

**GADSDEN CITY BOARD OF EDUCATION**  
**PRIVATE SCHOOLS**  
**POLICY AND PROCEDURES**

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**Part E — Uniform Provisions**

[SEC. 9501](#) | [SEC. 9502](#) | [SEC. 9503](#) | [SEC. 9504](#) | [SEC. 9505](#) | [SEC. 9506](#)

**SUBPART 1 — PRIVATE SCHOOLS****SEC. 9501. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.****(a) PRIVATE SCHOOL PARTICIPATION-**

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

(2) **SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS-** Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

(3) **SPECIAL RULE-** Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(4) **EXPENDITURES-** Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(5) **PROVISION OF SERVICES-** An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

**(b) APPLICABILITY-**

(1) **IN GENERAL-** This section applies to programs under —

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

(B) part C of title I;

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

(D) part B of title II;

(E) part D of title II;

(F) part A of title III;

(G) part A of title IV; and

(H) part B of title IV.

(2) **DEFINITION-** For the purpose of this section, the term 'eligible children' means children eligible for services under a program described in paragraph (1).

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

(B) Subject to subparagraph (A), the share of the local educational agency's subgrant under part A of title II that is used for



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

(c) CONSULTATION-

(1) IN GENERAL- To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this Act, on issues such as —

(A) how the children's needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be assessed and how the results of the assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and

(F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

(2) DISAGREEMENT- If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) TIMING- The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

(4) DISCUSSION REQUIRED- The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(d) PUBLIC CONTROL OF FUNDS-

(1) IN GENERAL- The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

(2) PROVISION OF SERVICES-

(A) IN GENERAL- The provision of services under this section shall be provided —

(i) by employees of a public agency; or

(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

(B) INDEPENDENCE; PUBLIC AGENCY- In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) COMMINGLING OF FUNDS PROHIBITED- Funds used to provide services under this section shall not be commingled with non-Federal funds.

**9502. STANDARDS FOR BY-PASS.**

(a) IN GENERAL- If, by reason of any provision of law, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or other entity is prohibited from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary schools and secondary schools, on an equitable basis, or if the Secretary determines that the agency, consortium, or entity has substantially failed or is unwilling to provide for that participation, as required by section 9501, the Secretary shall —



(1) waive the requirements of that section for the agency, consortium, or entity; and

(2) arrange for the provision of equitable services to those children, teachers, or other educational personnel through arrangements that shall be subject to the requirements of this section and of sections 9501, 9503, and 9504.

(b) DETERMINATION- In making the determination under subsection (a), the Secretary shall consider one or more factors, including the quality, size, scope, and location of the program, and the opportunity of private school children, teachers, and other educational personnel to participate in the program.

#### **SEC. 9503. COMPLAINT PROCESS FOR PARTICIPATION OF PRIVATE SCHOOL CHILDREN.**

(a) PROCEDURES FOR COMPLAINTS- The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 9501 by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within a reasonable period of time.

(b) APPEALS TO SECRETARY- The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within a reasonable period of time. The appeal shall be accompanied by a copy of the State educational agency's resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.

#### **SEC. 9504. BY-PASS DETERMINATION PROCESS.**

##### **(a) REVIEW-**

##### **(1) IN GENERAL-**

(A) WRITTEN OBJECTIONS- The Secretary shall not take any final action under section 9502 until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

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

##### **(2) PETITION FOR REVIEW-**

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

(B) TRANSMISSION- A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

(C) FILING- The Secretary, upon receipt of the copy of the petition, shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

##### **(3) FINDINGS OF FACT-**

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

(B) NEW OR MODIFIED FINDINGS- Any new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

##### **(4) JURISDICTION-**

(A) IN GENERAL- Upon the filing of a petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part.

(B) JUDGMENT- The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) DETERMINATION- Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with that agency, consortium, or entity and representatives of the affected private school children, teachers, or other educational

personnel, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the applicable requirements of section 9501 or any other provision of this Act.

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

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

#### **SEC. 9505. PROHIBITION AGAINST FUNDS FOR RELIGIOUS WORSHIP OR INSTRUCTION.**

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

#### **SEC. 9506. PRIVATE, RELIGIOUS, AND HOME SCHOOLS.**

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

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

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

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

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