

portunities for adult Indians, was omitted in the general amendment of this subchapter by Pub. L. 107-110. See section 7456 of this title.

PART D—WAIVERS

§ 7861. Waivers of statutory and regulatory requirements

(a) In general

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

- (1) receives funds under a program authorized by this chapter; and
- (2) requests a waiver under subsection (b) of this section.

(b) Request for waiver

(1) In general

A State educational agency, local educational agency, or Indian tribe that desires a waiver shall submit a waiver request to the Secretary that—

- (A) identifies the Federal programs affected by the requested waiver;
- (B) describes which Federal statutory or regulatory requirements are to be waived and how the waiving of those requirements will—

- (i) increase the quality of instruction for students; and
- (ii) improve the academic achievement of students;

(C) describes, for each school year, specific, measurable educational goals, in accordance with section 6311(b) of this title, for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes;

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

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

(2) Additional information

Such requests—

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

(B) shall be developed and submitted—

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

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

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

(3) General requirements

(A) State educational agencies

In the case of a waiver request submitted by a State educational agency acting on its

own behalf, the State educational agency shall—

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

(ii) submit the comments to the Secretary; and

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

(B) Local educational agencies

In the case of a waiver request submitted by a local educational agency that receives funds under this chapter—

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

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

(c) Restrictions

The Secretary shall not waive under this section any statutory or regulatory requirements relating to—

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

(2) maintenance of effort;

(3) comparability of services;

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

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

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirement for a charter school under subpart 1 of part B of subchapter V of this chapter;

(9) the prohibitions regarding—

(A) State aid in section 7902 of this title;

(B) use of funds for religious worship or instruction in section 7885 of this title; and

(C) activities in section 7906 of this title; or

(10) the selection of a school attendance area or school under subsections (a) and (b) of section 6313 of this title, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of subchapter I of this chapter if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 6313 of this title.

(d) Duration and extension of waiver

(1) In general

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

(2) Extension

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

- (A) the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver was requested and the waiver has contributed to improved student achievement; and
- (B) the extension is in the public interest.

(e) Reports**(1) Local waiver**

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

- (A) describes the uses of the waiver by the agency or by schools;
- (B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers were granted; and
- (C) evaluates the progress of the agency and of schools in improving the quality of instruction or the academic achievement of students.

(2) State waiver

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

(3) Indian tribe waiver

An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

- (A) describes the uses of the waiver by schools operated by the tribe; and
- (B) evaluates the progress of those schools in improving the quality of instruction or the academic achievement of students.

(4) Report to Congress

Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report—

- (A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and
- (B) describing whether the waivers—
 - (i) increased the quality of instruction to students; or
 - (ii) improved the academic achievement of students.

(f) Termination of waivers

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

(g) Publication

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

(Pub. L. 89-10, title IX, §9401, as added Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1972.)

PRIOR PROVISIONS

A prior section 7861, Pub. L. 89-10, title IX, §9141, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, related to national activities, prior to the general amendment of this subchapter by Pub. L. 107-110. See section 7451 of this title.

Prior sections 7871 to 7874 were omitted in the general amendment of this subchapter by Pub. L. 107-110.

Section 7871, Pub. L. 89-10, title IX, §9151, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3792, established National Advisory Council on Indian Education. See section 7471 of this title.

Section 7872, Pub. L. 89-10, title IX, §9152, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to peer review of applications. See section 7472 of this title.

Section 7873, Pub. L. 89-10, title IX, §9153, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to preference for Indian applicants for grants. See section 7473 of this title.

Section 7874, Pub. L. 89-10, title IX, §9154, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3793, related to minimum grant criteria. See section 7474 of this title.

PART E—UNIFORM PROVISIONS

SUBPART 1—PRIVATE SCHOOLS

§ 7881. Participation by private school children and teachers**(a) Private school participation****(1) In general**

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

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

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

(3) Special rule

Educational services and other benefits provided under this section for private school