selected school attendance areas. Under Section 556(b)(1)(A) of Chapter 1, an LEA may select those attendance areas with the highest concentrations of children from low-income families as Chapter 1 project areas. Section 556(b)(1)(B) of Chapter 1, however, permits an LEA with a "uniformly high concentration" of low-income children to include all of its attendance areas in its Chapter 1 project. This statutory provision is similar to the "no-wide variance" provision in §201.51(d)(4) of the Title I regulations. Section 556(b)(1)(C) of Chapter 1 provides a new option that was not available under Title I. This permits an LEA to use part of its Chapter 1 funds for services that promise to provide significant help to all educationally deprived low-income children residing in the LEA, regardless of whether those children reside in attendance areas that qualify under Section 556(b)(1)(A) or (B). Rather than establishing a new procedure for the selection of attendance areas, Section 556(b)(1)(C) actually creates an exception to the requirement that services be provided in eligible attendance areas.

Guidance in selection of attendance areas

In deciding what procedures LEAs may follow in selecting attendance areas as Chapter 1 project areas under Section 556(b)(1)(A) and (B), an SEA may wish to consider the following points:

1. Section 556(b)(2) of Chapter 1 requires an LEA to conduct "an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas...." In order to meet this requirement, an LEA may (a) determine which of its attendance areas are eligible under Section 556(b)(1)(A) or (B); (b) make a preliminary needs assessment to determine grade levels to be served and general instructional objectives; and (c) select the attendance areas to be designated as project areas.
2. In identifying eligible attendance areas, LEAs are encouraged to use the best available measure--which may be a composite of several indicators--for determining what is a low-income family. For example, an LEA may use (a) data on children from families receiving Aid to Families with Dependent Children, or (b) data on families whose children are eligible under the National School Lunch Program.
3. In identifying eligible attendance areas, an LEA may group its attendance areas according to grade spans. If an LEA uses grade span groupings, the groupings should be consistent with the grade spans served by the LEA's schools (e.g., K-6, 7-9, 10-12).
4. Some of the permissible methods for identifying attendance areas that qualify as having "the highest concentrations of low-income children" under Section 556(b)(1)(A) include:
 - a. Percentage method. An attendance area is eligible if the percentage of children from low-income families in that area is at least equal to the percentage of children from low-income families in the LEA as a whole.
 - b. 25 percent rule. Even if the percentage of children from low-income families in the LEA as a whole exceeds 25 percent, an LEA may identify as eligible each attendance area in which at least 25 percent of the children are from low-income families.
 - c. Numerical method. An attendance area is eligible if the number of children from low-income families in that area is at least equal to the average number of children from low-income families per attendance area in the LEA as a whole.

- d. Combination of percentage and numerical method. An LEA may identify some attendance areas as eligible by using the percentage method and some by using the numerical method. The total number of attendance areas that the LEA identifies as eligible by using the combination method, however, should not be more than the maximum number of attendance areas that the LEA would have identified as eligible if it had used only one of the methods.
5. The definition of "attendance area" contained in §200.3 of the regulations states, "...if a child's school attendance area cannot be determined on a geographical basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis."
6. An LEA may identify a school as an eligible school to receive Chapter 1 services--even if the school is located in an ineligible attendance area or serves children from more than one attendance area--if the number or percentage of low-income children attending that school is at least as high as the comparable statistics for an attendance area that was identified as eligible under one of the methods described above.
7. One interpretation of the phrase "uniformly high concentration of such children," as used in Section 556(b)(1)(B), is to permit an LEA to identify all attendance areas in the LEA or in a particular grade span grouping as eligible to receive Chapter 1 funds if the variation between (a) the percentage of children from low-income families in the attendance area with the highest concentration of such children and (b) the percentage of children from low-income families in the attendance area with the lowest concentration of such children is not more than the greater of 10 percent or one-third of the percentage of children from low-income families in the LEA as a whole. If an LEA chooses to use this option, it must provide project services in all attendance areas. It may not use the option to designate all areas as eligible and provide services in only a limited number of those areas.
8. The Secretary does not believe that Chapter 1 requires an LEA to serve attendance areas in rank order of their concentration of children from low-income families.
9. Title I included a provision that permitted an attendance area or school to be treated as eligible if it was eligible and designated as a project area or project school in either of the two preceding fiscal years (Title I, §122(c)). The Chapter 1 statute does not include a provision that permits an LEA to continue to consider an attendance area or school to be eligible if it does not currently qualify as an eligible attendance area or school. Under Chapter 1, however, an LEA is not required to identify eligible attendance areas or schools on an annual basis. An LEA's identification of eligible attendance areas or schools may be for the entire period covered by the LEA's application.

Guidance for the selection of participants under Section 556(b)(1)(C)

Section 556(b)(1)(C) of Chapter 1 permits an LEA to use part of its available Chapter 1 funds "...for services which promise to provide significant help for all such children served by such agency." As stated in Section 8 of this document and §200.49(c) of the final Chapter 1 regulations, the term "all such children" refers to all educationally deprived, low-income children. If an LEA chooses to provide services to children under Section 556(b)(1)(C), it must provide services that will be made available to all educationally deprived, low-income children, including those in private schools. In providing guidance to LEAs under this provision, an SEA may wish to consider the following points:

1. As part of its assessment of the educational needs of all children in eligible attendance areas, an LEA may wish to include an assessment of the special educational needs of low-income children in ineligible attendance areas in the LEA. On the basis of that analysis, the LEA may establish educational criteria for the selection of such children to receive Chapter 1 services. In accordance with Section 556(b)(1)(C) of Chapter 1, however, an LEA's Chapter 1 services provided under that section must consist of services that promise to provide significant help in meeting the special educational needs of educationally deprived, low-income children.
2. Section 556(b)(1)(C) states that under this option, services are "for all such children" (emphasis added). Under this provision, therefore, LEAs may not limit services to a portion of the low-income, educationally deprived children in the agency. This provision does not require that each child receive services; rather that services be designed for and available to all children, and, taken collectively, the provision of the services should promise to provide significant help to the group. Services provided under this option may be LEA rather than school based--for instance, establishment of after-school tutoring centers or establishment of traveling instructional programs which, during the school year, offer special services in all attendance areas having eligible children.

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SECTION 8

ANNUAL ASSESSMENT OF EDUCATIONAL NEEDS

Statutory Requirement

Section 556(b)(2) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.50 of the regulations (Appendix B, page 9)

Discussion

Chapter 1 retains the Title I requirement that LEAs conduct an annual assessment of educational needs. It is through the needs assessment procedure that an LEA decides which educationally deprived children will receive Chapter 1 services and determines what those services will be.

In providing guidance to LEAs on designing a project that meets the needs assessment requirement, an SEA may wish to consider the following points:

1. Section 200.3(b) of the regulations defines "educationally deprived children" as "children whose educational attainment is below the level that is appropriate for children of their age." As in the past, LEAs are free to use whatever measures of educational deprivation they think best identify the educationally deprived children and their special educational needs.
2. An LEA may also identify and select schools as project schools to receive Chapter 1 services on the basis of the annual needs assessment. If an LEA selects schools to receive Chapter 1 services, the needs assessment must identify educationally deprived children in those schools.
3. As stated in §200.50(a) of the regulations, identification of educationally deprived children must also include the identification of educationally deprived children residing in eligible attendance areas who are enrolled in private schools, regardless of whether those private schools are inside or outside the LEA. In identifying general instructional needs to be addressed and grade levels to be served, an LEA must consider the needs of the educationally deprived children it has identified in private schools.

4. Chapter 1 retains the basic Title I requirement that an LEA must conduct an annual assessment of educational needs. The Chapter 1 needs assessment must permit the selection of those educationally deprived children in the greatest need of special assistance. The term "permit," less definitive than "require," provides LEAs some latitude in selecting children for participation in Chapter 1 programs. While Chapter 1 funds must be used to serve only educationally deprived children, LEAs have discretion in deciding which educationally deprived children to serve. For example, an LEA may choose to skip certain educationally deprived children who may be receiving adequate services from other sources. Similarly, an LEA may continue to provide Chapter 1 services to an educationally deprived child even though he or she is not one of the children who is currently most in need of special assistance. The LEAs may use this more flexible needs assessment provision to keep educationally deprived children in the Chapter 1 project after they have made considerable progress.
5. Under Section 556(b)(1)(C), an LEA may use part of its Chapter 1 funds for services which promise to provide significant help for all educationally deprived, low-income children. This new provision is discussed in Section 7 of this document.

Example

One of a number of possible approaches that an LEA could use to meet the annual needs assessment requirement is set forth below:

STEP ONE - Identification of educationally deprived children

Using criteria and information of its choice, an LEA identifies educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools. Sources of information might include--

- o standardized test score data
- o results of informal diagnoses
- o records of academic performance
- o observations by professional staff

STEP TWO - Identification of general instructional areas and needs

Using information collected under Step One, an LEA identifies the general instructional areas (e.g., reading, math, language arts) on which the Chapter 1 project will focus, including the grade levels to be served and the types of educational needs to be addressed. In making this determination, the LEA may wish to consider services that are already available from other sources. At this point, the LEA determines which eligible attendance areas will be selected to participate in the Chapter 1 project.

STEP THREE - Selection of educationally deprived children to participate in the Chapter 1 project

Using selection criteria of its choice, an LEA identifies those educationally deprived children in project areas who will participate. The LEA may select those educationally deprived children in the greatest need of special assistance to participate.

STEP FOUR - Determination of the special educational needs of children selected to participate

An LEA identifies the specific educational needs of the children selected under Step Three and designs project activities which focus directly on those needs.

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SECTION 9

SUFFICIENT SIZE, SCOPE, AND QUALITY

Statutory Requirement

Section 556(b)(3) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.51 of the regulations (Appendix B, page 9)

Discussion

Chapter 1 continues the requirement in Title I that an LEA's project be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served. An SEA's determination concerning whether the size, scope, and quality of an LEA's project is acceptable may be based, in part, on the LEA's assessment of the needs of children in its project areas (see Section 7 of this document) and the SEA's standards for the effective and efficient use of Chapter 1 funds in ways that meet those needs. Under Chapter 1, an SEA has the same responsibility it had under Title I to determine whether an LEA's project is likely to give reasonable promise of meeting the special educational needs of the children being served.

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SECTION 10

PROHIBITION AGAINST USING CHAPTER 1 FUNDS TO PROVIDE GENERAL AID

Statutory Requirements

Section 552 of Chapter 1 (Appendix A, page 1); Section 555(c) of Chapter 1 (Appendix A, page 2); and Section 556(b)(2) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.52 of the regulations (Appendix B, page 9)

Discussion

Section 555(c) of Chapter 1 requires, in part, that Chapter 1 funds be used only for programs and projects which are designed to meet the special educational needs of educationally deprived children. This requirement was also contained in Section 124(a) of Title I. An LEA's Chapter 1 project, therefore, must serve only educationally deprived children and must provide only services designed to meet their special educational needs.

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SECTION 11

CONSULTATION WITH PARENTS AND TEACHERS

Statutory Requirement

Section 556(b)(3) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.53 of the regulations (Appendix B, page 9)

Discussion

Under Section 556(b)(3) of Chapter 1, as under Title I, LEAs must consult with teachers and parents as they design and implement their Chapter 1 projects. Unlike Title I, Chapter 1 does not require LEAs to establish parent advisory councils (PACs) (Cong. Rec. H5645 (daily ed. July 29, 1981)). The Senate report on the EGIA states: "No mention is made of local educational agency advisory committees, and the Committee considers the use and role of advisory committees to be purely a matter of local discretion" (Sen. Rept. No. 97-139, 97th Cong. 1st Sess. 896 (1981)).

Another option for meeting the parent consultation requirement is to hold regularly scheduled open meetings to explain, discuss, and consult with parents concerning the Chapter 1 project. Although the statute requires consultation with parents of the children to be served, it would not be inconsistent with Chapter 1 requirements to invite all parents to the meetings.

An LEA could also involve parents in various ways using a full or part-time "parent coordinator" or staff person whose primary or exclusive responsibility is to work with parents. Many LEAs currently employ such a staff member under Title I to promote parental involvement by contacting parents, distributing materials, holding training sessions, etc.

Meaningful parental involvement requires adequate information upon which to base that involvement. The LEAs may wish to consider providing parents--in an ongoing, timely, and adequate manner--proposed and final project applications, needs assessment documents, project plans, budgetary information, evaluation data, local, State, and Federal laws, regulations, and guidelines, and any other Chapter 1 information needed for full, effective parent involvement.

The options discussed above are by no means the only ways to meet the parent consultation requirement. These are alternatives that SEAs and LEAs may wish to consider when planning parent consultation.

Under Section 556(b)(3) of Chapter 1, LEAs must also consult with teachers of the children to be served in designing and implementing Chapter 1 projects. No particular form of teacher consultation is required. An LEA may wish to hold special staff meetings to discuss the Chapter 1 project, or it may devote portions of regular staff meetings to Chapter 1. Although consultation with teachers of the children to be served is required, it is not inconsistent with Chapter 1 to involve all teachers.

Section 200.70 of the regulations requires that, in providing Chapter 1 services to children in private schools, LEAs consult with private school officials. As in the requirements for parents and teachers, no particular form of consultation is required.

Section 555(c) of Chapter 1 indicates that Chapter 1 projects may include expenditures authorized under Title I. Since Title I permitted expenditures for the involvement of parents and teachers, an LEA may use Chapter 1 funds to pay costs that are reasonable and necessary for the effective implementation of the LEA's plan for consultation with parents and teachers, including costs associated with meetings and other appropriate activities of PACs.

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SECTION 12

EVALUATION

Statutory Requirement

Section 556(b)(4) of Chapter 1 (Appendix A, page 3)

Regulatory Requirement

Section 200.54 of the regulations (Appendix B, page 9)

Discussion

Chapter 1 contains less specific requirements for evaluation than those specified in Title I. Under Section 556(b)(4) of Chapter 1, LEAs are required to conduct an evaluation of their Chapter 1 projects. The law, however, gives SEAs and LEAs considerable discretion concerning the methods used for this evaluation. Under Chapter 1, the Department does not require LEAs to use any particular evaluation models.

In approving evaluation designs that meet Chapter 1 requirements, an SEA may wish to consider the following points:

1. Any evaluation schedule which satisfies the frequency requirement of "at least once every three years" may be used.
2. Under Section 556(b)(4) of Chapter 1, the evaluation design that is used must include objective measurements of educational achievement in basic skills. Any objective measurement instrument, however, may be used.
3. The models described in §§201.172-201.174 of the Title I regulations are appropriate evaluation designs and may be used. The Department does not require the use of those, or any other, particular models.

Chapter 1 does retain the Title I requirement that project participants' progress be measured to determine whether gains are sustained over a period of more than one year. One way of measuring sustained performance is by administering a pre-test, a post-test, and then taking a third measurement some time later. Acceptable testing cycles for such a schedule include fall/spring/fall, fall/fall/fall, and spring/spring/spring.

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SECTION 13

ALLOWABLE COSTS

Statutory Requirement

Section 555(c) of Chapter 1 (Appendix A, page 2)

Regulatory Requirement

Section 200.55 of the regulations (Appendix B, page 9)

Discussion

As indicated in §200.55 of the regulations, an LEA may use Chapter 1 funds only to meet the costs of project activities that are designed to meet the special educational needs of educationally deprived children and are included in the LEA's Chapter 1 application. Section 555(c) of Chapter 1 identifies certain types of allowable expenditures under Chapter 1. Section 555(c) also indicates that Chapter 1 projects may include "other expenditures authorized under title I of the Elementary and Secondary Education Act as in effect September 30, 1982."

Under Section 134 of Title I, personnel paid entirely with Title I funds may be assigned to certain "limited, rotating, supervisory duties not related to classroom instruction, the benefits of which are not limited to [Title I] participating children." Such duties may include only those to which similarly situated personnel not paid with Title I funds are assigned at the same school site and for which those similarly situated personnel are paid. Examples of the types of duties that may qualify include hall duty, lunchroom supervision, playground supervision, and other shared tasks that are necessary to the orderly conduct of the school day. Under Section 134 of Title I, the use of Title I personnel for these noninstructional duties may not exceed the lesser of (a) the proportion of total work time that non-Title I personnel spend performing these non-Title I duties; or (b) 10 percent of the Title I person's total work time. Since Title I authorized expenditures for this limited use of project personnel to perform noninstructional duties, the same types of expenditures are allowable under Section 555(c) of Chapter 1. Chapter 1 funds, however, may not be used to pay for any such noninstructional services in private schools.

Under Section 555(c) of Chapter 1 and §200.55 of the regulations, SEAs have considerable flexibility in determining allowable expenditures. The provisions in 34 CFR Part 74 and, in particular, Appendix C thereof contain specific guidance concerning the allowability of certain expenditures under Federal education programs. The preamble of the regulations indicates that, except for §74.62, 34 CFR Part 74 does not apply to Chapter 1 programs. The SEAs, however, may use these provisions as guidance. The SEAs that continue to comply with the principles contained in 34 CFR Part 74 in meeting the requirements in §200.55 of the regulations will be considered to be in compliance with the allowable costs requirements of Chapter 1.

When Obligations Are Made

Chapter 1 funds are obligated when the SEA or LEA commits those funds, according to State law or practice, to the support of specific programmatic or administrative

activities and identifies the Chapter 1 funds as supporting those specific programmatic or administrative activities.

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SECTION 14

RECORDKEEPING

Statutory Requirements

Section 555(d) of Chapter 1 (Appendix A, page 2); Section 556(b) of Chapter 1 (Appendix A, page 3); Section 437(a) of GEPA (Appendix A, page 19)

Section 435(b)(5) of GEPA, incorporated by Section 596(a) of ECIA, requires an SEA to use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Chapter 1 funds.

Regulatory Requirement

Section 200.56 of the regulations (Appendix B, page 9)

Discussion

The recordkeeping requirements contained in §200.56 of the regulations reflect the Department's desire to impose minimal recordkeeping obligations on SEAs and LEAs. In the Department's view, these minimal requirements are needed in order to permit verification that Chapter 1 funds have been properly spent. Consistent with the intent of Congress to reduce regulatory burdens, the recordkeeping requirements in §200.56 represent a major reduction from the recordkeeping that was previously required by §200.140 of the Title I regulations.

Consistent with an SEA's responsibility to conduct audits and program evaluations under Chapter 1, an SEA may require LEAs to retain specific types of records to demonstrate compliance with Chapter 1 requirements.

As stated in Sections 555(d) (see Appendix A, page 2) and 556(b) of Chapter 1 (see Appendix A, page 3), SEAs and LEAs must keep records as may be required for fiscal audit and program evaluation. The maintenance of records is essential if SEAs and LEAs are to comply with 34 CFR 74.62 (see Appendix C).

As nothing in the Chapter 1 statute or regulations specifies the particular records or data elements that SEAs and LEAs must maintain, agencies are free to keep those records that they determine are necessary for fiscal audit and program evaluation as long as they comply with the requirements of §200.56 of the regulations. The SEAs and LEAs, however, may wish to consider keeping records that show the following: the amount of Chapter 1 funds received; how the SEA or LEA used the funds; the total cost of the Chapter 1 project; any costs provided from other sources; compliance with Chapter 1 requirements; significant project experiences and results; evaluation data collected under

Section 556(b)(4); and any other information needed to facilitate an effective audit or evaluation of the Chapter 1 program.

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SECTION 15

AUDITS AND ACCESS TO RECORDS

Statutory Requirements

Section 555(d) of Chapter 1 (Appendix A, page 2); Section 556(b) of Chapter 1 (Appendix A, page 3); Section 452 of CEPA (Appendix A, pages 25-26); Section 1744 of the Omnibus Budget Reconciliation Act of 1981 (Appendix A, page 10)

The Inspector General Act of 1978 (5 U.S.C. App.) and the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212) also provide authority for audits and access to records of the Chapter 1 program.

Regulatory Requirements

Section 200.57 of the regulations (Appendix B, pages 9-10) and 34 CFR 74.62 (Appendix C)

Discussion

Section 200.57(a) expressly states that the Inspector General of the Department and the Comptroller General of the United States have the authority to conduct audits of the use of Chapter 1 funds. The SEAs are required to repay to the Department any funds determined by Federal audits not to have been spent in accordance with applicable law.

Section 200.57(b) of the regulations provides that any State or local government that receives Chapter 1 funds must comply with the audit requirements in 34 CFR 74.62. Section 74.62 provides for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations. The requirements are established to ensure that audits are made on an organizationwide basis, rather than on a grant-by-grant basis. As recipients of Federal financial assistance, SEAs are responsible for ensuring that the single, organizationwide audits of subrecipients required by §74.62 are conducted. This section also explains the conditions under which funds recovered from an LEA, as a result of a State audit, may be returned either to the same LEA or to another LEA.

The costs of audits required by §74.62 may be charged to the programs being audited as direct or indirect administrative costs. Of these costs, a proportionate share may be charged to the Chapter 1 program.

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SECTION 16

COMPROMISE OF AUDIT CLAIMS

Regulatory Requirement

Section 200.58 of the regulations (Appendix B, page 10)

Discussion

The Secretary recognizes the legal responsibility to seek recovery of Chapter 1 funds that have been determined through the audit resolution process to have been misspent. The Secretary, however, would generally rather resolve audit findings through negotiated compromise than through expensive and time-consuming administrative or judicial procedures. Section 200.58 sets forth the standards that the Secretary and other Department officials will use in deciding whether to compromise audit claims or to recommend possible compromises to the Department of Justice.

Under Section 452(f) of GEPA, the Secretary has the authority to compromise audit claims of \$50,000 or less under the conditions set forth in that section. Compromise settlements of claims in excess of that amount must be approved by the Department of Justice.

Under Section 456 of GEPA, the Secretary may repay to an SEA or LEA up to 75 percent of the funds recovered in satisfaction of a final audit determination concerning Chapter 1 funds if the conditions stated in that section are met.

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SECTION 17

SEA RULEMAKING AND OTHER RESPONSIBILITIES

Regulatory Requirement

Section 200.59 of the regulations (Appendix B, page 10)

Discussion

This section sets out an SEA's general responsibility to ensure that its LEAs comply with all applicable Federal requirements pertaining to Chapter 1. The section authorizes an SEA, in carrying out this responsibility, to adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds. Any such rules, regulations, procedures, guidelines, and criteria must be made in accordance with State law and must not conflict with Chapter 1, its legislative history, the regulations in Part 200, and any other applicable Federal statutes and regulations.

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SECTION 18

MAINTENANCE OF EFFORT

Statutory Requirement

Section 558(a) of Chapter 1 (Appendix A, page 5)

Regulatory Requirements

Sections 200.60-200.61 of the regulations (Appendix B, page 10)

Discussion

Like Title I, Chapter 1 requires LEAs that receive Chapter 1 funds to maintain fiscal effort with respect to the provision of free public education. Section 558(a) of Chapter 1 relaxes the standard for this requirement by requiring that an LEA's fiscal effort for the preceding fiscal year be not less than 90 percent of the effort for the second preceding fiscal year. In addition, under Section 558(a)(3) of Chapter 1, an SEA, rather than the Secretary, is authorized to waive the maintenance of effort requirement for one fiscal year only, if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. Under Chapter 1, if the one-time waiver is not appropriate, an LEA's allocation must be reduced in the exact proportion to which the LEA failed to meet the maintenance of effort requirement by falling below the 90 percent level.

The following paragraphs contain nonregulatory guidance regarding the maintenance of effort requirement:

1. Expenditures to be considered

As stated in Section 595(b) of ECIA and §200.3(d) of the regulations, any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of ECIA has the same meaning as that term was given in Title I. Section 198(a)(6) of Title I defined the term "current expenditures" (see Appendix A, pages 40-41).

The definition of current expenditures in Section 198 of Title I was used for computing maintenance of effort under §200.90 of the Title I regulations (46 Fed. Reg. 5145 (1981)). Because Section 595 of ECIA does not define this term, it has the same meaning under Chapter 1 as it had under Title I. The SEAs and LEAs, therefore, may continue to use this definition for deciding which expenditures to consider in determining compliance with the Chapter 1 maintenance of effort requirement.

2. Reduction in current allocation as a result of failure to maintain effort

As stated in §200.60(b) of the regulations, if an LEA fails to maintain effort and a waiver is not appropriate, the SEA shall reduce the LEA's Chapter 1 allocation in the exact proportion to which the LEA failed to meet the requirements of Section 558(a)(1) of Chapter 1 (using the measure most favorable to the LEA) for the second preceding fiscal year. For examples of how such a reduction is made, see fiscal years (FYs) 1983 and 1986 of the table on the following page.

3. Effect of failure to maintain effort on the base to be used in subsequent years

Section 200.60(b)(2) of the regulations specifies that, in determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the third preceding fiscal year (see tabular example).

Example (This example is based on an LEA with expenditures of \$1,000,000 in FY 1980, \$850,000 in FY 1981, \$810,000 in FY 1982, \$800,000 in FY 1983, and \$700,000 in FY 1984)

	1	2	3	4
Project year	Expenditures* in first preceding fiscal year	Expenditures in second preceding fiscal year	Level of expenditures required to avoid maintenance of effort penalty (90% of column 2)	Penalty reduction in LEA allocation
1983	\$850,000 (FY 1981) (failure to maintain effort)	\$1,000,000 (FY 1980)	\$900,000	5.6 percent of LEA allocation (\$50,000/\$900,000)
1984	\$810,000 (FY 1982)	\$900,000 (90% of FY 1980— i.e., third preceding fiscal year—instead of FY 1981)	\$810,000	none
1985	\$800,000 (FY 1983)	\$810,000 (FY 1982)	\$729,000	none
1986	\$700,000 (FY 1984) (failure to maintain effort)	\$800,000 (FY 1983)	\$720,000	2.8 percent of LEA allocation (\$20,000/\$720,000)

* Because funds expended in a particular project year (e.g., 1983) are applied for during the preceding year (e.g., 1982), the "first preceding year" would be the year two years prior to the project year (e.g., 1981).

4. Standards for granting a waiver

As stated in §200.61(a) of the regulations, an SEA may waive, for one fiscal year only, the maintenance of effort requirement for a particular LEA if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the resources of the LEA. Section 200.61(a)(2) of the regulations states that an SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances. The standards in §200.61(a) are based on the conference committee report on ECIA. (See 127 Cong. Rec. H5645 (daily ed. July 29, 1981).)

5. Effect of a waiver on an LEA's current Chapter 1 allocation

As stated in §200.61(b)(1) of the regulations, if an SEA waives the maintenance of effort requirement for a particular LEA, the SEA must allocate to that LEA the amount of Chapter 1 funds it is otherwise entitled to receive.

6. Effect of a waiver on the base to be used in subsequent years

Section 200.61(b)(2) of the regulations specifies that, in determining maintenance of effort for the fiscal year immediately following the fiscal year for which a waiver was granted, an SEA may consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year (see tabular example).

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SECTION 19

SUPPLEMENT, NOT SUPPLANT

Statutory Requirement

Section 558(b) and (d) of Chapter 1 (Appendix A, pages 5-6)

Regulatory Requirement

Section 200.62 of the regulations (Appendix B, pages 10-11)

Discussion

Section 558(b) of Chapter 1 retains the same basic supplement, not supplant requirement that was previously contained in Section 126(c) of Title I. Unlike Title I, however, the Chapter 1 statute does not contain a separate supplement, not supplant requirement for the special State and local programs described in Section 131(b) of Title I. Instead, Section 558(d) of Chapter 1 provides that, in determining compliance with the supplement, not supplant requirement, an LEA may exclude State and local funds expended for special programs designed to meet the educational needs of educationally deprived children, if those programs are consistent with the purposes of Chapter 1. This exclusion represents a major change in the previous supplement, not supplant requirement. Under Chapter 1, SEAs and LEAs are no longer required to provide children participating in a Chapter 1 project with an equitable share of State and locally-funded services that qualify for an exclusion. Chapter 1 also provides that an LEA shall not be required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with the supplement, not supplant requirement.

The following discussion does not impose any requirements beyond those contained in the Chapter 1 statute and regulations. It is intended to assist agencies in meeting those requirements. Although the discussion contains permissible ways of meeting the supplement, not supplant requirement, grantees may develop alternative approaches that comply with the statutory and regulatory requirements.

1. CRITERIA THAT SEAS MAY CHOOSE TO USE IN DETERMINING COMPLIANCE

a. Equitable distribution of regular, non-Federal funds.

It is a violation of the supplement, not supplant requirement if an LEA distributes State and local funds in a way that discriminates against children who participate in a Chapter 1 project. For example, an LEA could not--

- o Systematically assign a greater number of pupils per teacher in classes that include children who are receiving Chapter 1 services; or
- o Deny children who receive Chapter 1 services the opportunity to receive State and locally-funded regular programs on the same basis as other children.

b. Provision of services required by law.

It is a violation of the supplement, not supplant requirement if an LEA uses Chapter 1 funds to provide services that the LEA is required to provide under--

- o Federal, State, or local law.
- o A court order.

SOME EXAMPLES OF PROGRAMS THAT QUALIFY FOR AN EXCLUSION

Section 558(d) of Chapter 1 provides that, for purposes of determining compliance with the supplement, not supplant requirement, an LEA "may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, if such programs are consistent with the purposes of [Chapter 1]." A State or local program would qualify for an exclusion under this provision if--

- o All children participating in the program are educationally deprived.
- o The program provides supplementary services designed to meet the special educational needs of the children who are participating.

On the other hand, programs that are designed to provide special services to handicapped children or bilingual services to children of limited English-speaking proficiency would not generally qualify for an exclusion. (See, however, the discussion on pages 29-30 of this document.)

3. EXAMPLES OF CHAPTER 1 INSTRUCTIONAL SERVICES THAT MEET THE SUPPLEMENT, NOT SUPPLANT REQUIREMENT

This section describes some examples of instructional services that comply with the Chapter 1 supplement, not supplant requirement. The examples describe project designs which, if operated in public schools, meet the supplement, not supplant requirement. Not all of the designs are appropriate ways of providing Chapter 1 services in private schools. Agencies are free to develop alternative approaches that are consistent with the Chapter 1 statute and regulations.

a. In-class project. For purposes of this section, an "in-class project" means a Chapter 1 project in which instructional services are provided to participating children in the same classroom setting and at the same time in which they would receive instructional services if they were not participating in the Chapter 1 project. An in-class project meets the supplement, not supplant requirement if--

- o The project is particularly designed to meet participants' special educational needs;
- o The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1 remains responsible for,

and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the instructional program of participating children, providing them with instructional services, and evaluating their progress; and

- o Instructional staff paid with Chapter 1 funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services which are particularly designed to meet participants' special educational needs.

Example: An LEA wishes to provide a special program of remedial instruction using a teacher aide for ten high school juniors assigned to one business math class, and for five high school sophomores in a separate compensatory math class which meets at the same time. The teacher aide spends half of each class period in each class, working individually with Chapter 1 participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the supplement, not supplant requirement if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Chapter 1 participants are receiving a program of instruction which meets their individual needs.

b. Limited pull-out project. For purposes of this section, a "limited pull-out project" means a Chapter 1 project in which--

- o Instructional services are provided to participating children in a different setting or at a different time than would be the case if those children were not participating in the Chapter 1 project; and

- o Services are provided for a period that does not exceed 25 percent of the time--computed on a per day, per month, or per year basis--that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from teachers of required or elective subjects who are paid with non-Chapter 1 funds.

A limited pull-out project meets the supplement, not supplant requirement if--

- o The project is particularly designed to meet participants' special educational needs;
- o The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1, remains responsible for, and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress; and
- o Instructional staff paid with Chapter 1 funds work under the supervision of the classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services which are particularly designed to meet participants' special educational needs.

Example: Fifty third graders participate in a Chapter 1 project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Chapter 1 project, a special resource center is staffed by personnel paid with Chapter 1 funds; Chapter 1 participants are pulled out of class for one-half hour, five days per week to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the 50 participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the supplement, not supplant requirement so long as the classroom teacher whose instruction the

Chapter 1 project is designed to supplement continues to remain responsible for the program of instruction which is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work closely with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Chapter 1 participants.

c. Extended pull-out project. For purposes of this section, an "extended pull-out project" means a Chapter 1 project in which--

- o Chapter 1 services are provided to participating children in a different classroom setting or at a different time than would be the case if those children were not participating in the Chapter 1 project; and
- o Chapter 1 services are provided for a period that exceeds 25 percent of the time--computed on a per day, per month, or per year basis--that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from teachers who are paid with non-Chapter 1 funds.

An extended pull-out project meets the supplement, not supplant requirement if either of the following conditions are met:

- o The agency allocates to the Chapter 1 project the full-time equivalent number of non-Chapter 1 staff that--in the absence of the Chapter 1 service-- would have been used to provide the non-Chapter 1 funded instructional service that is replaced with the Chapter 1 funded service; or
- o The agency allocates to the Chapter 1 project an amount of non-Chapter 1 funds required to provide the number of non-Chapter 1 funded staff referred to above.

d. Add-on project. For purposes of this section, an "add-on project" is one in which Chapter 1 services are provided at a time in which participants would not otherwise be receiving State and locally-funded instructional services, including periods such as vacations, weekends, before or after regular school hours, or during noninstructional time. An add on project meets the supplement, not supplant requirement so long as the project is particularly designed to meet participants' special educational needs.

e. Replacement project. For purposes of this section, a "replacement project" means a Chapter 1 project in which--

- o Chapter 1 services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Chapter 1 project; and
- o The Chapter 1 project provides services which replace all or part of the course of instruction regularly provided to Chapter 1 participants with a distinct, self-contained Chapter 1 program which is particularly designed to meet participants' special educational needs.

A replacement project meets the supplement, not supplant requirement if the agency meets either of the conditions specified above for extended pull-out projects.

4. EXAMPLES OF PERMISSIBLE SERVICES FOR HANDICAPPED CHILDREN

In general, an LEA may not use Chapter 1 funds to provide special educational services that the LEA is required to provide to handicapped children under Federal or State law. An LEA, however, may use Chapter 1 funds to provide services to handicapped children--without violating the supplement, not supplant requirement--if the Chapter 1 services have all of the following characteristics:

- o The LEA designs its Chapter 1 project to address special needs resulting from educational deprivation, not needs relating to a child's handicapping condition;
- o The LEA sets overall project objectives that do not distinguish between handicapped and nonhandicapped participants;

- o The LEA--

(A) Through the use of uniform criteria, selects children for participation on the basis of educational deprivation, not on the basis of handicap; and

(B) Selects as participating handicapped children only those who can reasonably be expected to make substantial progress toward accomplishing project objectives without the LEA substantially modifying the educational level of the subject matter; and

- o The LEA provides Chapter 1 services at intensities taking into account the needs and abilities of individual participants, but without distinguishing generally between handicapped and nonhandicapped participants with respect to the instruction provided.

5. AN EXAMPLE OF PERMISSIBLE SERVICES FOR CHILDREN OF LIMITED ENGLISH-SPEAKING PROFICIENCY

In general, an LEA may not use Chapter 1 funds to provide special educational services that the LEA is required to provide to children of limited English-speaking proficiency under Federal or State law. An LEA may use Chapter 1 funds to provide services to children of limited English-speaking proficiency--without violating the supplement, not supplant requirement--if the Chapter 1 services have all of the following characteristics:

- o The LEA designs its Chapter 1 project to address special needs resulting from educational deprivation, not needs relating solely to a child having limited English-speaking proficiency;
- o The LEA sets overall project objectives that do not distinguish between participants of limited English-speaking proficiency and other participants;
- o Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of limited English-speaking proficiency; and
- o The LEA provides Chapter 1 services taking into account the needs and abilities of individual participants but without distinguishing generally between children of limited English-speaking proficiency and other children with respect to the instruction provided. The LEAs may use Chapter 1 funds to provide bilingual staff and secure appropriate materials, when such staff and materials are necessary to address the educational deprivation of limited English-speaking children.

* * * * *

SECTION 20

COMPARABILITY OF SERVICES

Statutory Requirement

Section 558(c) and (d) of Chapter 1 (Appendix A, pages 5-6)

Regulatory Requirement

Section 200.63 of the regulations (Appendix B, page 11)

Discussion

Section 126(e) of the Title I statute included the following requirement concerning comparability of services:

Subject to the provisions of section 131, a local educational agency may receive funds under this title only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title. Where, under regulations of the Commissioner, all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable, in accordance with regulations of the Commissioner, in each project area.

The Title I statute required each LEA to report each year concerning its compliance with the comparability requirement. The Title I statute, however, did not prescribe any particular methodology for demonstrating compliance with the comparability requirement. Although not specifically mandated by the statute, the Title I regulations contained long-standing criteria for determining compliance with the comparability requirement. Under these regulations, an LEA met the comparability requirement if for schools serving corresponding grade levels—

1. The average number of children enrolled per instructional staff member for each school serving a project area was not more than 105 percent of the average number of children enrolled per instructional staff member in schools serving school attendance areas in the LEA that were not receiving Title I assistance; and
2. The average per pupil expenditure of State and local funds for instructional staff in each school serving a project area was not less than 95 percent of the average per pupil expenditure of State and local funds for instructional staff in schools serving school attendance areas in the LEA that were not receiving Title I assistance.

Under the Title I regulations, each LEA was required to meet both of these criteria in order to comply with the Title I comparability requirement.

As shown above, the Title I regulations allowed five percent leeway in determining initial compliance with the comparability requirement. Although this tolerance was not specifically authorized by the Title I statute, it was generally recognized as being necessary to avoid an unmanageable and overly technical application of the statute. The Title I regulations allowed up to ten percent leeway in determining whether an LEA had maintained comparability, once comparability had been initially established within the five percent limit. The Title I regulations also specifically permitted LEAs to group schools by corresponding grade levels for purposes of making the comparability determinations. The Title I regulations further permitted LEAs to divide the schools in each span into two groups based on the size of their enrollments and to exclude schools with enrollments of 100 or less students in making comparability determinations.

Section 558(c)(1) of Chapter 1 contains a comparability requirement that is very similar to the comparability requirement in Title I. There are, however, the following differences:

1. Chapter 1 does not require LEAs to file comparability reports. An LEA is deemed to have met the comparability requirement if it has filed with the SEA a written assurance that it has established--
 - a. a districtwide salary schedule;
 - b. a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and
 - c. a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.
2. Section 558(c)(2) of Chapter 1 specifically provides that unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.
3. Section 558(d) of Chapter 1 permits the exclusion of State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, if such programs are consistent with the purposes of Chapter 1. Unlike Title I, however, Chapter 1 does not provide for the exclusion of State and local expenditures for bilingual programs for children of limited English-speaking proficiency or special educational programs for handicapped children or children with specific learning disabilities.

4. The statute, in Section 558(c)(2), offers one test for determining compliance with the comparability requirement. The statute does not require that this be the only way LEAs may demonstrate comparability. States may establish alternative methods that LEAs may use in meeting this requirement. States may not, however, deny comparability to an LEA meeting the test contained in Section 558(c)(2).

The following discussion addresses several specific issues raised by the changes in the comparability requirement:

1. Effect of assurances

As discussed above, an LEA is deemed to have met the comparability requirement if it has filed certain assurances with the SEA. These assurances may take the place of the detailed comparability reports that were required under Title I. Although LEAs are no longer required to demonstrate comparability on an annual basis, an LEA must ensure that it complies with the assurances that it provides under Section 558(c)(2) and will be held accountable for any breach of those assurances. Compliance with the assurances may be examined as part of program reviews, audits, or lawsuits concerning compliance. The LEAs, therefore, should retain documentation to show that they have implemented the policy contained in their assurances. An LEA that has failed to comply with the assurances will be in violation of the Chapter 1 statute.

2. Meaning of the term "equivalence"

The Chapter 1 statute and legislative history do not provide guidance on the meaning of the term "equivalence" as it is used in Section 558(c)(2). Each SEA, therefore, may wish to develop standards, e.g., by comparing pupil/staff ratios or per pupil levels of expenditures, for use in deciding whether an LEA's policy ensures equivalence among schools. With respect to equivalence among schools in teachers, administrators, and auxiliary personnel, one permissible approach would be to use either or both of the criteria that were previously used to determine comparability of services under §201.116 of the Title I regulations. Under Title I, LEAs were required to measure comparability each fall and ensure that services in each project area school not vary unfavorably from nonproject school averages by more than five percent. LEAs were further required to measure comparability one additional time, between January 1 and April 30 of each year, but were not required to make adjustments unless one or more project area schools were noncomparable by ten percent or more. Consistent with the overall attempt to afford SEAs and LEAs maximum flexibility, the regulations do not require the use of this, or any other, specific method of verifying LEAs' compliance with the comparability requirements. If an SEA does choose to use a method similar to this under Chapter 1, it could either use the same five percent/ten percent limits or it may, in accordance with the statutory requirements, establish its own reasonable limits.

It would also be permissible to allow the grade level and size groupings that were permitted under §201.117 of the Title I regulations. Under §201.117, an LEA could also exclude schools with 100 or less students from its comparability determinations. Since approaches described in §§201.116-201.117 of the Title I regulations were acceptable under Section 126(e) of Title I, those approaches are, therefore, considered acceptable under the similar comparability language in Section 558(c) of Chapter 1.

3. Meaning of the phrase "unpredictable changes"

In determining the meaning of the phrase "unpredictable changes" as used in Section 558(c)(2) of Chapter 1, each SEA has considerable flexibility. Such changes would not generally include those which the LEA knew, prior to the beginning of the school year, would occur; e.g., planned school closings, staff reassignments.

4. Expenditures that may be excluded in determining compliance

As discussed above, for the purpose of determining compliance with the comparability requirement in Section 558(c), an LEA may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children if such programs are consistent with the purposes of Chapter 1. Many State and local compensatory education programs may, therefore, be excluded from the comparability requirement.

On the other hand, unlike under Title I, State and local funds spent on programs for bilingual education or programs for the education of handicapped children may not generally be excluded in determining compliance with the comparability requirement. Possible problems resulting from this change, however, might be avoided by establishing separate standards of equivalency for programs for bilingual education and programs for education of handicapped children that relate to the number of children in each school that have a need for services under those programs.

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SECTION 21

PARTICIPATION BY CHILDREN IN PRIVATE SCHOOLS

Statutory Requirements

Sections 556(b)(5) and 557(a) of Chapter 1 (Appendix A, page 3)

Regulatory Requirements

Sections 200.70-200.75 of the regulations (Appendix B, pages 11-12)

Discussion

Section 130(a) of Title I required an LEA to provide for the participation in its Title I project of educationally deprived children in the school districts of the LEA who are enrolled in private elementary and secondary schools. The regulations implementing this requirement were contained in §§201.80-201.82 of the Title I regulations and Subpart F of 34 CFR Part 76.

Section 557(a) of Chapter 1 contains a requirement that is nearly identical to the requirement contained in Section 130(a) of Title I. The requirements in Subpart F of 34 CFR Part 76, however, do not apply to Chapter 1 programs. Instead, the regulatory requirements for the participation of educationally deprived children in private schools are contained in §§200.70-200.75 of the regulations implementing the Chapter 1 program for LEAs. Although §§200.70-200.75 contain many of the same requirements contained in Subpart F of 34 CFR Part 76, the regulations reflect the commitment to simplify regulatory requirements and to issue regulations that more closely follow the statutory language.

The following discussion deals with specific issues concerning the participation in an LEA's Chapter 1 project of children in private schools:

1. Consultation with private school officials

Section 200.70 requires an LEA to consult with private school officials in providing services to private school children. The Secretary encourages LEAs to consult with appropriate representatives before making any decisions that affect the participation of private school children.

2. Private school children to be served

As stated in §200.70, an LEA must provide the opportunity to participate in Chapter 1 services to "educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools...." This requirement applies even though such children are attending private schools outside the project area. The LEA, likewise, is not required to serve children who reside outside a project area but who attend private schools located within the project area. If the LEA chooses to use a portion of its Chapter 1 funds to provide services under Section 556(b)(1)(C) to all educationally deprived, low-income children in the public schools, such services must also be made available to all low-income, educationally deprived children residing in the LEA who are enrolled in private schools.

3. Exclusion of children attending a private school that is not in compliance with State laws

Section 557(a) of Chapter 1 requires an LEA to provide Chapter 1 services to children in private elementary and secondary schools. If a private educational institution qualifies as a private elementary or secondary school under State law, the LEA must serve eligible children attending that private school regardless of whether it is in compliance with other State laws.

4. Exclusion of children in a private school that does not want its children to participate

An LEA is not required to provide Chapter 1 services to eligible children in a private school where the officials of the school have indicated a desire that the children not participate in Chapter 1 programs. If private school officials reject Chapter 1 services for their eligible children, the LEA may retain its full allocation of Chapter 1 funds, including that portion based on low-income private school children, for other authorized Chapter 1 purposes.

5. Exclusion of children enrolled in private schools which are in violation of Title VI of the Civil Rights Act of 1964

An LEA may require private school officials who wish their students to participate in Chapter 1 to sign an assurance regarding compliance with Title VI of the Civil Rights Act of 1964. The applicability of Title VI is the subject of the Office for Civil Rights' "Report on Nonpublic Schools Participating in Federal Programs" published in the Federal Register on August 23, 1976 (see 41 FR 35553).

6. Services to be provided to children in private schools

In conducting the annual needs assessment described in §200.50 of the regulations, an LEA must take into account the educational needs of educationally deprived children in private schools. To facilitate this process, officials of the LEA must consult with private school officials. As stated in §200.71 of the regulations, "[t]he Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served." If the needs assessment reveals that the private school children have different educational needs than public school children, an LEA must consider those different needs in designing its Chapter 1 project.

As discussed in Section 8 of this document, an LEA must conduct an annual needs assessment that: (1) identifies educationally deprived children, including those attending private schools, in all eligible attendance areas; (2) permits the selection of those children in greatest need; and (3) determines project participants' needs with sufficient specificity to ensure concentration on those needs. In conducting its needs assessment, the LEA treats children in private schools no differently than children in public schools. That is, their needs are considered in determining the instructional services to be offered and the project areas to be served. Once the LEA selects project areas and determines the instructional areas to be served, children in private schools and in public schools are selected on essentially the same basis.

Except for services offered under Section 556(b)(1)(C), private school children may be served only if they reside in a project area. Accordingly, if the LEA selects only elementary level project areas, it should serve private school children only at the elementary level. An LEA would have the flexibility to provide services to private school children at different grades within the elementary level; e.g., serve grades 1-3 in the public schools and grades 4-6 in the private schools.

7. Use of Chapter 1 funds to supplement, rather than supplant services provided by a private school

As stated in §200.72 of the regulations, "...[a]n LEA shall use Chapter 1 funds to provide services that supplement the level of services that would, in the absence of Chapter 1 services, be available to children in private schools."

8. Allocation of Chapter 1 funds directly to a private school

Chapter 1 funds may not be allocated directly to a private school. As stated in §200.70(c) of the regulations, "...[t]he LEA shall exercise administrative direction and control over Chapter 1 funds and property that benefit educationally deprived children in private schools." In addition, §200.72(b) specifies that an LEA shall use Chapter 1 funds to meet the special educational needs of educationally deprived children in private schools rather than to meet the needs of the private schools or the general needs of the children in those schools.

9. Use of public school employees

Section 200.70(d) of the regulations specifies that Chapter 1 services to children in private schools "...must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency or corporation who or which, in the provision of those services, is independent of the private school and of any religious organizations." However, Chapter 1 services may be provided by persons not independent of the private school or of a religious organization, if they are employed directly by the LEA, as long as the services are provided at a time when the teacher is not being paid by the private school. During the time that such a teacher is providing Chapter 1 services, he/she must be under the supervision and administrative control of the LEA and must have no responsibilities to the private school. In addition, as stated in §200.73 of the regulations, an LEA may use Chapter 1 funds to make public employees available in other than public facilities to the extent necessary to provide equitable Chapter 1 services for children in a private school if those services are not normally provided by the private school.

* * * * *

SECTION 22

DUE PROCESS PROCEDURES

Subpart F of the regulations (Appendix B, pages 12-15) contains specific procedures to afford due process protections to SEAs and LEAs concerning--

- o Bypass determinations under Section 557(b) of Chapter 1
- o Final audit determinations
- o Determinations to withhold funds
- o Cease and desist complaints

As stated in Section 557(b) of Chapter 1 (Appendix A, page 3), the Secretary implements a bypass if an LEA is prohibited by law from providing Chapter 1 services for private school children on an equitable basis or has substantially failed to provide such services. Normally, the Secretary hires a contractor to provide the Chapter 1 services to private school children under a bypass.

The bypass provisions in §§200.80-200.85 of the regulations specify procedures for an affected SEA or LEA to challenge a determination by the Secretary to implement a bypass.

Sections 200.90-200.106 of the regulations provide SEAs with procedures for challenging adverse final audit determinations, decisions to withhold funds, and cease and desist complaints. Under the regulations, these proceedings will be conducted before the Education Appeal Board. Proceedings regarding final audit determinations and cease and desist complaints will be conducted in accordance with the practice and procedure of the Education Appeal Board, whereas proceedings regarding the withholding of funds will be conducted in accordance with the provisions of the Administrative Procedure Act.

As noted in §200.94, cease and desist complaints--unlike final audit determinations and withholdings, which are issued by the Assistant Secretary for Elementary and Secondary Education--will only be issued by the Secretary. Before the Secretary issues a complaint, he will make every reasonable effort to discuss the circumstances giving rise to the complaint with the SEA and afford the SEA an opportunity to explain its position.

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SECTION 23

SERVICES IN LOCAL INSTITUTIONS FOR NEGLECTED OR DELINQUENT CHILDREN

Statutory Requirement

Section 554 of Chapter 1 (Appendix A, pages 1-2), which incorporates the funding provisions from Title I, including Section 111(c)(1)(A)(iii), provides that among the children to be counted to determine an LEA's allocation are children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children.

Chapter 1 also incorporates Section 111(a)(3)(A) of Title I which provides that:

Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children...who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency...which does assume such responsibility shall be eligible to receive such portion of the allocation.

Regulatory Requirement

Section 200.22(a) of the regulations (Appendix B, page 7)

Discussion

The funding provisions quoted above clearly indicate that an LEA is to receive that portion of its allocation based on children in local institutions for neglected or delinquent (N or D) children only if the LEA provides services for the children in such institutions. An LEA may wish to consider the following points, along with other factors, in designing and implementing services for children in institutions for N or D children:

1. In conducting the annual needs assessment, particular attention should be given to the needs of the children in the local N or D institution. The children are counted for the purpose of computing an allocation because of special needs associated with their particular circumstances; accordingly, their needs should be assessed with those circumstances in mind.
2. LEAs provide services only for those children residing in local institutions for N or D children. Children in State-operated institutions receive Chapter 1 services through the State agency that operates those institutions and provides the regular program of instruction for these children.

3. N or D children may benefit from some form of special non-instructional services that recognize their special needs as institutionalized children. While meeting special educational needs must be the objective of all Chapter 1 services, children in institutions may need special support services to maximize the likelihood of reaching the educational objectives.
4. Services for the institutionalized children need not be provided in the institution. If the students attend a public school, the services may be provided in the school facilities.
5. It is possible that the needs assessment will indicate that the children in the institution need only the same remedial instruction and related services offered to other Chapter 1 participants in the LEA. In these cases, the children need not be offered services beyond those offered to the other participants.
6. An SEA may choose not to require an LEA to make a separate budget or keep a separate account of Chapter 1 funds expended for N or D children. Only if the LEA fails to provide assistance to meet the needs of N or D children is the SEA required to reduce the LEA's allocation by the amount that is based on N or D children.

* * * * *

SECTION 24

APPLICATION OF OTHER STATUTES AND REGULATIONS

See pages 52342-52343 of the preamble to the regulations (Appendix B, pages 3-4).

Discussion

Subject to specific exceptions, GEPA applies to the Chapter 1 program. The exceptions relate to particular sections of GEPA that are inapplicable as a matter of law because they are expressly made inapplicable by ECLIA, because they are superseded by particular ECLIA provisions, or for other reasons explained in the preamble of the final regulations (see Appendix B, pages 3-4).

The inapplicable GEPA sections, which are described in the preamble of the final regulations, are: (a) Section 408(a)(1), authorizing the Secretary to promulgate regulations; (b) Section 425, concerning review of certain SEA actions; (c) Section 426(a), concerning technical assistance; (d) Section 427, concerning parental participation; (e) Section 430, concerning applications for assistance; (f) Section 431A, concerning maintenance of effort determinations; (g) Section 434, except subsection (a)(2) thereof, concerning SEA monitoring and enforcement; (h) Section 435, except subsections (b)(2) and (b)(5) thereof, concerning single State applications; (i) Section 436, except subsections (b)(2) and (b)(3) thereof, concerning single LEA applications; (j) Section 437(b), relating to access to records; (k) Section 453, relating to withholding of funds; and (l) Section 455, concerning judicial review, to the extent it applies to withholding actions under Chapter 1.

There are other sections of GEPA that technically are applicable to Chapter 1 but that by their own terms concern subject matters that are unrelated to Chapter 1. These include, for example, provisions concerning internal Department organization that have been superseded by the Department of Education Organization Act, authorizations of other agencies and programs, such as the authorizations for the National Institute of Education and the National Center for Education Statistics, and provisions concerning Federal advisory councils.

The GEPA provisions unrelated to Chapter 1 are: (a) Sections 401, 402, and 403, concerning the previous Education Division of the Department of Health, Education, and Welfare and its officers and units; (b) Section 405, concerning the National Institute of Education; (c) Section 406, concerning the National Center for Education Statistics; (d) that Section 406A authorizing appropriations for science education programs; (e) Section 407, concerning rules for education officers of the United States; (f) Section 421, concerning the applicability of Part C of GEPA; (g) Section 424, concerning a compilation of assisted innovative projects; (h) Section 426(c), concerning awards for curriculum development; (i) Section 426A, concerning equalization assistance; and (j) Sections 441-449, concerning advisory councils.

The GEPA provisions that are legally applicable to Chapter 1 and contain subject matters related to Chapter 1 may be classified in three categories--(1) provisions that impose administrative responsibilities on the Department in administering Chapter 1 but that do not affect the rights or responsibilities of award recipients; (2) provisions that confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients; and (3) provisions that impose requirements or duties on award recipients. In some instances, particular provisions may be deemed to fall under more than one of these categories. The sections are listed in the following paragraphs according to their predominant characteristics.

The GEPA provisions that impose administrative responsibilities on the Department in administering Chapter 1 but that do not affect the rights or responsibilities of award recipients include: (a) Section 400, concerning definitions, applicability,

and appropriations; (b) Section 408(a)(2)-(6), (b), (c), and (d), concerning administrative authorities of education officials; (c) Section 409, concerning educational impact statements for regulations affecting institutions of higher education; (d) Section 411, concerning advance appropriations for programs; (e) Section 413, concerning the availability of appropriations; (f) Section 414, concerning contingent extension of program authorizations; (g) Section 415, concerning payment methods; (h) Section 416, authorizing planning and evaluation by the Secretary; (i) Section 417, requiring annual evaluation reports; (j) Section 418, requiring reports related to the possible renewal of expiring programs; (k) Section 419, concerning program evaluation by the Comptroller General; (l) Section 421A, regarding the administration of programs by the Secretary; (m) Sections 422 and 426(d), concerning collection and dissemination of information and an annual report; (n) Section 423, concerning a catalog of Federal education assistance programs; (o) Section 428, concerning use of funds withheld for failure of an LEA to comply with Title VI of the Civil Rights Act of 1964; (p) Section 429, authorizing the Secretary to furnish information to the public; and (q) Section 431, concerning the issuance of regulations by the Secretary.

The GEPA provisions that specifically confer rights or possible opportunities on award recipients or that limit the Department's authority in taking actions affecting award recipients include: (a) Section 400A, concerning paperwork control; (b) Section 426(b), concerning use by LEAs of systematic cost allocation methods; (c) Section 432, prohibiting Federal control of education; (d) Section 440(a), limiting Federal authority to terminate or suspend funds for refusals to provide personally identifiable data; (e) Section 440(b), providing due process procedures for sanctions under nondiscrimination provisions of Federal law; (f) Section 440(c), prohibiting the imposition of quotas; (g) Section 451, concerning the Education Appeal Board; (h) Section 452, concerning audit determinations; (i) Section 454, concerning cease and desist orders; (j) Section 455, except with regard to withholding actions, concerning judicial review of certain determinations; and (k) Section 456, authorizing "grant-back" of funds recovered following an audit determination.

The GEPA provisions that impose requirements or duties on award recipients include: (a) that Section 406A which imposes responsibilities on States to furnish information; (b) Section 412, concerning the period of availability of appropriated funds; (c) Section 420, prohibiting use of appropriated funds for busing; (d) Section 433, concerning application of the Davis-Bacon Act regarding wages in construction and minor remodeling projects; (e) Sections 434(a)(2), 435(b)(2) and (b)(5), and 436(b)(2) and (b)(3), concerning fiscal control and fund accounting procedures; (f) Section 437(a), concerning records; (g) Section 438, concerning the privacy and related rights of parents and students regarding student records; (h) Section 439(a), concerning the availability for parental inspection of instructional material used in research or experimentation programs; and (i) Section 439(b), forbidding requirements that students submit to psychiatric or psychological testing or treatment designed to elicit particular information.

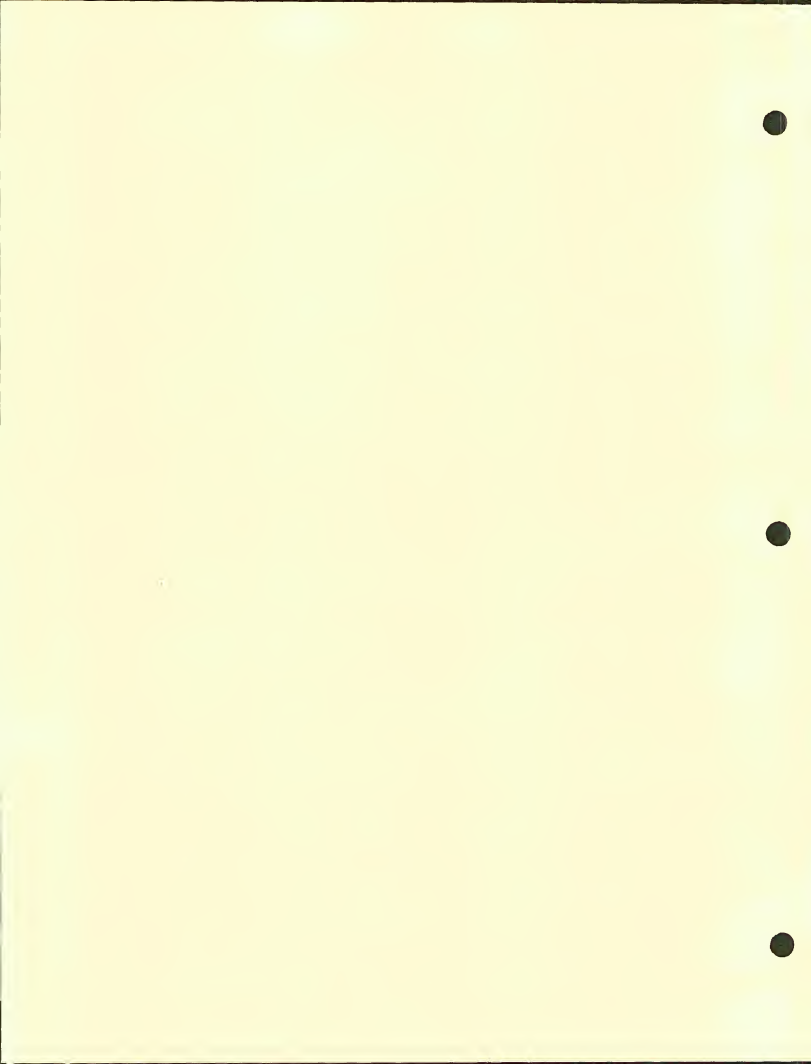
APPENDIX D

CIRCULAR A-102

ATTACHMENT P

THE SINGLE AUDIT CONCEPT

FEDERAL OFFICE OF MANAGEMENT AND
BUDGET



GENERAL PROVISIONS

Attachment P -- audit requirements to OMB Circular A-102 "Uniform Administrative Requirements for Grant-In-Aid to State and Local Governments" published October 1979 to meet the substantial need for improvement in audits of federally assisted programs.

In summary, it:

Applies to all state and local governments (including Indian tribal governments) that receive federal assistance directly or indirectly.

Provides for independent audits of financial operations to be made on an organization-wide basis that will determine whether:

- Financial operations are conducted properly.
- Financial statements are presented fairly.
- Recipients have complied with federal laws and regulations having a material effect on the financial statements or on the federal awards tested.
- Financial reports to the federal government are supported by the underlying records and are reliable.
- Internal control procedures have been established to meet the objectives of federally assisted programs.

Provides that no additional federal requirements for audit will be imposed unless required by law, approved by OMB, or required by state or local government.

Provides that recipients shall require subrecipients that are state and local governments to comply with Attachment P requirements.

AUDIT REQUIREMENTS

1. State and local governments will arrange for their independent audits. (Letter of engagement should specify scope of audit to be in accordance with Attachment P.)
2. State and local governments will pay for their independent audits. (Federal programs may be charged direct or indirect for a reasonable share of the audit costs.)



3. Audits are to be conducted by qualified auditors. (State auditors, certified public accountants and public accountants licensed before December 31, 1970.)
4. Maximum use will be made of the work of internal auditors and program reviewers.
5. Audit organizations and individual auditors must be independent. Impairments to independence are: (GAO Standards)
 - Personal Impairments - Circumstances in which individual auditors cannot be impartial because of their view or personal situation.
 - External Impairments - Factors external to the audit organization which can restrict the audit, such as authority to overrule or influence auditor's judgement.
 - Organizational Impairments - Place within the state or local governmental unit being audited. Audit organization should be outside the staff or line management function.
6. Financial and compliance audits will be made no less frequently than every two years covering the period since the last audit.
7. Audits are to be made in accordance with:
 - Generally accepted auditing standards.
 - GAO Standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1981 Revision (yellow book).
 - GAO guidelines for financial and compliance audits of federally assisted programs (red book) currently being revised.
 - Specific grant compliance supplements issued by OMB in August 1980.
 - Compliance features that are identified and required by state and local governments.

FINANCIAL/COMPLIANCE REQUIREMENT

1. A representative number of charges and functions involving federal awards shall be financial/compliance tested to determine that they:
 - Are reasonable and necessary.
 - Conform to any award requirements that apply.



- Are net of applicable credits (user charges and purchase discounts).
 - Do not include costs properly chargeable to other federally assisted or state programs and were allocated equitably.
 - Were properly recorded and supported by source documentation.
 - Were given consistent accounting treatment.
 - Had advance approval and were purchased competitively and were necessary.
2. Audit tests shall include procedures to verify compliance with significant grant provisions (OMB compliance supplement).

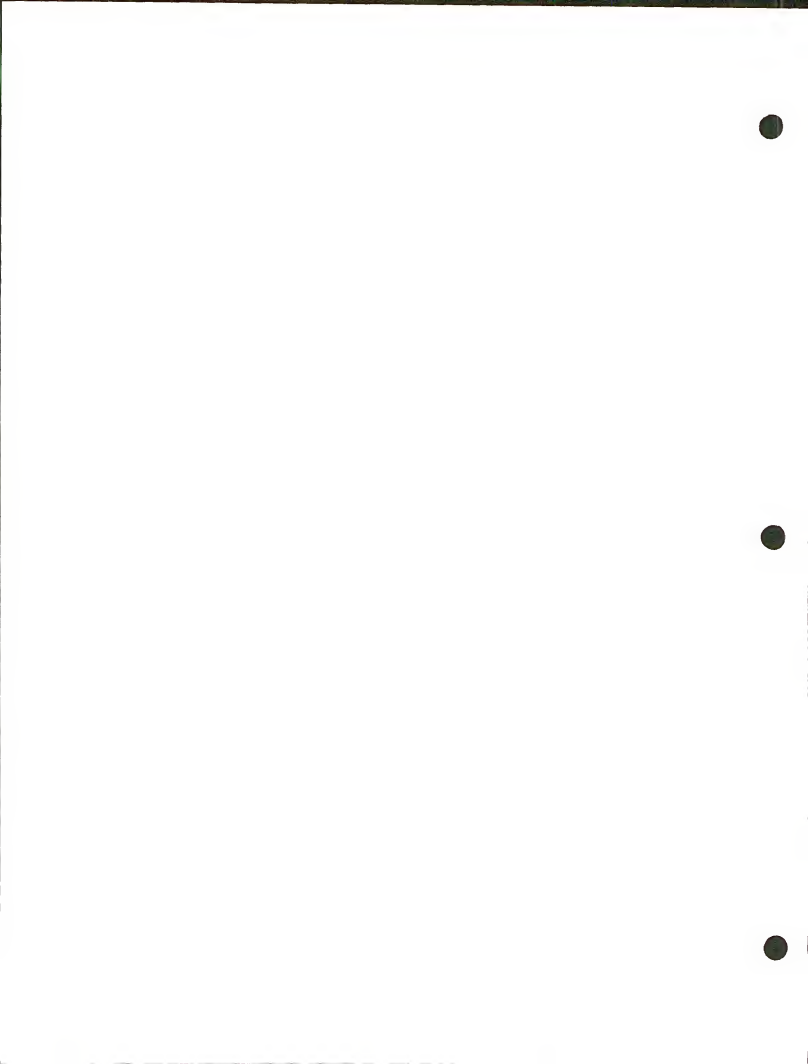
IRREGULARITIES

1. If the auditor becomes aware of irregularities in the state or local governmental unit, the auditor shall promptly notify the:
- Cognizant OIG office of audit.
 - Recipient management official above the level of involvement.
2. Irregularities include such matters as:
- Conflicts of interest.
 - Falsification of records or reports.
 - Misappropriation of funds or other assets.

AUDIT REPORT

The audit report shall include:

1. Financial statements (including footnotes).
2. Auditor's comments on the financial statements which should:
 - Identify statements examined and period covered.
 - Identify federal programs and amount of awards.
 - State that audit was done in accordance with:
 - Generally accepted auditing standards
 - GAO auditing standards



GAO audit guidelines
OMB compliance supplements
State and local audit requirements

- Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles (state nature of qualified opinion).
3. Auditor's comments on internal controls. (Identify significant controls maintained and those controls tested.)
- Identify weaknesses in and non-compliance with the systems of internal control.
 - Separately identifying weaknesses having a material effect on the financial statements or on the award tested, for:
 - Internal financial controls
 - Internal administrative compliance controls
4. Auditor's comments on compliance.
- Instances of non-compliance with the terms of agreements and provisions of federal law or regulations having a material effect on the financial statements and reports or on the awards tested.
 - Contain an expression of positive assurance for compliance items tested and negative assurance for untested items.
5. Comments on the accuracy and completeness of financial reports and claims for advances and reimbursement.
6. Comments on corrective action taken or planned by recipient or subrecipient.
7. Schedule of questioned costs. (Include narrative of circumstances involved.)



DEPARTMENT OF EDUCATION
EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981
CHAPTER 1 - FINANCIAL ASSISTANCE TO MEET SPECIAL
EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

1. Program Objectives

Chapter 1 of the Education Consolidation and Improvement Act of 1981 provides financial assistance to state and local education agencies (LEAs) to meet the special needs of educationally deprived children. These procedures apply to that portion of Chapter 1 that provides financial assistance to LEAs to meet the special educational needs of educationally deprived children in attendance areas with concentrations of children from low-income families.

2. Program Procedures

Funds are provided to each state education agency (SEA) for allocation to LEAs based on a statutory formula. An LEA may receive a Chapter 1 grant if it has on file with the SEA an application that meets the requirements in Section 556 of Chapter 1 and has been approved by the SEA.

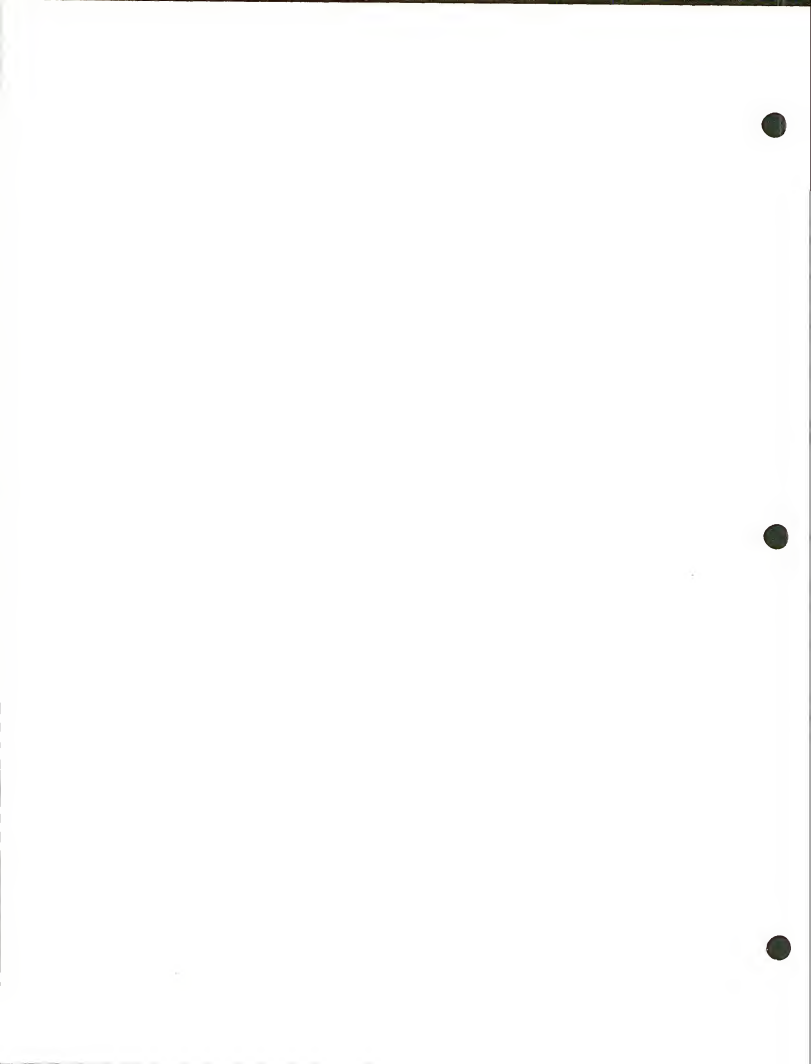
3. Compliance Requirements and Suggested Audit Procedures

According to Chapter 1, states have authority to issue rules consistent with the federal statute and regulations; all of these rules and regulations should be reviewed prior to commencing the audit.

The following are some of the compliance items taken from a document issued by the Office of Management and Budget. While these following items deal only with Chapter 1, the audit will cover all federally funded programs in the district.

1. Compliance Requirement

An SEA may grant Chapter 1 funds only to LEAs that submit an application for a project to be conducted during a period of not more than three fiscal years. An SEA shall approve an LEA's application for Chapter 1 funds if it includes a description of the Chapter 1 project to be



conducted, the assurances required under Section 556 (b) of Chapter 1 and the assurances required by Section 436 (b) (2) and (b) (3) of GEPA. (Public Law 97-35, Section 556 and 34 CFR 200.13 - 200.14)

Suggested Audit Procedures

- Review the SEA's system for reviewing LEA applications and awarding funds to LEAs and evaluate for adequacy.
- Select a sample of accepted and rejected applications and determine if there is adherence to the prescribed procedures.

2. Compliance Requirement

An LEA may use Chapter 1 funds only to meet the costs of project activities that are designed and implemented to meet the special educational needs of educationally deprived children identified under Section 556 (b) (2) of Chapter 1. These activities must be included in an application approved by an SEA and comply with all applicable Chapter 1 requirements. (Public Law 97-35, Section 555 (c) and 34 CFR 200.52)

Suggested Audit Procedures

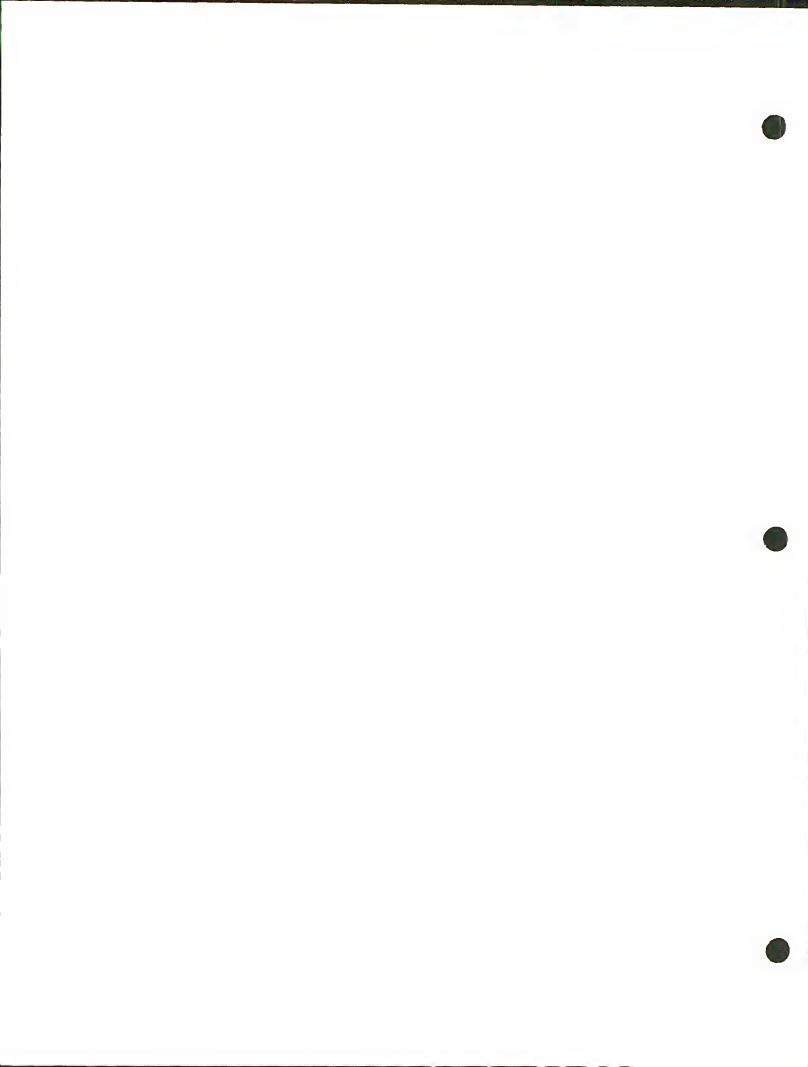
- Review the LEA's approved project application.
- Review expenditure records and supporting documentation.

3. Compliance Requirement

Chapter 1 projects shall be conducted in attendance areas of LEAs having the highest concentrations of low-income children. If an LEA has a uniformly high concentration of low-income children, the projects may be in all attendance areas. The projects may be designed to use part of the funds to provide services that will help all educationally deprived, low-income children served by the LEA. (Public Law 97-35, Section 556 (b) (1) and 34 CFR 200.49)

Suggested Audit Procedures

- Review the system used to determine attendance areas having the highest concentrations of children from low-income families and evaluate for adequacy.
- Identify the source of the demographic information and consider its reliability.



- Determine the schools in which Chapter 1 projects are being provided and whether the children receiving the Chapter 1 services are educationally deprived children from attendance areas having the highest concentrations of low-income families.

4. Compliance Requirement

The combined fiscal effort per student or the aggregate expenditures of the LEA from state and local funds for free public education for the preceding year must be at least 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding year, unless specifically waived by the SEA. The waiver may be for one fiscal year only. (Public Law 97-35, Section 558 (a) and 34 CFR 200.60 and 200.61)

Suggested Audit Procedures

- Review a sample of granted waivers and determine basis for waiving.
- Ascertain whether the SEA waived the expenditure requirement.
- Review the second and first preceding years' financial and related records and determine total expenditures.
- If necessary, review the second preceding and first preceding years' pupil records and determine per pupil expenditures.

5. Compliance Requirements

- a. An LEA may use Chapter 1 funds only to supplement, and to the extent practical increase, the level of funds that would, in the absence of Chapter 1 funds, be made available from non-federal sources for the education of pupils participating in Chapter 1 projects.
- b. An LEA may not use Chapter 1 funds to supplant funds from non-federal sources. (Chapter 1 Regulations 200.62)
- c. An LEA may exclude state and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children that are consistent with the purposes of Chapter 1. (Public Law 97-35, Section 553 (b) and 34 CFR 200.62)

Suggested Audit Procedures

- Review financial and pupil records and determine the expenditures for children participating in Chapter 1 projects.



- Ascertain the amount financed with federal funds.
- Ascertain whether the expenditures for Chapter 1 pupils are greater than the expenditures of state and local funds by an amount that is no less than the cost of the Chapter 1 projects.
- Identify services provided to all children with state or local funds.
- Determine whether Chapter 1 funds were used to provide services that supplement or were additional to services that would be provided with state and local funds.

6. Compliance Requirements

- a. An LEA may receive Chapter 1 funds only if state and local funds will be used to provide in project areas services which, taken as a whole, are at least comparable to services, taken as a whole, being provided in areas not receiving Chapter 1 funds.
- b. If all school attendance areas are designated as Chapter 1 project areas, an LEA may receive Chapter 1 funds only if state and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.
- c. An LEA may exclude state and local funds for special programs to meet the educational needs of educationally deprived children that are consistent with the purposes of Chapter 1. (Public Law 97-35, Section 558 (c) and 34 CFR 200.63)

Suggested Audit Procedures

- Review the systems by which the LEA determines and selects the levels of service among the different schools and evaluate for adequacy.
- Examine information maintained by the LEA to determine comparability (e.g., district-wide salary schedule; policies to insure equivalence among schools in teachers, administrators and auxiliary personnel; policies to insure equivalence among schools in curriculum materials and instructional supplies).

7. Compliance Requirement

The LEA's Chapter 1 project must be based on an annual assessment of educational needs that identifies educationally deprived children in all eligible attendance areas, permits selection of those children who have the greatest need for special assistance and determines the needs of participating children with sufficient specificity to insure concentration on those needs. (Public Law 97-35, Section 556 (b) (2) and 34 CFR 200.50)



Suggested Audit Procedures

- Identify methods used to assess needs and ascertain whether they are considered suitable.
- Determine whether assessments are performed with the required frequency.
- Review the manner in which the LEA applies the results of the assessment to make sure that only educationally deprived children are served.

8. Compliance Requirements

- a. Except where prohibited by state law, in which case the Secretary invokes a "bypass" to have the services performed directly, the LEA shall provide educationally deprived children residing in a project area of the LEA who are enrolled in private elementary and secondary schools with educational services and arrangements as will assure participation on an equitable basis of these children.
- b. If the LEA decides to serve educationally deprived, low-income children under Section 556 (b) (1) (c) of Chapter 1, the LEA must also provide Chapter 1 services to educationally deprived, low-income children in private schools as will assure participation on an equitable basis of those children. (Public Law 97-35, Section 557 (a) and (b) and 34 CFR 200.70-200.75)

Suggested Audit Procedures

- Review procedures for determining numbers and needs of educationally deprived children in private schools and evaluate for adequacy.
- Ascertain Chapter 1 services provided to such children and determine whether those services have been provided on an equitable basis.

9. Compliance Requirement

An SEA or LEA may obligate Chapter 1 funds only during the fiscal year for which the funds were appropriated and during the succeeding fiscal year (i.e., commit funds from a specifically identified fiscal year, according to state law or practice, to the support of specific programmatic or administrative activities. (Public Law 97-35, Section 596 (b) and Section 412 (b) of GEPA)



Suggested Audit Procedures

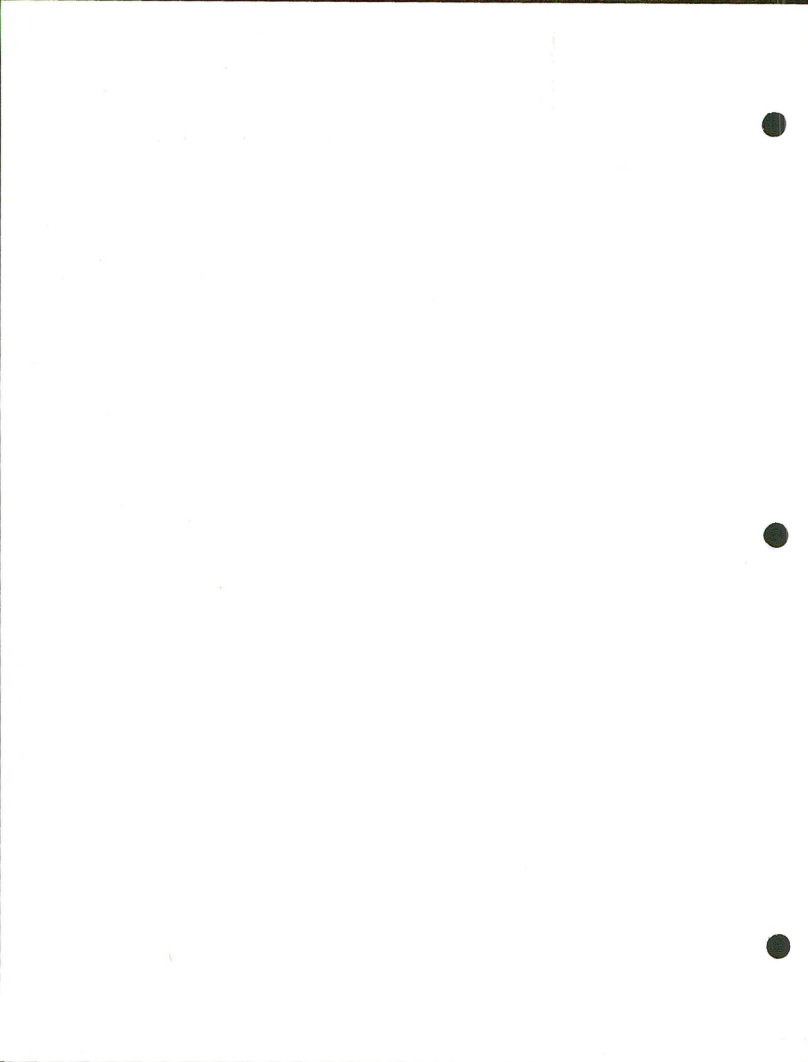
- Test expenditure and related records and note dates for obligation of grant funds.
- Test older unliquidated obligations for currency.

10. Compliance Requirement

The SEA and LEAs must retain records, for audit and evaluation, for five years after the project or until audit resolution is complete. (Public Law 97-35, Section 437 (a), Section 555 (d) and Section 556 (b) of GEPA and 34 CFR 200.56)

Suggested Audit Procedures

- Review procedures for records retention.
- Review correspondence and determine whether there were any instances of required records not being available.



COGNIZANT AUDIT AGENCY
AND
RECIPIENT ORGANIZATION

OMB will designate cognizant audit agency with responsibility over audits of recipient (state agency) organization. Recipient organizations will have responsibility over subrecipient organizations as follows:

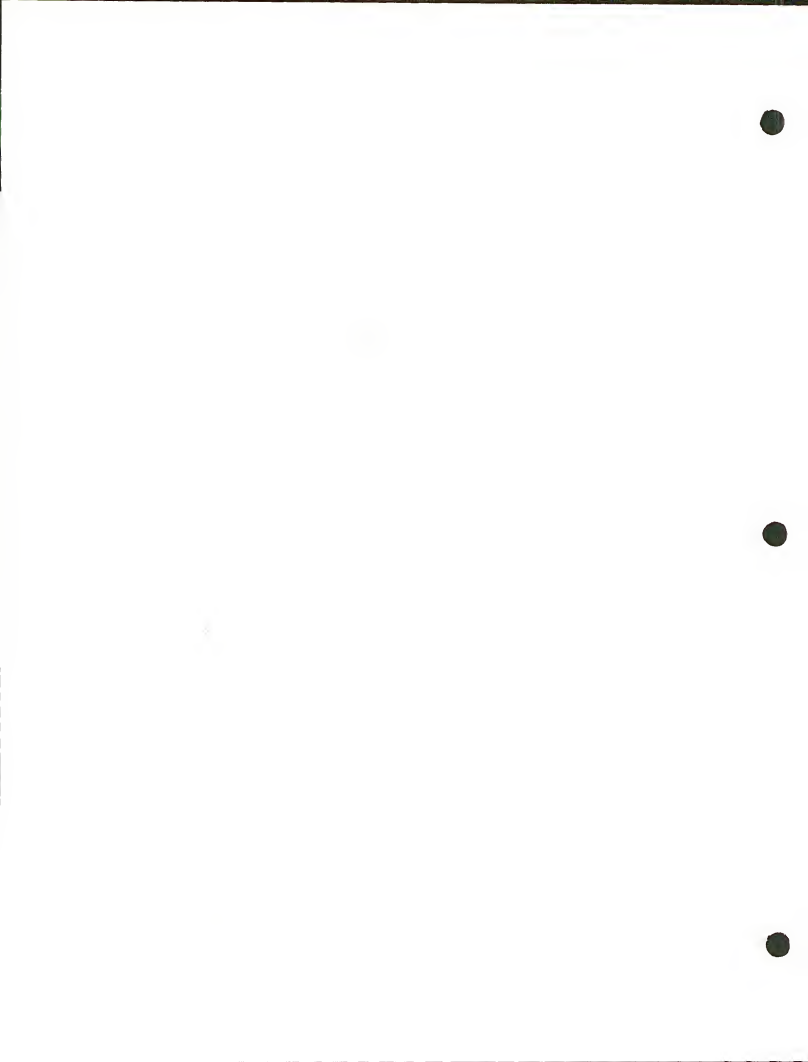
- Require subrecipients that are state and local governments to adopt the requirements of OMB Circular A-102, Attachment P.
- Assure that satisfactory audit coverage is provided of subrecipients in a timely manner and in accordance with Attachment P.
- Provide technical advice and act as liaison between the cognizant agency, independent auditors and subrecipient organizations.
- Assure that all audit reports of subrecipients that affect federally assisted programs are received and reviewed.
- Maintain a follow-up system on audit findings to assure that findings are resolved.
- Inform cognizant audit agency of irregularities uncovered.
- Obtain or make quality control reviews of the work papers of the auditors and provide the results to the cognizant audit agency.
- Obtain or make quality assessment reviews of the quality of the work of non-federal audit organizations and provide the results to the cognizant audit agency.
- When significant inadequacies in an audit of a subrecipient are disclosed:

The subrecipient organization will be advised by the recipient.

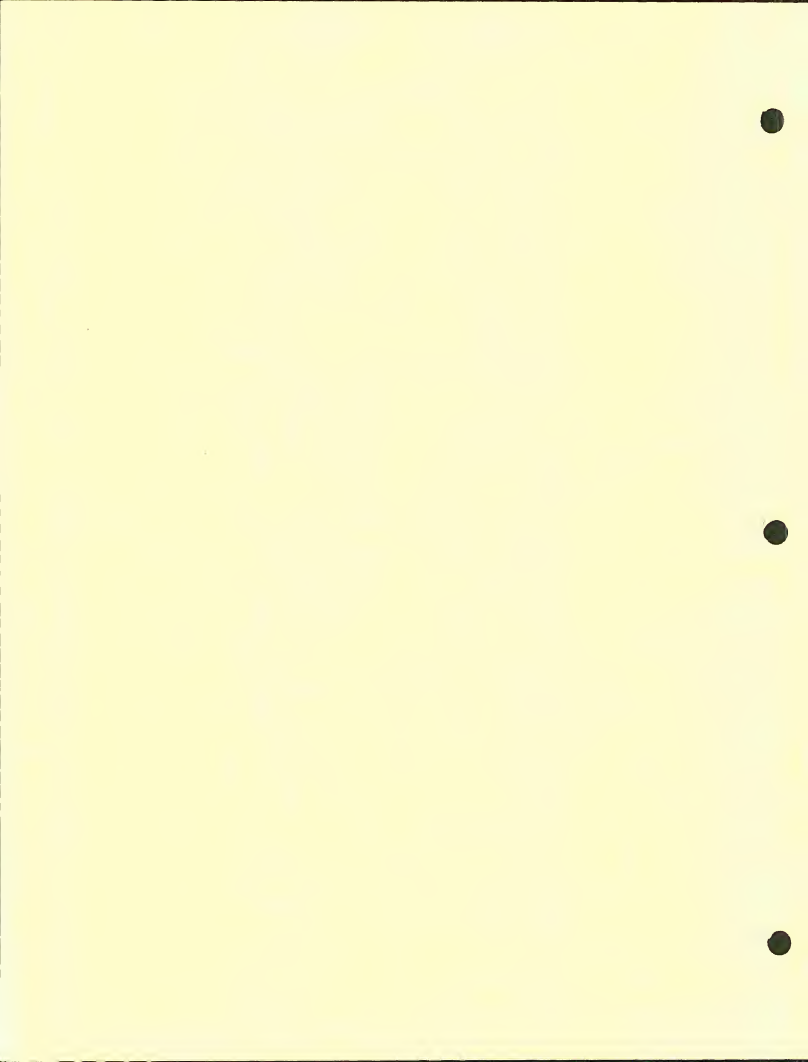
The auditor will be called upon to take corrective action.

If corrective action is not taken, the recipient organization shall notify the cognizant audit agency of the facts and its recommendations.

Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.



APPENDIX E
MONTANA CHAPTER 1
CHECKLISTS AND FORMS



ECIA CHAPTER 1 MONITORING CHECKLIST

Project No. _____

School District Name And No. _____

Acceptable
Unacceptable
Additional
Information
Necessary

Needs Assessment

1. District-wide data was used to plan the Chapter 1 program.
2. Needs assessment data was compiled, organized and summarized for program planning purposes.
3. Sources of information/data used in the needs assessment:
 - a.
 - b.
 - c.
4. Chapter 1 program was planned in accordance with needs assessment results.
5. Funds are reasonably distributed to schools on a basis of number and needs of children.

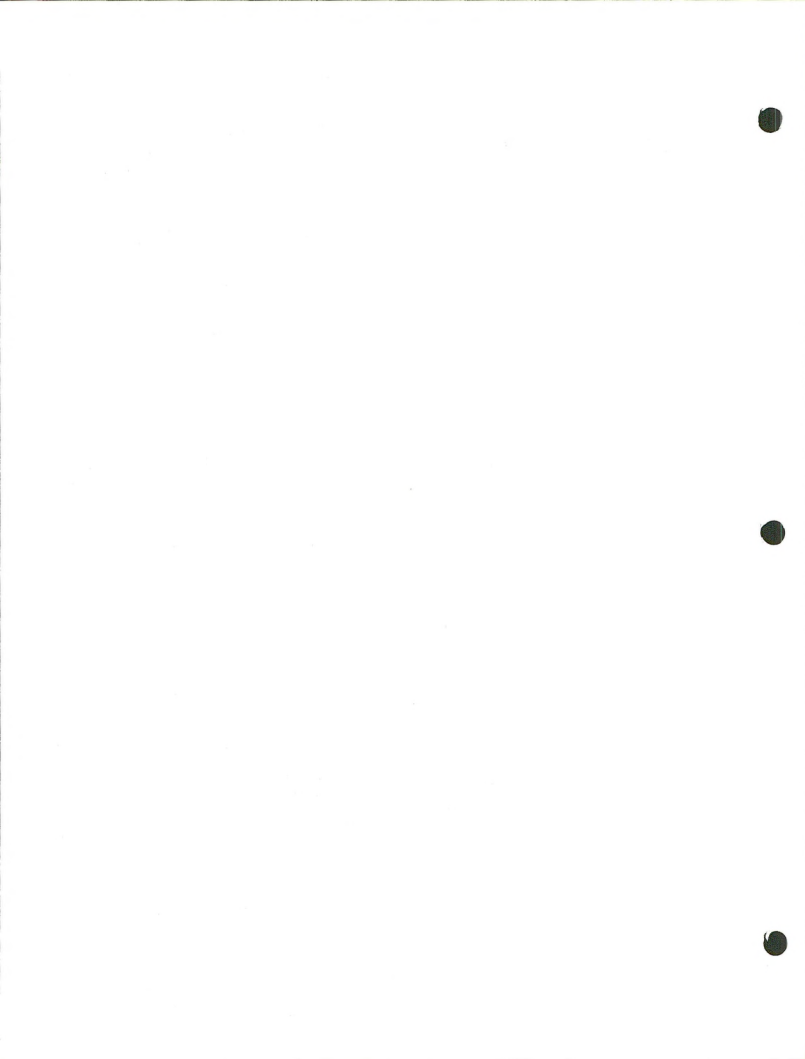
Student Selection

1. A consistent, systematic and educationally sound student selection process is used.
2. Data gathered in student selection process:
 - a.
 - b.
 - c.

(Attach prioritized list form and teacher referral form.)
3. The most educationally deprived students were selected to participate in accordance with approved student selection criteria.
4. There is additional objective information to support any participants selected based on teacher recommendations.
5. There is documentation to support why low-scoring students were not selected.
6. Comparisons of rosters with special education programs do not reveal any duplication of student services.

Diagnosis And IEPs

1. All Chapter 1 students are diagnostically evaluated and the Chapter 1 teacher has the diagnostic results (or a summary of the results).
2. An IEP is written for each student based on diagnostic information.



Acceptable

Unacceptable

Additional
Information
NecessaryDiagnosis And IEPs (Continued)

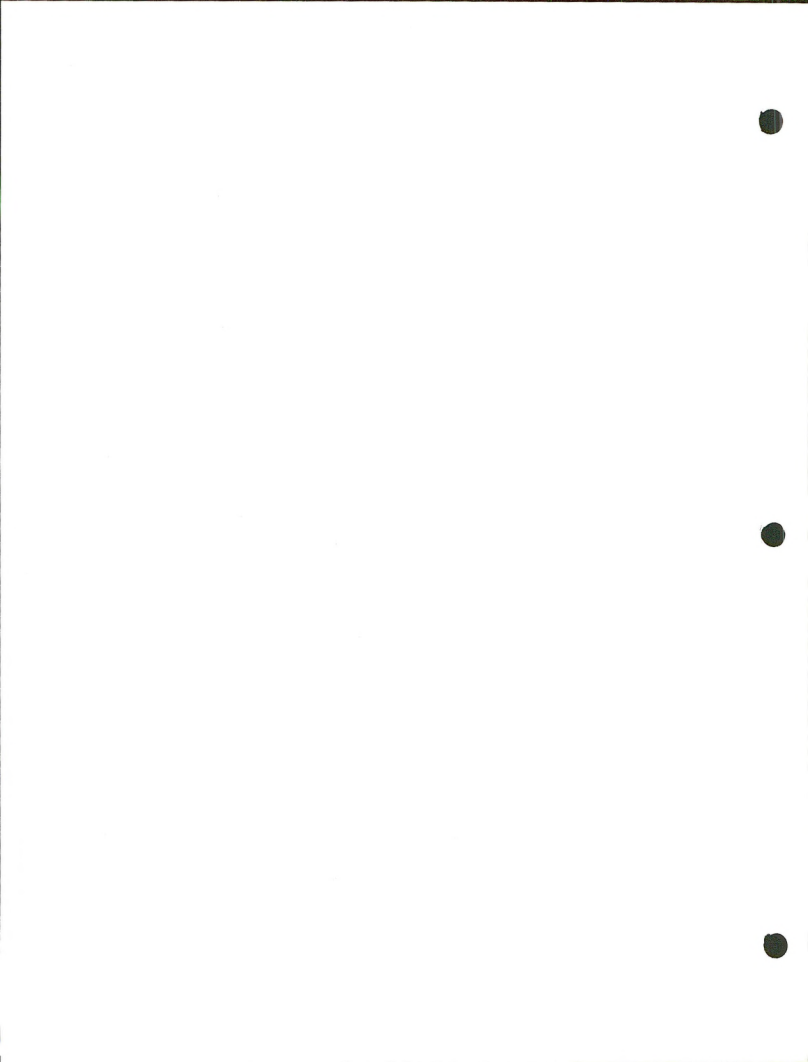
- | | | | |
|---|---|---|--|
| — | — | — | 3. Each IEP specifies the plan for implementation (materials, methods, instructional procedures, etc.). |
| — | — | — | 4. The Chapter 1 teacher systematically reviews each IEP, determines if objectives are being met and revises the IEPs as needed. |
| — | — | — | 5. Regular classroom teacher has input into the process of writing student IEPs. |

Instructional Program

- | | | | |
|---|---|---|--|
| — | — | — | 1. The Chapter 1 services provided are supplementary to the school's basic instructional program. If they are not, the criteria for an extended pull-out or replacement program are met. |
| — | — | — | 2. Chapter 1 staff's current schedule(s) is available for review. |
| — | — | — | 3. Teacher's schedule shows reasonable student caseload. |
| — | — | — | 4. Daily lesson plans for each Chapter 1 student are based on the IEP. |
| — | — | — | 5. The Chapter 1 teacher and the regular classroom teacher communicate on a regular basis regarding the Chapter 1 student's progress and instructional needs. |

Evaluation

- | | | | |
|---|---|---|--|
| — | — | — | 1. List testing information: name of pretest (test/subtest); name of post-test and planned date for administration. |
| — | — | — | 2. An appropriate test/subtest is being used for Chapter 1 evaluation. |
| — | — | — | 3. The appropriate testing schedule and dates are being used as per the approved application. |
| — | — | — | 4. Chapter 1 student selection and the pretest score are separated. |
| — | — | — | 5. The proper norms are being used in scoring student test results. |
| — | — | — | 6. Proper testing procedures are being followed in the Chapter 1 evaluation program. |
| — | — | — | 7. Consideration has been provided for special aspects of the testing program (extrapolation/interpolation; functional level testing). |
| — | — | — | 8. Evaluation results from the previous year's project were used in planning the current program. |



Acceptable

Unacceptable

Additional
Information
NecessaryFinancial Records

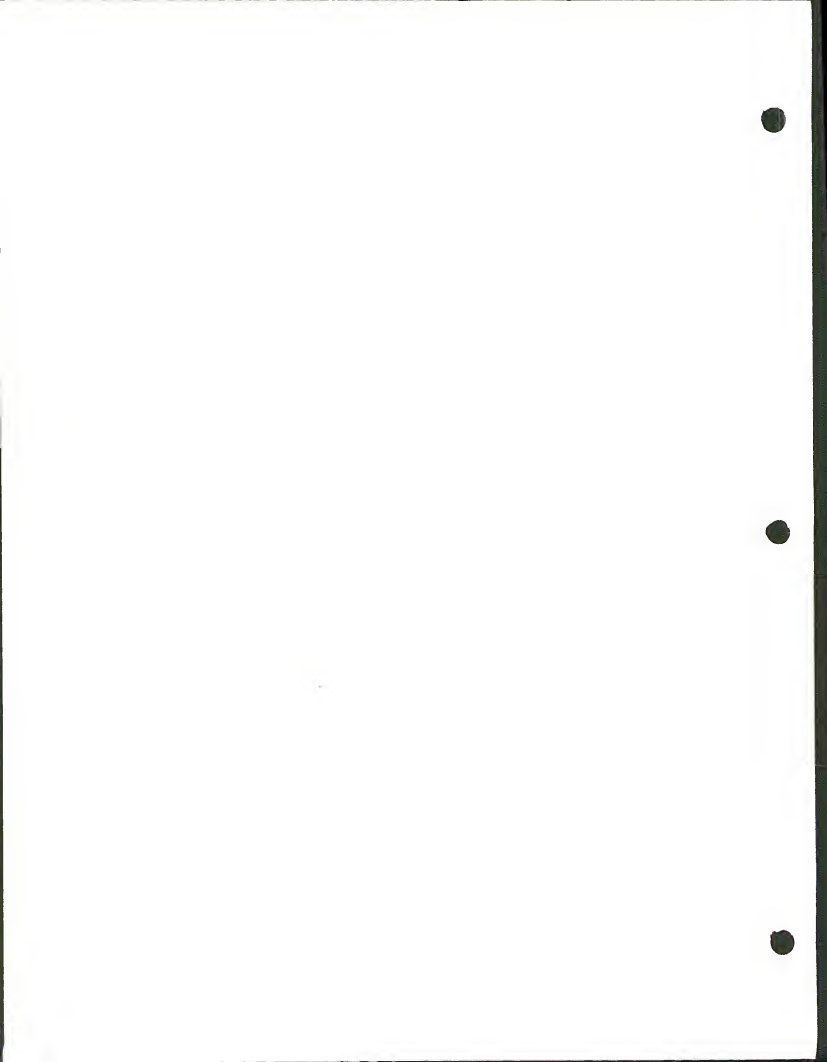
- | | | | |
|---|---|---|--|
| — | — | — | 1. Salary and wage charges are supported by time and attendance records, leave records, individual payroll records and/or payroll registers. |
| — | — | — | 2. Equipment and supplies purchased with Chapter 1 funds have been ordered prior to the end of the first semester. |
| — | — | — | 3. Equipment and supply items not received by January 31 will arrive in time to have an impact on the current project. |
| — | — | — | 4. No obligations were incurred prior to the approval date of the current project. |

Chapter 1 Staff

- | | | | |
|---|---|---|---|
| — | — | — | 1. The Chapter 1 staff hired and duties assigned were in accordance with the approved application. |
| — | — | — | 2. Non-instructional duties of Chapter 1 staff are within the appropriate limits. |
| — | — | — | 3. Chapter 1 tutors and aides are properly supervised. |
| — | — | — | 4. Salary/wages paid to Chapter 1 personnel is comparable to that paid other employees of the district or community for similar work. |

Parent Involvement

- | | | | |
|---|---|---|---|
| — | — | — | 1. Parents of Chapter 1 students were consulted in the planning and are consulted in the implementation of the current project. |
| — | — | — | 2. List efforts made to inform and involve Chapter 1 parents in the program. |
| — | — | — | 3. Parents of Chapter 1 students have been informed of their child's placement in the Chapter 1 program. |



Acceptable

Unacceptable

Additional
Information
Necessary

—	—	—
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—

Private School Participation

1. The private school helped determine the needs, number of children and types of services to be provided.
2. The level of funding or services provided per student in the private school is equal to that at the public school.
3. The most educationally deprived students were selected in accordance with the approved application.
4. The participants reside in the attendance area of the target school.
5. The Chapter 1 funded portion of personnel for the private school is for duties performed only for Chapter 1 participants.
6. The district has adequately managed and supervised the Chapter 1 resources including equipment used at the private school.

Target Area Selection

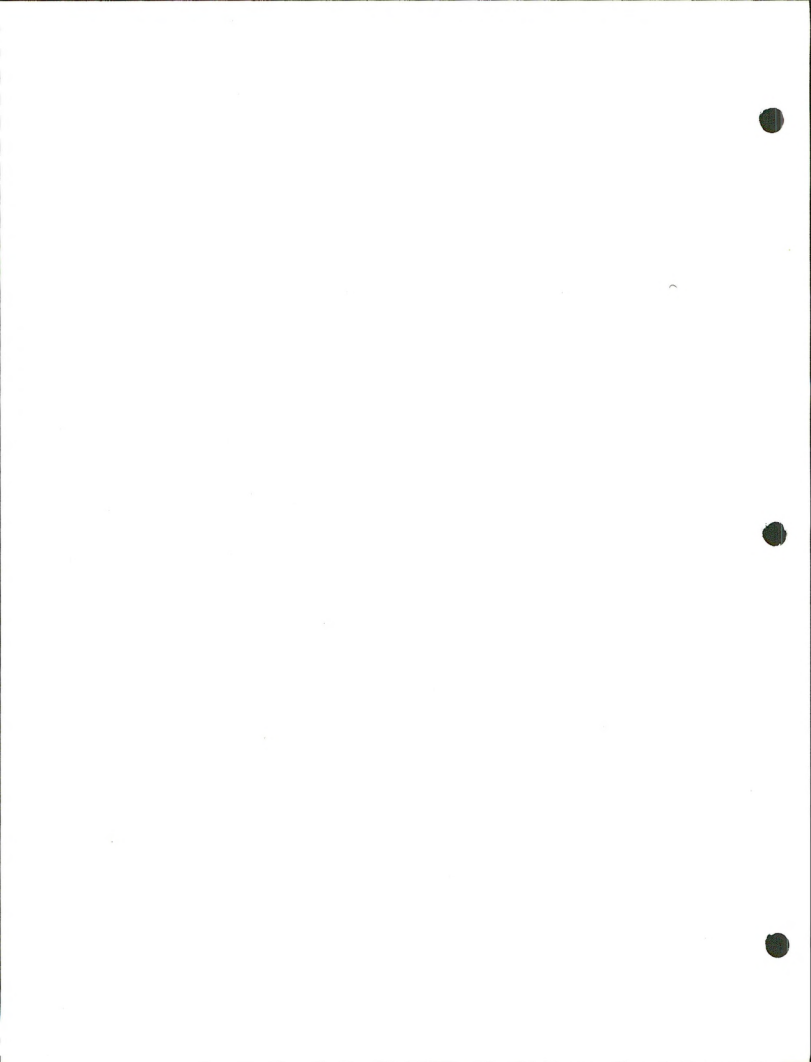
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1. The district maintains worksheets to support the low-income figures on the application.
2. The low-income figures were traced to the source data and substantiate the information in the approved application.

Comparability

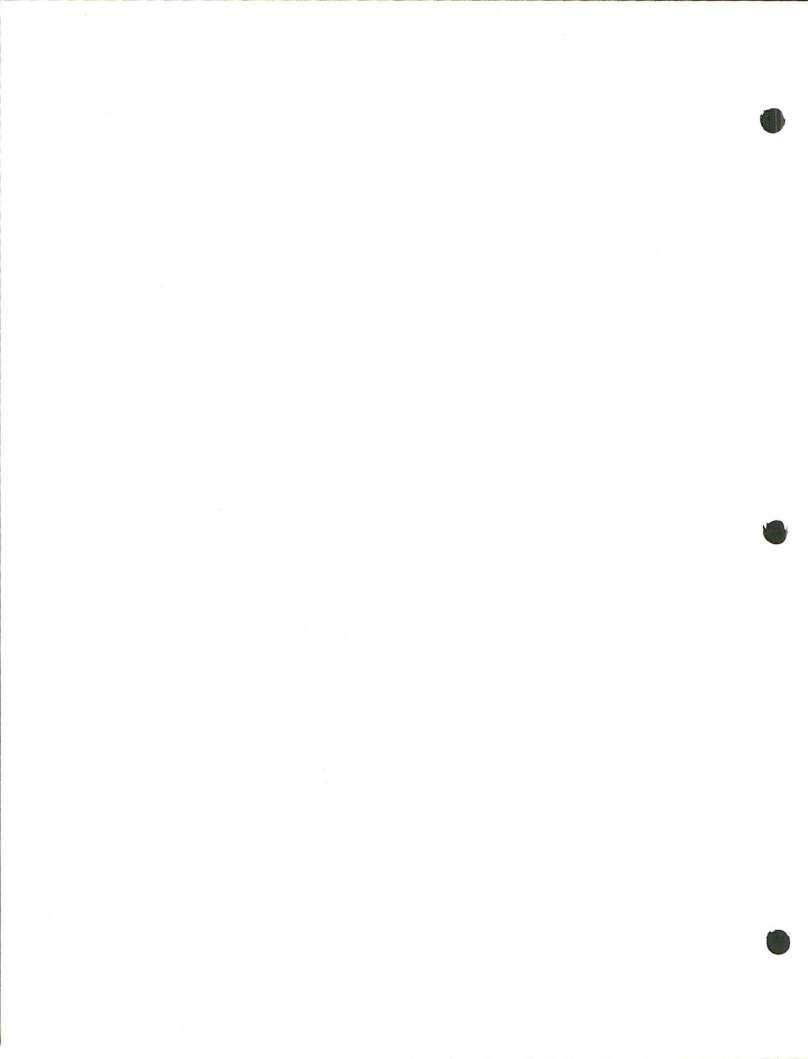
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1. The district maintains on file information to support the comparability assurance: (a) copy of all pertinent salary schedules, (b) statement of policy regarding assignment of staff; and (c) statement of policy regarding distribution of supplies and equipment funds among buildings.
2. The information in the comparability file substantiates the assurance in the approved application.



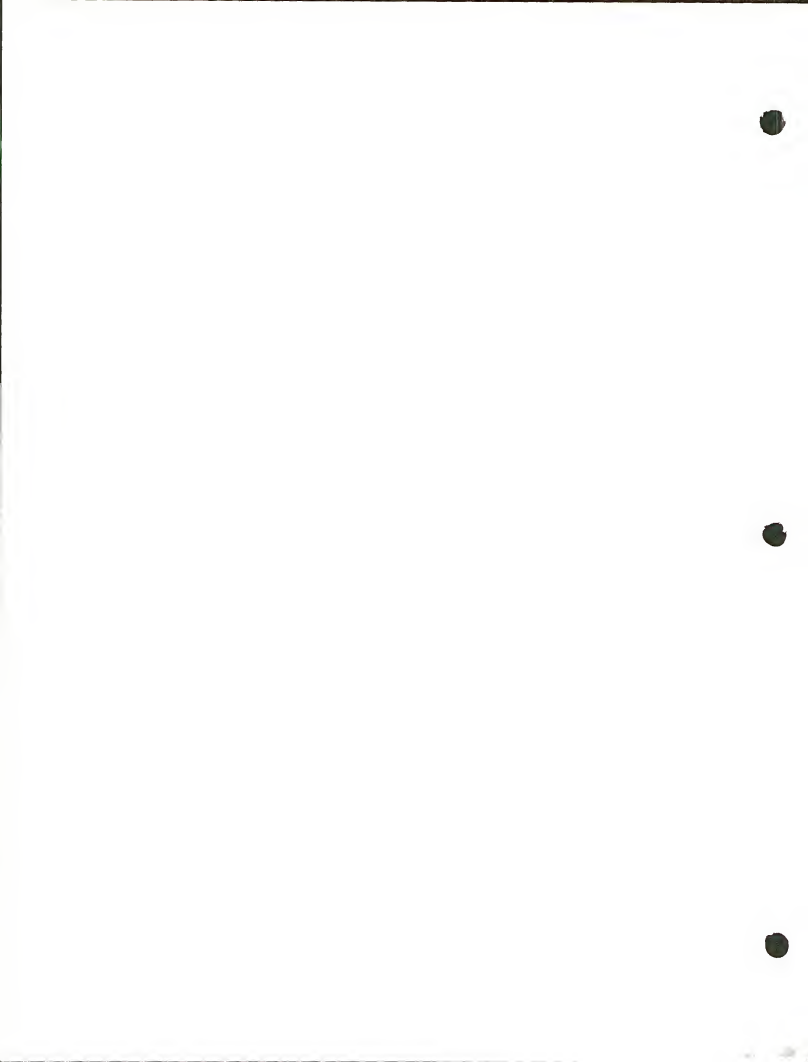
DESIGNING AND IMPLEMENTING A CHAPTER 1 PROGRAM

- I. CONDUCT A NEEDS ASSESSMENT (April-May-June)
- Gather district-wide data to be used for planning the Chapter 1 program
 - Consider test data and teacher surveys as well as other pertinent data
 - Determine the focus of the Chapter 1 program
 - Develop selection criteria
 - Compile and summarize needs assessment information
- II. SELECT CHAPTER 1 STUDENTS (August-September)
- Gather student selection information (e.g., test scores, teacher referrals/surveys)
 - Develop prioritized student lists, using objectively based information, for each Chapter 1 subject
 - Select students greatest in need of Chapter 1 help
 - Obtain parental permission (suggestion)
 - Schedule students
 - Update prioritized lists as needed
- III. DEVELOP STUDENTS' IEPs--PROVIDE DIRECT INSTRUCTION (September-May)
- Gather diagnostic information on each student
 - Obtain input from parents and teachers
 - Develop instructional objectives (long-term and short-term)
 - Write daily/weekly lesson plans based on IEP objectives
 - Initiate direct instruction
 - Continue communication with classroom teachers regarding Chapter 1 students
 - Revise/update IEP as needed
- IV. FULFILL CHAPTER 1 EVALUATION REQUIREMENTS (April-May)
- Pretest and posttest students on appropriate norm dates
 - Submit completed subjective and objective evaluation to Office of Public Instruction
 - Participate in planning the next Chapter 1 program
- V. ENCOURAGE PARENTAL INVOLVEMENT IN THE CHAPTER 1 PROGRAM (Continuous)
- Involve parents in the planning and implementation of the Chapter 1 program (required by law)
 - Hold an annual open meeting to explain the program and request input from parents.
- VI. PARTICIPATE IN INSERVICE OPPORTUNITIES (Continuous/As Available)
- Attend Chapter 1 workshops presented by the Office of Public Instruction
 - Plan/participate in local Chapter 1 inservice training



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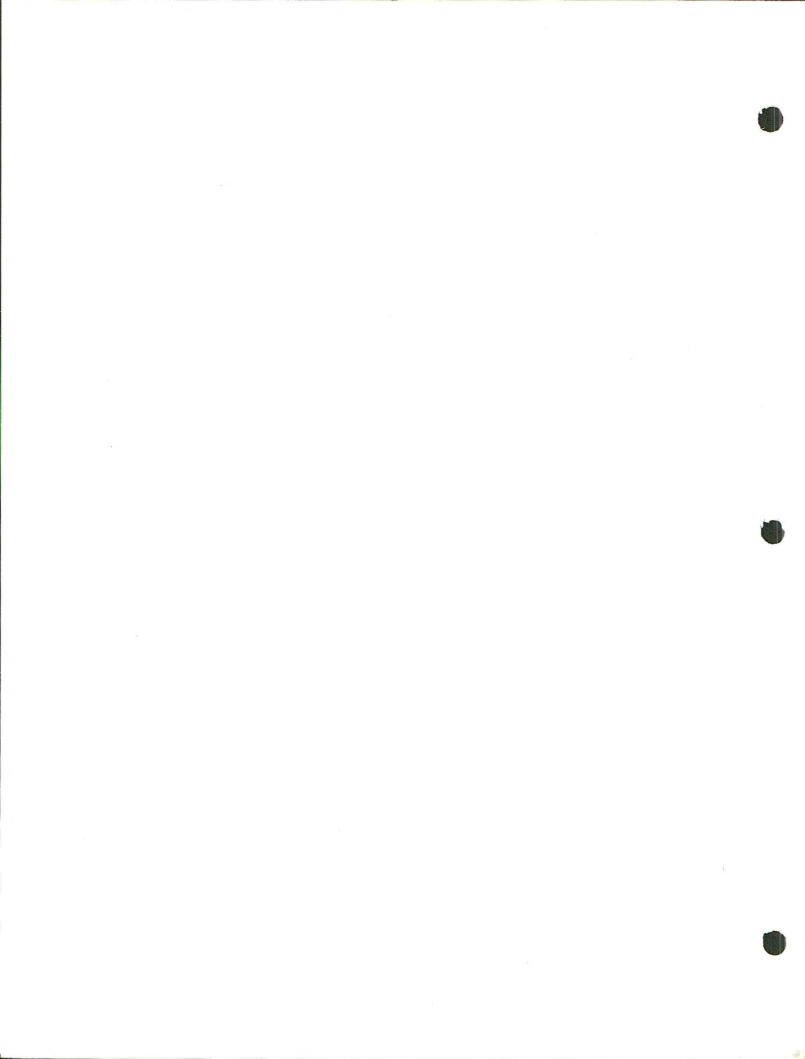
Endorsement Requirements for Accreditation
Chapter 1

All teachers shall hold a valid Montana teaching certificate. Endorsement requirements for specific Chapter 1 assignments are indicated below.

If your assignment is: _____ You should be endorsed in: _____ Specific credit requirement
(subject) (subject & code number)

Chapter 1 - Identified and Funded
Supplemental and Remedial Programs

Remedial Math - Elementary	Elementary Education (00) or Special Education K-12	
Remedial Math - Secondary	Elementary Education (00) or Special Education K-12 or Mathematics (40) on a secondary certificate	
Remedial Reading - Elementary	Elementary Education (00) or Reading K-12 or Special Education K-12	
Remedial Reading - Secondary	Elementary Education (00) or Reading K-12 or Special Education K-12 or English (20) on a secondary certificate	15 quarter credits in reading if endorsed in (20)
Remedial Language Arts - Elementary	Elementary Education (00) or Special Education K-12	
Remedial Language Arts - Secondary	Elementary Education (00) or Special Education K-12 or English (20) on a secondary certificate	



SELECTING A STANDARDIZED TEST

1. Check CONTENT VALIDITY. List the objectives for the content/curriculum area taught in the school and to be tested.

Test items measure at least 75% of these objectives.

There are at least three items per objective.

At least 50% of the test items directly measure the objectives.

The test reflects the relative emphases of the content/curriculum.

The test is free of irrelevant features such as regional, cultural and sex biases.

2. Check the RELIABILITY. This can be found in the Test Administration Manual or Test Standardization Information.

The reliability of the test is .85 or higher.

3. Check the NORMS and TEST SCORES.

The test has been normed within the last ten years.

The norm sample includes schools/students similar to those in your school.

Scores are reported in NCEs or percentile equivalents.

4. Check ADMINISTRATION and SCORING CONSIDERATIONS.

Teachers can administer the test with minimal training.

The time required to administer the test is within acceptable limits.

The type of administration (group or individual) is appropriate.

If machine-scoring is not used, teacher can hand-score the test and use the norm tables with a minimum degree of training.

All necessary norms are easily available.

5. Check TEST LEVELS.

The test is appropriate for the grade/age of students to be tested.

