

TITLE ~~IX~~ VIII – GENERAL PROVISIONS

PART A – DEFINITIONS

**SEC. 9101 8101. DEFINITIONS. (20 U.S.C. 7801)**

Except as otherwise provided, in this Act:

(1) AVERAGE DAILY ATTENDANCE.—(A) IN GENERAL. Except as provided otherwise by State law or this paragraph, the term “average daily attendance” means—

(i) the aggregate number of days of attendance of all students during a school year; divided by

(ii) the number of days school is in session during that year.

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

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

(i) consider the child to be in attendance at a school of the agency making the payment; and

(ii) not consider the child to be in attendance at a school of the agency receiving the payment.

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

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

(A) without regard to the source of funds—

(i) the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State or, in the case of the United States, for all States (which, for the purpose of this paragraph, means the 50 States and the District of Columbia); plus

(ii) any direct current expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

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

- (4) **(3) CHILD.** The term "child" means any person within the age limits for which the State provides free public education.
- (5) **(4) CHILD WITH A DISABILITY.** The term "child with a disability" has the same meaning given that term in section 602 of the Individuals with Disabilities Education Act.
- (6) **(5) COMMUNITY-BASED ORGANIZATION.** The term "community-based organization" means a public or private nonprofit organization of demonstrated effectiveness that—
- (A) is representative of a community or significant segments of a community; and
  - (B) provides educational or related services to individuals in the community.
- (7) **(6) CONSOLIDATED LOCAL APPLICATION.** The term "consolidated local application" means an application submitted by a local educational agency pursuant to section 9305 **8305**.
- (8) **(7) CONSOLIDATED LOCAL PLAN.** The term "consolidated local plan" means a plan submitted by a local educational agency pursuant to section 9305 **8305**.
- (9) **(8) CONSOLIDATED STATE APPLICATION.** The term "consolidated State application" means an application submitted by a State educational agency pursuant to section 9302 **8302**.
- (10) **(9) CONSOLIDATED STATE PLAN.** The term "consolidated State plan" means a plan submitted by a State educational agency pursuant to section 9302 **8302**.
- (11) ~~CORE ACADEMIC SUBJECTS.~~ The term "~~core academic subjects~~" means ~~English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.~~
- (12) **(10) COUNTY.** The term "county" means one of the divisions of a State used by the Secretary of Commerce in compiling and reporting data regarding counties.
- (13) **(11) COVERED PROGRAM.** The term "covered program" means each of the programs authorized by—
- (A) part A of title I;
  - ~~(B) subpart 3 of part B of title I; [Even Start]~~
  - ~~(C) (B) part C of title I; [Migrants]~~
  - ~~(D) (C) part D of title I; [Neglected or Delinquent]~~
  - ~~(E) part F of title I; [CSRDI]~~
  - ~~(F) (D) part A of title II; [Professional Development] [Supporting Effective Instruction]~~
  - ~~(G) part D of title II; [Technology]~~
  - ~~(H) (E) part A of title III; [ELL]~~
  - ~~(I) (F) part A of title IV; [Safe and Drug-Free Schools] [Student Support and Academic Enrichment Grants]~~
  - ~~(J) (G) part B of title IV; and [21<sup>st</sup> Century Community Learning Centers]~~
  - ~~(K) part A of title V [Innovation (old Chapter 2)]; and~~
  - ~~(L) (H) subpart 2 of part B of title VI **V**. [Rural and Low-Income School Program]~~
- (14) **(12) CURRENT EXPENDITURES.** The term "current expenditures" means expenditures for free public education—

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

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

(15) **(13) DEPARTMENT.** The term "Department" means the Department of Education.

(16) **(14) DISTANCE LEARNING.** The term "distance learning" means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.

**(15) DUAL OR CONCURRENT ENROLLMENT PROGRAM.** The term "dual or concurrent enrollment program" means a program offered by a partnership between at least one institution of higher education and at least one local educational agency through which a secondary school student who has not graduated from high school with a regular high school diploma is able to enroll in one or more postsecondary courses and earn postsecondary credit that—

**(A) is transferable to the institutions of higher education in the partnership; and**

**(B) applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).**

**(16) EARLY CHILDHOOD EDUCATION PROGRAM.** The term "early childhood education program" has the meaning given the term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003). [see p. 17]

**(17) EARLY COLLEGE HIGH SCHOOL.** The term "early college high school" means a partnership between at least one local educational agency and at least one institution of higher education that allows participants to simultaneously complete requirements toward earning a regular high school diploma and earn not less than 12 credits that are transferable to the institutions of higher education in the partnership as part of an organized course of study toward a postsecondary degree or credential at no cost to the participant or participant's family.

~~(17) (18) EDUCATIONAL SERVICE AGENCY.~~ The term "educational service agency" means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies.

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

(19) ~~EXEMPLARY TEACHER.~~ The term "exemplary teacher" means a teacher who—

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

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

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

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

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

~~(25)~~ **(20) LIMITED ENGLISH PROFICIENT. ENGLISH LEARNER.** The term "limited English proficient learner", when used with respect to an individual, means an individual—

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C)(i) who was not born in the United States or whose native language is a language other than English;
  - (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
  - (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
  - (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—
  - (i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3) **challenging State academic standards**;
  - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
  - (iii) the opportunity to participate fully in society.

**(21) EVIDENCE-BASED.—(A) IN GENERAL.** Except as provided in subparagraph (B), the term "evidence-based", when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that—

**(i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—**

**(I) strong evidence from at least 1 well-designed and well-implemented experimental study;**

**(II) moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or**

**(III) promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or**

**(ii)(I) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and**

**(II) includes ongoing efforts to examine the effects of such activity, strategy, or intervention.**

**(B) DEFINITION FOR SPECIFIC ACTIVITIES FUNDED UNDER THIS ACT.** When used with respect to interventions or improvement activities or strategies funded under section 1003, the term "evidence-based" means a State, local educational agency, or school activity, strategy, or intervention that meets the requirements of subclause (I), (II), or (III) of subparagraph (A)(i).

**(22) EXPANDED LEARNING TIME.** The term "expanded learning time" means using a longer school day, week, or year schedule to significantly increase the total number of school hours, in order to include additional time for—

(A) activities and instruction for enrichment as part of a well-rounded education; and

(B) instructional and support staff to collaborate, plan, and engage in professional development (including professional development on family and community engagement) within and across grades and subjects.

**(23) EXTENDED-YEAR ADJUSTED COHORT GRADUATION RATE.—(A) IN GENERAL.** The term "extended-year adjusted cohort graduation rate" means the fraction—

(i) the denominator of which consists of the number of students who form the original cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data must be collected annually by State educational agencies for submission to the National Center for Education Statistics under section 153 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9543), adjusted by—

(I) adding the students who joined that cohort, after the date of the determination of the original cohort; and

(II) subtracting only those students who left that cohort, after the date of the determination of the original cohort, as described in subparagraph (B); and

(ii) the numerator of which—

(I) consists of the sum of—

(aa) the number of students in the cohort, as adjusted under clause (i), who earned a regular high school diploma before, during, or at the conclusion of—

(AA) one or more additional years beyond the fourth year of high school; or

(BB) a summer session immediately following the additional year of high school; and

(bb) all students with the most significant cognitive disabilities in the cohort, as adjusted under clause (i), assessed using the alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) and awarded a State-defined alternate diploma that is—

(AA) standards-based;

(BB) aligned with the State requirements for the regular high school diploma; and

(CC) obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(1)); and

(II) shall not include any student awarded a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

**(B) COHORT REMOVAL.** To remove a student from a cohort, a school or local educational agency shall require documentation, or obtain documentation from the State educational agency, to confirm that the student has transferred out, emigrated to another country, or transferred to a prison or juvenile facility, or is deceased.

**(C) TRANSFERRED OUT.** For purposes of this paragraph, the term "transferred out" has the meaning given the term in clauses (i), (ii), and (iii) of paragraph (25)(C).

**(D) SPECIAL RULES.—(i) SCHOOLS STARTING AFTER GRADE 9.** For those high schools that start after grade 9, the original cohort shall be calculated for the earliest high school grade students attend no later than the date by which student membership data is collected annually by State educational agencies for submission to the National Center for Education Statistics pursuant to section 153 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9543).

**(ii) VERY SMALL SCHOOLS.** A State educational agency may calculate the extended year adjusted cohort graduation rate described under this paragraph for a high school with an average enrollment over a 4-year period of less than 100 students for the purposes of section 1111(c)(4) by—

**(I) averaging the extended-year adjusted cohort graduation rate of the school over a period of three years; or**

**(II) establishing a minimum number of students that must be included in the cohort described in clause (i) of subparagraph (A) that will provide a valid graduation rate calculation as determined by the Secretary, below which the school shall be exempt from differentiation and identification under such section.**

~~(20)~~ **(24) FAMILY LITERACY SERVICES.** The term "family literacy services" means services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

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

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

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

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

**(25) FOUR-YEAR ADJUSTED COHORT GRADUATION RATE.—(A) IN GENERAL.** The term "four-year adjusted cohort graduation rate" means the fraction—

**(i) the denominator of which consists of the number of students who form the original cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data is collected annually by State educational agencies for submission to the National Center for Education Statistics pursuant to section 153 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9543), adjusted by—**

**(I) adding the students who joined that cohort, after the date of the determination of the original cohort; and**

**(II) subtracting only those students who left that cohort, after the date of the determination of the original cohort, as described in subparagraph (B); and**

**(ii) the numerator of which—**

**(I) consists of the sum of—**

**(aa) the number of students in the cohort, as adjusted under clause (i), who earned a regular high school diploma before, during, or at the conclusion of—**

**(AA) the fourth year of high school; or**

(BB) a summer session immediately following the fourth year of high school;  
and

(bb) all students with the most significant cognitive disabilities in the cohort, as adjusted under clause (i), assessed using the alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) and awarded a State-defined alternate diploma that is—

(AA) standards-based;

(BB) aligned with the State requirements for the regular high school diploma;  
and

(CC) obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(1)); and

(II) shall not include any student awarded a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

(B) COHORT REMOVAL. To remove a student from a cohort, a school or local educational agency shall require documentation, or obtain documentation from the State educational agency, to confirm that the student has transferred out, emigrated to another country, or transferred to a prison or juvenile facility, or is deceased.

(C) TRANSFERRED OUT.—(i) IN GENERAL. For purposes of this paragraph, the term "transferred out" means that a student, as confirmed by the high school or local educational agency in accordance with clause (ii), has transferred to—

(I) another school from which the student is expected to receive a regular high school diploma; or

(II) another educational program from which the student is expected to receive a regular high school diploma or an alternate diploma that meets the requirements of subparagraph (A)(ii)(I)(bb).

(ii) CONFIRMATION REQUIREMENTS.—(I) DOCUMENTATION REQUIRED. The confirmation of a student's transfer to another school or educational program described in clause (i) requires documentation of such transfer from the receiving school or program in which the student enrolled.

(II) LACK OF CONFIRMATION. A student who was enrolled in a high school, but for whom there is no confirmation of the student having transferred out, shall remain in the adjusted cohort.

(iii) PROGRAMS NOT PROVIDING CREDIT. Except as provided in subparagraph (A)(ii)(I)(bb), a student who is retained in grade or who is enrolled in a program leading to a general equivalency diploma, or other alternative educational program that does not issue or provide credit toward the issuance of a regular high school diploma, shall not be considered transferred out and shall remain in the adjusted cohort.

(D) SPECIAL RULES.—(i) SCHOOLS STARTING AFTER GRADE 9. For those high schools that start after grade 9, the original cohort shall be calculated for the earliest high school grade students attend no later than the date by which student membership data must be collected annually by State educational agencies for submission to the National Center for Education Statistics pursuant to section 153 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9543).

*(ii) VERY SMALL SCHOOLS. A State educational agency may calculate the four-year adjusted cohort graduation rate described under this paragraph for a high school with an average enrollment over a 4-year period of less than 100 students for the purposes of section 1111(c)(4) by—*

*(I) averaging the four-year adjusted cohort graduation rate of the school over a period of three years; or*

*(II) establishing a minimum number of students that must be included in the cohort described in clause (i) of subparagraph (A) that will provide a valid graduation rate calculation as determined by the Secretary, below which the school shall be exempt from differentiation and identification under such section.*

~~(21)~~ **(26) FREE PUBLIC EDUCATION.** The term "free public education" means education that is provided—

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

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

~~(22)~~ **(27) GIFTED AND TALENTED.** The term "gifted and talented", when used with respect to students, children, or youth, means students, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

~~(23) HIGHLY QUALIFIED.~~ The term "highly qualified"—

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

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

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

~~(B) when used with respect to—~~

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

~~(I) holds at least a bachelor's degree; and~~

~~(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or~~

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



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

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

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

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

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

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

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

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

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

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

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

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

**(28) HIGH SCHOOL.** *The term "high school" means a secondary school that—*

*(A) grants a diploma, as defined by the State; and*

*(B) includes, at least, grade 12.*

~~(24) (29) INSTITUTION OF HIGHER EDUCATION. The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965.~~

~~[(25) LIMITED ENGLISH PROFICIENT: redesignated as (20, ENGLISH LEARNER)]~~

~~(26) (30) LOCAL EDUCATIONAL AGENCY.—(A) IN GENERAL. The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.~~

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

(C) BIA BUREAU OF INDIAN EDUCATION SCHOOLS. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs Education.

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

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

~~(27)~~ (31) MENTORING. The term "mentoring", except when used to refer to teacher mentoring, means a process by which a responsible adult, postsecondary student, or secondary school student works with a child to provide a positive role model for the child, to establish a supportive relationship with the child, and to provide the child with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of the child to become a responsible adult.

(32) MIDDLE GRADES. The term ["middle grades"] means any of grades 5 through 8.

(33) MULTI-TIER SYSTEM OF SUPPORTS. The term "multi-tier system of supports" means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decisionmaking.

~~(28)~~ (34) NATIVE AMERICAN AND NATIVE AMERICAN LANGUAGE. The terms "Native American" and "Native American language" have the same meaning given those terms in section 103 of the Native American Languages Act of 1990.

~~(29)~~ (35) OTHER STAFF. The term "other staff" means ~~pupil services~~ specialized instructional support personnel, librarians, career guidance and counseling personnel, education aides, and other instructional and administrative personnel.

~~(30)~~ (36) OUTLYING AREA. The term "outlying area" ~~means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands and for the purpose of section 1121(b) and any other discretionary grant program under this Act, includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau until an agreement for the extension of United States education assistance under the Compact of Free Association for each of the freely associated states becomes effective after the date of enactment of the No Child Left Behind Act of 2001.~~

(A) means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands;

(B) means the Republic of Palau, to the extent permitted under section 105(f)(1)(B)(ix) of the Compact of Free Association Amendments Act of 2003 (Public Law 108-188; 117 Stat.

2751) and until an agreement for the extension of United States education assistance under the Compact of Free Association becomes effective for the Republic of Palau; and

(C) for the purpose of any discretionary grant program under this Act, includes the Republic of the Marshall Islands and the Federated States of Micronesia, to the extent permitted under section 105(f)(1)(B)(viii) of the Compact of Free Association Amendments Act of 2003 (Public Law 108-188; 117 Stat. 2751).

(37) PARAPROFESSIONAL. The term "paraprofessional", also known as a "paraeducator", includes an education assistant instructional assistant.

~~(34)~~ (38) PARENT. The term "parent" includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

~~(32)~~ (39) PARENTAL INVOLVEMENT. The term "parental involvement" means the participation of parents in regular, two-way, and meaningful communication involving student academic learning and other school activities, including ensuring—

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

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

(C) that parents are full partners in their child's education and are included, as appropriate, in decisionmaking and on advisory committees to assist in the education of their child; **and**

(D) the carrying out of other activities, such as those described in section 4418 **1116**.

(40) PAY FOR SUCCESS INITIATIVE. The term "pay for success initiative" means a performance-based grant, contract, or cooperative agreement awarded by a public entity in which a commitment is made to pay for improved outcomes that result in social benefit and direct cost savings or cost avoidance to the public sector. Such an initiative shall include—

(A) a feasibility study on the initiative describing how the proposed intervention is based on evidence of effectiveness;

(B) a rigorous, third-party evaluation that uses experimental or quasi-experimental design or other research methodologies that allow for the strongest possible causal inferences to determine whether the initiative has met its proposed outcomes;

(C) an annual, publicly available report on the progress of the initiative; **and**

(D) a requirement that payments are made to the recipient of a grant, contract, or cooperative agreement only when agreed upon outcomes are achieved, except that the entity may make payments to the third party conducting the evaluation described in subparagraph (B).

~~(33)~~ (41) POVERTY LINE. The term "poverty line" means the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved.

~~(34)~~ (42) PROFESSIONAL DEVELOPMENT. The term "professional development"—

(A) includes activities that—

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

- ~~(ii) are an integral part of broad schoolwide and districtwide educational improvement plans;~~
- ~~(iii) give teachers, principals, and administrators the knowledge and skills to provide students with the opportunity to meet challenging State academic content standards and student academic achievement standards;~~
- ~~(iv) improve classroom management skills;~~
- ~~(v)(I) are high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher's performance in the classroom; and~~
- ~~(II) are not 1-day or short-term workshops or conferences;~~
- ~~(vi) support the recruiting, hiring, and training of highly qualified teachers, including teachers who became highly qualified through State and local alternative routes to certification;~~
- ~~(vii) advance teacher understanding of effective instructional strategies that are—~~
  - ~~(I) based on scientifically based research (except that this subclause shall not apply to activities carried out under part D of title II); and~~
  - ~~(II) strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers; and~~
- ~~(viii) are aligned with and directly related to—~~
  - ~~(I) State academic content standards, student academic achievement standards, and assessments; and~~
  - ~~(II) the curricula and programs tied to the standards described in subclause (I) except that this subclause shall not apply to activities described in clauses (ii) and (iii) of section 2123(3)(B);~~
- ~~(ix) are developed with extensive participation of teachers, principals, parents, and administrators of schools to be served under this Act;~~
- ~~(x) are designed to give teachers of limited-English proficient children, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;~~
- ~~(xi) to the extent appropriate, provide training for teachers and principals in the use of technology so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and core academic subjects in which the teachers teach;~~
- ~~(xii) as a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;~~
- ~~(xiii) provide instruction in methods of teaching children with special needs;~~
- ~~(xiv) include instruction in the use of data and assessments to inform and instruct classroom practice; and~~
- ~~(xv) include instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents; and~~

~~(B) may include activities that—~~

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

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

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

*The term "professional development" means activities that—*

*(A) are an integral part of school and local educational agency strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and*

*(B) are sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—*

*(i) improve and increase teachers'—*

*(I) knowledge of the academic subjects the teachers teach;*

*(II) understanding of how students learn; and*

*(III) ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;*

*(ii) are an integral part of broad schoolwide and districtwide educational improvement plans;*

*(iii) allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;*

*(iv) improve classroom management skills;*

*(v) support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;*

*(vi) advance teacher understanding of—*

*(I) effective instructional strategies that are evidence-based; and*

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

*(vii) are aligned with, and directly related to, academic goals of the school or local educational agency;*

*(viii) are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian tribes (as applicable), and administrators of schools to be served under this Act;*

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

(x) to the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

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

(xii) are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

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

(xiv) include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(xv) involve the forming of partnerships with institutions of higher education, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

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

(xvii) provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(xviii) where practicable, provide jointly for school staff and other early childhood education program providers, to address the transition to elementary school, including issues related to school readiness.

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

~~(36) PUPIL SERVICES PERSONNEL; PUPIL SERVICES.— (A) PUPIL SERVICES PERSONNEL. The term "pupil services personnel" means school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the Individuals with Disabilities Education Act) as part of a comprehensive program to meet student needs.~~

~~(B) PUPIL SERVICES.~~ The term "pupil services" means the services provided by pupil services personnel.

~~(37) SCIENTIFICALLY BASED RESEARCH.~~ The term "scientifically based research"—

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

~~(B) includes research that—~~

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

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

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

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

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

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

**(43) REGULAR HIGH SCHOOL DIPLOMA.** The term "regular high school diploma"—

**(A) means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E); and**

**(B) does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.**

**(44) SCHOOL LEADER.** The term "school leader" means a principal, assistant principal, or other individual who is—

**(A) an employee or officer of an elementary school or secondary school, local educational agency, or other entity operating an elementary school or secondary school; and**

**(B) responsible for the daily instructional leadership and managerial operations in the elementary school or secondary school building.**

~~(38)~~ **(45) SECONDARY SCHOOL.** The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

~~(39)~~ **(46) SECRETARY.** The term "Secretary" means the Secretary of Education.

~~(47) SPECIALIZED INSTRUCTIONAL SUPPORT PERSONNEL; SPECIALIZED INSTRUCTIONAL SUPPORT SERVICES.—(A) SPECIALIZED INSTRUCTIONAL SUPPORT PERSONNEL. The term "specialized instructional support personnel" means—~~

~~(i) school counselors, school social workers, and school psychologists; and~~

~~(ii) other qualified professional personnel, such as school nurses, speech language pathologists, and school librarians, involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services (including related services as that term is defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)) as part of a comprehensive program to meet student needs.~~

~~(B) SPECIALIZED INSTRUCTIONAL SUPPORT SERVICES. The term "specialized instructional support services" means the services provided by specialized instructional support personnel.~~

~~{(40)}~~ (48) STATE. The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

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

~~(42) TEACHER MENTORING. The term "teacher mentoring" means activities that—~~

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

~~(i) are designed to help the teachers continue to improve their practice of teaching and to develop their instructional skills; and~~

~~{(ii)} part of an ongoing developmental induction process—~~

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

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

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

(43) (50) TECHNOLOGY. The term "technology" means state-of-the-art technology products and services *modern information, computer and communication technology products, services, or tools, including, the Internet and other communications networks, computer devices and other computer and communications hardware, software applications, data systems, and other electronic content (including multimedia content) and data storage.*

(51) UNIVERSAL DESIGN FOR LEARNING. The term "universal design for learning" has the meaning given the term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003). [See p. 17]

(52) WELL-ROUNDED EDUCATION. The term "well-rounded education" means courses, activities, and programming in subjects such as English, reading or language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education,



health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience.

**Definitions incorporated by reference from section 103 of the  
Higher Education Act of 1965**

(8) EARLY CHILDHOOD EDUCATION PROGRAM. The term "early childhood education program" means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(B) a State licensed or regulated child care program; or

(C) a program that—

(i) serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) is—

(I) a State prekindergarten program;

(II) a program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or

(III) a program operated by a local educational agency.

(24) UNIVERSAL DESIGN FOR LEARNING. The term "universal design for learning" means a scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

**SEC. 9102 8102. APPLICABILITY OF TITLE. (20 U.S.C. 7802)**

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

**SEC. 9103 8103. APPLICABILITY TO BUREAU OF INDIAN AFFAIRS EDUCATION OPERATED SCHOOLS. (20 U.S.C. 7803)**

For the purpose of any competitive program under this Act—

- (1) a consortium of schools operated by the Bureau of Indian Affairs Education;
  - (2) a school operated under a contract or grant with the Bureau of Indian Affairs Education in consortium with another contract or grant school or a tribal or community organization; or
  - (3) a Bureau of Indian Affairs Education school in consortium with an institution of higher education, a contract or grant school, or a tribal or community organization,
- shall be given the same consideration as a local educational agency.

**PART B – FLEXIBILITY IN THE USE OF ADMINISTRATIVE AND OTHER FUNDS**

**SEC. 9201 8201. CONSOLIDATION OF STATE ADMINISTRATIVE FUNDS FOR ELEMENTARY AND SECONDARY EDUCATION PROGRAMS. (20 U.S.C. 7821)**

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

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

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

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

- (A) the coordination of those programs with other Federal and non-Federal programs;
- (B) the establishment and operation of peer-review mechanisms under this Act;
- (C) the administration of this title;
- (D) the dissemination of information regarding model programs and practices;
- (E) technical assistance under any program under this Act;
- (F) State-level activities designed to carry out this title;
- (G) training personnel engaged in audit and other monitoring activities; and
- (H) implementation of the Cooperative Audit Resolution and Oversight Initiative of the Department; and

**(l) implementation of fiscal support teams that provide technical fiscal support assistance, which shall include evaluating fiscal, administrative, and staffing functions, and any other key operational function.**

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

(d) **REVIEW.** To determine the effectiveness of State administration under this section, the Secretary may periodically review the performance of State educational agencies in using consolidated administrative funds under this section and take such steps as the Secretary finds appropriate to ensure the effectiveness of that administration.

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

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

**SEC. 9202 8202. SINGLE LOCAL EDUCATIONAL AGENCY STATES. (20 U.S.C. 7822)**

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

**SEC. 9203 8203. CONSOLIDATION OF FUNDS FOR LOCAL ADMINISTRATION. (20 U.S.C. 7823)**

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

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

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

(d) **USES OF ADMINISTRATIVE FUNDS.** ~~—(1) IN GENERAL.~~ A local educational agency that consolidates administrative funds under this section may use the consolidated funds for the administration of the programs and for uses, at the school district and school levels, comparable to those described in section 9204(b)(2) **8201(b)(2).**

**(2) FISCAL SUPPORT TEAMS.** A local educational agency that uses funds as described in section 8201(b)(2)(I) may contribute State or local funds to expand the reach of such support without violating any supplement, not supplant requirement of any program contributing administrative funds.

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

**SEC. 9204 8204. CONSOLIDATED SET-ASIDE FOR DEPARTMENT OF THE INTERIOR FUNDS. (20 U.S.C. 7824)**

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

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

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

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

(ii) be developed in consultation with Indian tribes.

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

**(c) ACCOUNTABILITY SYSTEM.**—(1) For the purposes of part A of title I, the Secretary of Interior, in consultation with the Secretary, if the Secretary of the Interior requests the consultation, using a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year, shall define the standards, assessments, and accountability system consistent with section 1111, for the schools funded by the Bureau of Indian Education on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.

(2) The tribal governing body or school board of a school funded by the Bureau of Indian Affairs may waive, in part or in whole, the requirements established pursuant to paragraph (1) where such requirements are determined by such body or school board to be inappropriate. If such requirements are waived, the tribal governing body or school board shall, within 60 days, submit to the Secretary of Interior a proposal for alternative standards, assessments, and an accountability system, if applicable, consistent with section 1111, that takes into account the unique circumstances and needs of such school or schools and the students served. The Secretary of the Interior and the Secretary shall approve such standards, assessments, and accountability system unless the Secretary determines that the standards, assessments, and accountability system do not meet the requirements of section 1111, taking into account the unique circumstances and needs of such school or schools and the students served.

(3) **TECHNICAL ASSISTANCE.** The Secretary of Interior and the Secretary shall, either directly or through a contract, provide technical assistance, upon request, to a tribal governing body or school board of a school funded by the Bureau of Indian Affairs that seeks a waiver under paragraph (2).

#### **SEC. 8205. DEPARTMENT STAFF.**

The Secretary shall—

(1) not later than 60 days after the date of enactment of the Every Student Succeeds Act, identify the number of Department full-time equivalent employees who worked on or administered each education program or project authorized under this Act, as such program or project was in effect on the day before such date of enactment, and publish such information on the Department's website;

(2) not later than 60 days after such date of enactment, identify the number of full-time equivalent employees who worked on or administered each program or project authorized under this Act, as such program or project was in effect on the day before such date of enactment, that has been eliminated or consolidated since such date of enactment;

(3) not later than 1 year after such date of enactment, reduce the workforce of the Department by the number of full-time equivalent employees the Department identified under paragraph (2); and

(4) not later than 1 year after such date of enactment, report to Congress on—

(A) the number of full-time equivalent employees associated with each program or project authorized under this Act and administered by the Department;

(B) the number of full-time equivalent employees who were determined to be associated with eliminated or consolidated programs or projects described in paragraph (2);

(C) how the Secretary has reduced the number of full-time equivalent employees as described in paragraph (3);

(D) the average salary of the full-time equivalent employees described in subparagraph (B) whose positions were eliminated; and

(E) the average salary of the full-time equivalent employees who work on or administer a program or project authorized by the Department under this Act, disaggregated by employee function within each such program or project.

### **PART C – COORDINATION OF PROGRAMS; CONSOLIDATED STATE AND LOCAL PLANS AND APPLICATIONS**

#### **SEC. 9301 8301. PURPOSES. (20 U.S.C. 7841)**

The purposes of this part are—

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

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

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

**SEC. 9302 8302. OPTIONAL CONSOLIDATED STATE PLANS OR APPLICATIONS. (20 U.S.C. 7842)**

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

- (A) each of the covered programs in which the State participates; and
- (B) such other programs as the Secretary may designate.

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

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

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

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

**SEC. 9303 8303. CONSOLIDATED REPORTING. (20 U.S.C. 7843)**

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

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

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

**SEC. 9304 8304. GENERAL APPLICABILITY OF STATE EDUCATIONAL AGENCY ASSURANCES. (20 U.S.C. 7844)**

(a) ASSURANCES. A State educational agency, in consultation with the Governor of the State, that submits a consolidated State plan or consolidated State application under this Act, whether separately or under section 9302 8302, shall have on file with the Secretary a single set

of assurances, applicable to each program for which the plan or application is submitted, that provides that—

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

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

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

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

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

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

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

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

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

(6) the State will—

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

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

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

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

**SEC. 9305 8305. CONSOLIDATED LOCAL PLANS OR APPLICATIONS. (20 U.S.C. 7845)**

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

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

(b) REQUIRED CONSOLIDATED PLANS OR APPLICATIONS. A State educational agency that has an approved consolidated State plan or application under section 9302 **8302** may require local educational agencies in the State receiving funds under more than one program included in the consolidated State plan or consolidated State application to submit consolidated local plans or applications under those programs, but may not require those agencies to submit separate plans.

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

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

**(e) RURAL CONSOLIDATED PLAN.—(1) IN GENERAL.** *Two or more eligible local educational agencies, a consortium of eligible local educational service agencies, or an educational service agency on behalf of eligible local educational agencies may submit plans or applications for 1 or more covered programs to the State educational agency on a consolidated basis, if each eligible local educational agency impacted elects to participate in the joint application or elects to allow the educational service agency to apply on its behalf.*

**(2) ELIGIBLE LOCAL EDUCATIONAL AGENCY.** *For the purposes of this subsection, the term "eligible local educational agency" means a local educational agency that is an eligible local educational agency under part B of title V.*

**SEC. 9306 8306. OTHER GENERAL ASSURANCES. (20 U.S.C. 7846)**

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

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

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

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

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

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

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

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



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

(6) the applicant will—

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

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

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

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

#### PART D – WAIVERS

#### SEC. 9401 8401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS. (20 U.S.C. 7861)

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

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

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

**(a) IN GENERAL.—(1) REQUEST FOR WAIVER BY STATE OR INDIAN TRIBE. A State educational agency or Indian tribe that receives funds under a program authorized under this Act may submit a request to the Secretary to waive any statutory or regulatory requirement of this Act.**

**(2) LOCAL EDUCATIONAL AGENCY AND SCHOOL REQUESTS SUBMITTED THROUGH THE STATE.—(A) REQUEST FOR WAIVER BY LOCAL EDUCATIONAL AGENCY. A local educational agency that receives funds under a program authorized under this Act and desires a waiver of any statutory or regulatory requirement of this Act shall submit a request containing the information described in subsection (b)(1) to the appropriate State educational agency. The State educational agency may then submit the request to the Secretary if the State educational agency determines the waiver appropriate.**

**(B) REQUEST FOR WAIVER BY SCHOOL. An elementary school or secondary school that desires a waiver of any statutory or regulatory requirement of this Act shall submit a request containing the information described in subsection (b)(1) to the local educational agency serving the school. The local educational agency may then submit the request to the State educational agency in accordance with subparagraph (A) if the local educational agency determines the waiver appropriate.**

**(3) RECEIPT OF WAIVER.** *Except as provided in subsection (b)(4) or (c), the Secretary may waive any statutory or regulatory requirement of this Act for which a waiver request is submitted to the Secretary pursuant to this subsection.*

(b) **REQUEST FOR WAIVER.**—(1) **IN GENERAL.** A State educational agency, *acting on its own behalf or on behalf of a* local educational agency *in accordance with subsection (a)(2)*, or Indian tribe that desires a waiver shall submit a waiver request to the Secretary, *which shall include a plan* that—

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

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

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

~~(ii) improve the academic achievement of students;~~

(C) ~~describes, for each school year, specific, measurable educational goals, in accordance with section 1111(b), for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes~~ *how the waiving of such requirements will advance student academic achievement;*

(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~~ *describes the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;*

*(E) includes only information directly related to the waiver request; and*

~~(E)~~ *F* describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested *and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describes how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).*

(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 those agencies or* on behalf of, and based on the requests of, local educational agencies *in the State*) 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, *or on behalf of local educational agencies in the State under subsection (a)(2)*, the State educational agency shall—

(i) provide all *the public and any* interested local educational agencies *agency* in the State with notice and a reasonable opportunity to comment *and provide input* on the request, *to the extent that the request impacts the local educational agency*;

(ii) submit the comments *and input* to the Secretary, *with a description of how the State addressed the comments and input*; and

(iii) provide notice and information *a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment* to the public regarding the waiver request in the manner in which the applying agency customarily provides similar notices and information to the public.

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

(i) the request shall be reviewed *and approved* by the State educational agency *in accordance with subsection (a)(2) before being submitted to the Secretary* and be accompanied by the comments, if any, of the State educational agency *and the public*; and

(ii) notice and information *a reasonable opportunity to comment* regarding the waiver request shall be provided to the *State educational agency and the public* by the agency requesting the waiver in the manner in which that agency customarily provides similar notices and information *opportunity to comment* to the public.

(4) WAIVER DETERMINATION, DEMONSTRATION, AND REVISION.—(A) IN GENERAL. *The Secretary shall issue a written determination regarding the initial approval or disapproval of a waiver request not more than 120 days after the date on which such request is submitted. Initial disapproval of such request shall be based on the determination of the Secretary that—*

*(i) the waiver request does not meet the requirements of this section;*

*(ii) the waiver is not permitted under subsection (c);*

*(iii) the description required under paragraph (1)(C) in the plan provides insufficient information to demonstrate that the waiving of such requirements will advance student academic achievement consistent with the purposes of this Act; or*

*(iv) the waiver request does not provide for adequate evaluation to ensure review and continuous improvement of the plan.*

(B) WAIVER DETERMINATION AND REVISION. *Upon the initial determination of disapproval under subparagraph (A), the Secretary shall—*

*(i) immediately—*

*(I) notify the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe, as applicable, of such determination; and*

*(II) provide detailed reasons for such determination in writing to the applicable entity under subclause (I) to the public, such as posting in a clear and easily accessible format to the Department's website;*

*(ii) offer the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe an opportunity to revise and resubmit the waiver request by a date that is not more than 60 days after the date of such determination; and*

(iii) if the Secretary determines that the resubmission under clause (ii) does not meet the requirements of this section, at the request of the State educational agency, local educational agency, school, or Indian tribe, conduct a hearing not more than 30 days after the date of such resubmission.

(C) WAIVER DISAPPROVAL. The Secretary may ultimately disapprove a waiver request if—

(i) the State educational agency, local educational agency, school, or Indian tribe has been notified and offered an opportunity to revise and resubmit the waiver request, as described under clauses (i) and (ii) of subparagraph (B); and

(ii) the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe—

(I) does not revise and resubmit the waiver request; or

(II) revises and resubmits the waiver request, and the Secretary determines that such waiver request does not meet the requirements of this section after a hearing conducted under subparagraph (B)(iii), if such a hearing is requested.

(D) EXTERNAL CONDITIONS. The Secretary shall not disapprove a waiver request under this section based on conditions outside the scope of the waiver request.

(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, **Indian tribes** or other recipients of funds under this Act;

(2) maintenance of effort;

(3) comparability of services;

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

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

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirement for a charter school under ~~subpart 1 of part B~~ **C** of title ~~V~~ **IV**;

(9) the prohibitions ~~regarding~~—

(A) ~~State aid in section 9522~~ **in subpart 2 of part F**;

(B) **regarding** use of funds for religious worship or instruction in section ~~9505~~ **8505**; and

(C) **regarding** activities in section ~~9526~~ **8526**; or

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

(d) DURATION AND EXTENSION OF WAIVER; LIMITATIONS.—(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 *State demonstrates* 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.

*(3) SPECIFIC LIMITATIONS. The Secretary shall not require a State educational agency, local educational agency, school, or Indian tribe, as a condition of approval of a waiver request, to—*

*(A) include in, or delete from, such request, specific academic standards, such as the Common Core State Standards developed under the Common Core State Standards Initiative or any other standards common to a significant number of States;*

*(B) use specific academic assessment instruments or items, including assessments aligned to the standards described in subparagraph (A); or*

*(C) include in, or delete from, such waiver request any specific elements of—*

*(i) State academic standards;*

*(ii) academic assessments;*

*(iii) State accountability systems; or*

*(iv) teacher and school leader evaluation systems.*

~~(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.

**(e) REPORTS.** A State educational agency, local educational agency, school, or Indian tribe receiving a waiver under this section shall describe, as part of, and pursuant to, the required annual reporting under section 1111(h)—

(1) the progress of schools covered under the provisions of such waiver toward improving student academic achievement; and

(2) how the use of the waiver has contributed to such progress.

(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 ~~the Secretary—~~

(A) presents a rationale and supporting information that clearly demonstrates that the waiver is not contributing to the progress of schools described in subsection (e)(1); or

(B) determines that the waiver is no longer necessary to achieve its original purposes.

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

## **PART E – APPROVAL AND DISAPPROVAL OF STATE PLANS AND LOCAL APPLICATIONS**

### **SEC. 8451. APPROVAL AND DISAPPROVAL OF STATE PLANS. (20 U.S.C. 7871)**

(a) **APPROVAL.** A plan submitted by a State pursuant to section 2101(d), 4103(c), 4203, or 8302 shall be approved by the Secretary unless the Secretary makes a written determination (which shall include the supporting information and rationale supporting such determination), prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan is not in compliance with section 2101(d), 4103(c), or 4203, or part C, respectively.

(b) **DISAPPROVAL PROCESS.—(1) IN GENERAL.** The Secretary shall not finally disapprove a plan submitted under section 2101(d), 4103(c), 4203, or 8302, except after giving the State educational agency notice and an opportunity for a hearing.

(2) **NOTIFICATIONS.** If the Secretary finds that the plan is not in compliance, in whole or in part, with section 2101(d), 4103(c), or 4203, or part C, as applicable, the Secretary shall—

(A) immediately notify the State of such determination;

(B) provide a detailed description of the specific provisions of the plan that the Secretary determines fail to meet the requirements, in whole or in part, of such section or part, as applicable;

(C) offer the State an opportunity to revise and resubmit its plan within 45 days of such determination, including the chance for the State to present supporting information to clearly demonstrate that the State plan meets the requirements of such section or part, as applicable;

(D) provide technical assistance, upon request of the State, in order to assist the State to meet the requirements of such section or part, as applicable;

(E) conduct a hearing within 30 days of the plan's resubmission under subparagraph (C), unless a State declines the opportunity for such hearing; and

(F) request additional information, only as to the noncompliant provisions, needed to make the plan compliant.

(3) **RESPONSE.** If the State educational agency responds to the Secretary's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the State educational agency received the notification, and resubmits the plan as described in paragraph (2)(C), the Secretary shall approve such plan unless the Secretary determines the plan does not meet the requirements of section 2101(d), 4103(c), or 4203, or part C, as applicable.

(4) **FAILURE TO RESPOND.** If the State educational agency does not respond to the Secretary's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the State educational agency received the notification, such plan shall be deemed to be disapproved.

(c) **LIMITATION.** A plan submitted under section 2101(d), 4103(c), 4203, or 8302 shall not be approved or disapproved based upon the nature of the activities proposed within such plan if such proposed activities meet the applicable program requirements.

(d) **PEER-REVIEW REQUIREMENTS.** Notwithstanding any other requirements of this part, the Secretary shall ensure that any portion of a consolidated State plan that is related to part A of title I is subject to the peer-review process described in section 1111(a)(4).

#### **SEC. 8452. APPROVAL AND DISAPPROVAL OF LOCAL EDUCATIONAL AGENCY APPLICATIONS. (20 U.S.C. 7872)**

(a) **APPROVAL.** An application submitted by a local educational agency pursuant to section 2102(b), 4106, 4204(b) or 8305, shall be approved by the State educational agency unless the State educational agency makes a written determination (which shall include the supporting information and rationale for such determination), prior to the expiration of the 120-day period beginning on the date on which the State educational agency received the application, that the application is not in compliance with section 2102(b), 4106, or 4204(b), or part C, respectively.

(b) **DISAPPROVAL PROCESS.—(1) IN GENERAL.** The State educational agency shall not finally disapprove an application submitted under section 2102(b), 4106, 4204(b) or 8305 except after giving the local educational agency notice and opportunity for a hearing.

(2) **NOTIFICATIONS.** If the State educational agency finds that the application submitted under section 2102(b), 4106, 4204(b) or 8305 is not in compliance, in whole or in part, with section 2102(b), 4106, or 4204(b), or part C, respectively, the State educational agency shall—

(A) immediately notify the local educational agency of such determination;

(B) provide a detailed description of the specific provisions of the application that the State determines fail to meet the requirements, in whole or in part, of such section or part, as applicable;

(C) offer the local educational agency an opportunity to revise and resubmit its application within 45 days of such determination, including the chance for the local educational agency to present supporting information to clearly demonstrate that the application meets the requirements of such section or part;

(D) provide technical assistance, upon request of the local educational agency, in order to assist the local educational agency to meet the requirements of such section or part, as applicable;

(E) conduct a hearing within 30 days of the application's resubmission under subparagraph (C), unless a local educational agency declines the opportunity for such a hearing; and

(F) request additional information, only as to the noncompliant provisions, needed to make the application compliant.

(3) **RESPONSE.** If the local educational agency responds to the State educational agency's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the local educational agency received the notification, and resubmits the application as described in paragraph (2)(C), the State educational agency shall approve such application unless the State educational agency determines the application does not meet the requirements of this part.

(4) **FAILURE TO RESPOND.** If the local educational agency does not respond to the State educational agency's notification described in paragraph (2)(A) prior to the expiration of the 45-day period beginning on the date on which the local educational agency received the notification, such application shall be deemed to be disapproved.

## **PART E **F** – UNIFORM PROVISIONS**

### **Subpart 1 – Private Schools**

#### **SEC. 9501 8501. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.** **(20 U.S.C. 7881)**

(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.—(A) IN GENERAL.** 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.

**(B) OMBUDSMAN.** *To help ensure equitable services are provided to private school children, teachers, and other educational personnel under this section, the State educational agency involved shall direct the ombudsman designated by the agency under section 1117 to monitor and enforce the requirements of this section.*

(4) **EXPENDITURES.** ~~(A) IN GENERAL.~~ 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.

**(B) OBLIGATION OF FUNDS.** *Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.*

**(C) NOTICE OF ALLOCATION.** *Each State educational agency shall provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under this subpart that the local educational agencies have determined are available for eligible private 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) **(A)** part C of title I;
- (C) **(B)** 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) **(C)** part A of title III;
- (G) **(D)** part A of title IV; and
- (H) **(E)** 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. *Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children 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 how that amount is determined*; 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; *and*

*(G) whether the agency, consortium, or entity shall provide services directly or through a separate government agency, consortium, or entity, or through a third-party contractor; and*

*(H) whether to provide equitable services to eligible private school children—*

*(i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(C) based on all the children from low-income families in a participating school attendance area who attend private schools; or*

*(ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(C) based on the number of children from low-income families who attend private schools.*

(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 schoolchildren, 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.

*(5) DOCUMENTATION. Each local educational agency shall maintain in the agency's records, and provide to the State educational agency involved, a written affirmation signed by officials of each participating private school that the meaningful consultation required by this section has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that*

*the program design is not equitable with respect to eligible private school children. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.*

**(6) COMPLIANCE.—(A) IN GENERAL.** *If the consultation required under this section is with a local educational agency or educational service agency, a private school official shall have the right to file a complaint with the State educational agency that the consultation required under this section was not meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school or its students equitably as required by this section.*

**(B) PROCEDURE.** *If the private school official wishes to file a complaint, the private school official shall provide the basis of the noncompliance and all parties shall provide the appropriate documentation to the appropriate officials.*

**(C) SERVICES.** *A State educational agency shall provide services under this section directly or through contracts with public and private agencies, organizations, and institutions, if the appropriate private school officials have—*

*(i) requested that the State educational agency provide such services directly; and*

*(ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.*

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

**(2) PROVISION OF SERVICES.—(A) IN GENERAL.** The provision of services under this section shall be provided—

(i) by employees of a public agency; or

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

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

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

## **SEC. 9502 8502. STANDARDS FOR BY-PASS. (20 U.S.C. 7882)**

**(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 9504 8501, 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 9504 **8501**, 9503 **8503**, and 9504 **8504**.

(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 **8503**. COMPLAINT PROCESS FOR PARTICIPATION OF PRIVATE SCHOOL CHILDREN. (20 U.S.C. 7883)**

(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 9504 **8501** 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 **45 days**.

(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 45-day timeline**. The appeal shall be accompanied by a copy of the State educational agency's resolution, and, **if there is one**, a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 420 **90** days after receipt of the appeal.

**SEC. 9504 **8504**. BY-PASS DETERMINATION PROCESS. (20 U.S.C. 7884)**

(a) REVIEW.—(1) IN GENERAL.—(A) WRITTEN OBJECTIONS. The Secretary shall not take any final action under section 9502 **8502** 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 9504 **8501** 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 **8505.** PROHIBITION AGAINST FUNDS FOR RELIGIOUS WORSHIP OR INSTRUCTION. (20 U.S.C. 7885)**

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 **8506.** PRIVATE, RELIGIOUS, AND HOME SCHOOLS. (20 U.S.C. 7886)**

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

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

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

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

## Subpart 2 – Other Provisions

### **SEC. 9521 8521. MAINTENANCE OF EFFORT. (20 U.S.C. 7901)**

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

(b) REDUCTION IN CASE OF FAILURE TO MEET.—(1) IN GENERAL. The State educational agency shall reduce the amount of the allocation of funds under a covered program in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) of this section by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency), *if such local educational agency has also failed to meet such requirement (as determined using the measure most favorable to the local agency) for 1 or more of the 5 immediately preceding fiscal years.*

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

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

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

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

### **SEC. 9522 8522. PROHIBITION REGARDING STATE AID. (20 U.S.C. 7902)**

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

### **SEC. 9523 8523. PRIVACY OF ASSESSMENT RESULTS. (20 U.S.C. 7903)**

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

### **SEC. 9524 8524. SCHOOL PRAYER. (20 U.S.C. 7904)**

(a) GUIDANCE. The Secretary shall provide and revise guidance, not later than September 1, 2002, and of every second year thereafter, to State educational agencies, local educational agencies, and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available ~~on the Internet~~ *by*

**electronic means, including by posting the guidance on the Department's website in a clear and easily accessible manner.** The guidance shall be reviewed, prior to distribution, by the Office of Legal Counsel of the Department of Justice for verification that the guidance represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

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

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

**SEC. 9525 8525. EQUAL ACCESS TO PUBLIC SCHOOL FACILITIES. (20 U.S.C. 9525)**

(a) **SHORT TITLE.** This section may be cited as the "Boy Scouts of America Equal Access Act".

(b) **IN GENERAL.—(1) EQUAL ACCESS.** Notwithstanding any other provision of law, no public elementary school, public secondary school, local educational agency, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the Department shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 of the United States Code (as a patriotic society).

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

(c) **TERMINATION OF ASSISTANCE AND OTHER ACTION.—(1) DEPARTMENTAL ACTION.** The Secretary is authorized and directed to effectuate subsection (b) by issuing and securing compliance with rules or orders with respect to a public elementary school, public secondary school, local educational agency, or State educational agency that receives funds made available through the Department and that denies equal access, or a fair opportunity to meet, or discriminates, as described in subsection (b).

(2) **PROCEDURE.** The Secretary shall issue and secure compliance with the rules or orders, under paragraph (1), through the Office for Civil Rights and in a manner consistent with the procedure used by a Federal department or agency under section 602 of the Civil Rights Act of 1964. If the public school or agency does not comply with the rules or orders, then

notwithstanding any other provision of law, no funds made available through the Department shall be provided to a school that fails to comply with such rules or orders or to any agency or school served by an agency that fails to comply with such rules or orders.

(3) JUDICIAL REVIEW. Any action taken by the Secretary under paragraph (1) shall be subject to the judicial review described in section 603 of the Civil Rights Act of 1964. Any person aggrieved by the action may obtain that judicial review in the manner, and to the extent, provided in section 603 of such Act.

(d) DEFINITION AND RULE.—(1) DEFINITION. In this section, the term "youth group" means any group or organization intended to serve young people under the age of 21.

(2) RULE. For the purpose of this section, an elementary school or secondary school has a limited public forum whenever the school involved grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory.

**SEC. 9526 8526. GENERAL PROHIBITIONS PROHIBITED USES OF FUNDS. (20 U.S.C. 7906)**

(a) PROHIBITION. None of the **No** funds authorized under this Act shall **may** be used—

**(1) for construction, renovation, or repair of any school facility, except as authorized under this Act;**

**(2) for transportation unless otherwise authorized under this Act;**

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

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

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

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

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

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

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

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

(4) create any legally enforceable right.

**SEC. 8526A. PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL. (20 U.S.C. 7906a)**

**(a) IN GENERAL.** No officer or employee of the Federal Government shall, through grants, contracts, or other cooperative agreements, mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic standards and assessments, curricula, or program of instruction developed and implemented to meet the



requirements of this Act (including any requirement, direction, or mandate to adopt the Common Core State Standards developed under the Common Core State Standards Initiative, any other academic standards common to a significant number of States, or any assessment, instructional content, or curriculum aligned to such standards), nor shall anything in this Act be construed to authorize such officer or employee to do so.

(b) **FINANCIAL SUPPORT.** No officer or employee of the Federal Government shall condition or incentivize the receipt of any grant, contract, or cooperative agreement, the receipt of any priority or preference under such grant, contract, or cooperative agreement, or the receipt of a waiver under section 8401 upon a State, local educational agency, or school's adoption or implementation of specific instructional content, academic standards and assessments, curricula, or program of instruction developed and implemented to meet the requirements of this Act (including any condition, priority, or preference to adopt the Common Core State Standards developed under the Common Core State Standards Initiative, any other academic standards common to a significant number of States, or any assessment, instructional content, or curriculum aligned to such standards).

**SEC. 9527 8527. PROHIBITIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS. (20 U.S.C. 7907)**

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

(b) **PROHIBITION ON ENDORSEMENT OF CURRICULUM.** Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department, *whether through a grant, contract, or cooperative agreement*, to endorse, approve, or sanction any curriculum, *including any curriculum aligned to the Common Core State Standards developed under the Common Core State Standards Initiative or any other academic standards common to a significant number of States*, designed to be used in an elementary school or secondary school.

(c) **LOCAL CONTROL.** *Nothing in this section shall be construed to—*

*(1) authorize an officer or employee of the Federal Government, whether through a grant, contract, or cooperative agreement to mandate, direct, review, or control a State, local educational agency, or school's instructional content, curriculum, and related activities;*

*(2) limit the application of the General Education Provisions Act (20 U.S.C. 1221 et seq.);*

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

*(4) create any legally enforceable right.*

(d) **PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION OF STANDARDS.—(1) IN GENERAL.** Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

(2) **RULE OF CONSTRUCTION.** Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI *Act shall be construed to prohibit a State, local educational agency, or school from using funds provided under this Act for the development or implementation of any instructional content, academic standards, academic assessments,*

curriculum, or program of instruction that a State, local educational agency, or school chooses, as permitted under State and local law, as long as the use of such funds is consistent with the terms of the grant, contract, or cooperative agreement providing such funds.

(d) **(3) RULE OF CONSTRUCTION ON BUILDING STANDARDS.** Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

**SEC. 9528 8528. ARMED FORCES RECRUITER ACCESS TO STUDENTS AND STUDENT RECRUITING INFORMATION. (20 U.S.C. 7908)**

(a) **POLICY.—(1) ACCESS TO STUDENT RECRUITING INFORMATION.** Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act **(20 U.S.C. 1232g(a)(5)(B))** and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, **up** on a request made by **a** military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings **the name, address, and telephone listing of each secondary school student served by the local educational agency, unless the parent of such student has submitted the prior consent request under paragraph (2).**

(2) **CONSENT.—(A) OPT-OUT PROCESS.** A **parent of a** secondary school student or the parent of the student may **submit a written** request, **to the local educational agency**, that the student's name, address, and telephone listing described in paragraph (1) not be released **for purposes of paragraph (1)** without prior written parental consent **of the parent**, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request. **Upon receiving such request, the local educational agency may not release the student's name, address, and telephone listing for such purposes without the prior written consent of the parent.**

**(B) NOTIFICATION OF OPT-OUT PROCESS.** **Each local educational agency shall notify the parents of the students served by the agency of the option to make a request described in subparagraph (A).**

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

**(4) RULE OF CONSTRUCTION PROHIBITING OPT-IN PROCESSES.** **Nothing in this subsection shall be construed to allow a local educational agency to withhold access to a student's name, address, and telephone listing from a military recruiter or institution of higher education by implementing an opt-in process or any other process other than the written consent request process under paragraph (2)(A).**

**(5) PARENTAL CONSENT.** **For purposes of this subsection, whenever a student has attained 18 years of age, the permission or consent required of and the rights accorded to the parents of the student shall only be required of and accorded to the student.**

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

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

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

**SEC. 9529 8529. PROHIBITION ON FEDERALLY SPONSORED TESTING. (20 U.S.C. 7909)**

(a) **GENERAL PROHIBITION.** Notwithstanding any other provision of Federal law and except as provided in subsection (b), no funds provided under this Act to the Secretary or to the recipient of any award may be used to develop, *incentivize*, pilot test, field test, implement, administer, or distribute any federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law, *including any assessment or testing materials aligned to the Common Core State Standards developed under the Common Core State Standards Initiative or any other academic standards common to a significant number of States.*

(b) **EXCEPTIONS.** Subsection (a) shall not apply to international comparative assessments developed under the authority of section 153(a)(~~5~~)(6) of the Education Sciences Reform Act of 2002 (*20 U.S.C. 9543(a)(6)*) and administered to only a representative sample of pupils in the United States and in foreign nations.

**SEC. 9530 8530. LIMITATIONS ON NATIONAL TESTING OR CERTIFICATION FOR TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS. (20 U.S.C. 7910)**

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

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

**SEC. 8530A. PROHIBITION ON REQUIRING STATE PARTICIPATION. (20 U.S.C. 7910a)**

*Any State that opts out of receiving funds, or that has not been awarded funds, under one or more programs under this Act shall not be required to carry out any of the requirements of such program or programs, and nothing in this Act shall be construed to require a State to participate in any program under this Act.*

**SEC. 9531 8531. PROHIBITION ON NATIONWIDE DATABASE. (20 U.S.C. 7911)**

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

**SEC. 9532 8532. UNSAFE SCHOOL CHOICE OPTION. (20 U.S.C. 7912)**

(a) **UNSAFE SCHOOL CHOICE POLICY.** Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in

consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

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

**SEC. 9533 8533. PROHIBITION ON DISCRIMINATION. (20 U.S.C. 7913)**

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

**SEC. 9534 8534. CIVIL RIGHTS. (20 U.S.C. 7914)**

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

(b) RULE OF CONSTRUCTION. Nothing in this Act shall be construed to require the disruption of services to a child or the displacement of a child enrolled in or participating in a program administered by an eligible entity, as defined in section 4446 1111(d) of title I and part B C of title V IV, at the commencement of the entity's participation in a grant under section 4446 1111(d) of title I or part B C of title V IV.

**SEC. 9535 8535. RULEMAKING. (20 U.S.C. 7915)**

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

**SEC. 9536 8536. SEVERABILITY. (20 U.S.C. 7916)**

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

**SEC. 4155 8537. TRANSFER OF SCHOOL DISCIPLINARY RECORDS. (20 U.S.C. 7165) [transferred from §4155]**

(a) NONAPPLICATION OF PROVISIONS. This section shall not apply to any disciplinary records with respect to a suspension or expulsion that are transferred from a private, parochial or other nonpublic school, person, institution, or other entity, that provides education below the college level.

(b) DISCIPLINARY RECORDS. In accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), not later than 2 years after the date of enactment of this part, each State receiving Federal funds under this Act shall provide an assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.

**SEC. 8538. CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS.**  
**(20 U.S.C. 7918)**

(a) **IN GENERAL.** To ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students, an affected local educational agency shall consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the local educational agency prior to the affected local educational agency's submission of a required plan or application for a covered program under this Act or for a program under title VI of this Act. Such consultation shall be done in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute to such plan.

(b) **DOCUMENTATION.** Each affected local educational agency shall maintain in the agency's records and provide to the State educational agency a written affirmation signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.

(c) **DEFINITIONS.** In this section:

(1) **AFFECTED LOCAL EDUCATIONAL AGENCY.** The term "affected local educational agency" means a local educational agency—

(A) with an enrollment of American Indian or Alaska Native students that is not less than 50 percent of the total enrollment of the local educational agency; or

(B) that—

(i) for fiscal year 2017, received a grant in the previous year under subpart 1 of part A of title VII (as such subpart was in effect on the day before the date of enactment of the Every Student Succeeds Act) that exceeded \$40,000; or

(ii) for any fiscal year following fiscal year 2017, received a grant in the previous fiscal year under subpart 1 of part A of title VI that exceeded \$40,000.

(2) **APPROPRIATE OFFICIALS.** The term "appropriate officials" means—

(A) tribal officials who are elected; or

(B) appointed tribal leaders or officials designated in writing by an Indian tribe for the specific consultation purpose under this section.

(d) **RULE OF CONSTRUCTION.** Nothing in this section shall be construed—

(1) to require the local educational agency to determine who are the appropriate officials; or

(2) to make the local educational agency liable for consultation with appropriate officials that the tribe determines not to be the correct appropriate officials.

(e) **LIMITATION.** Consultation required under this section shall not interfere with the timely submission of the plans or applications required under this Act.

**SEC. 8539. OUTREACH AND TECHNICAL ASSISTANCE FOR RURAL LOCAL EDUCATIONAL AGENCIES. (20 U.S.C. 7919)**

(a) **OUTREACH.** The Secretary shall engage in outreach to rural local educational agencies regarding opportunities to apply for competitive grant programs under this Act.

(b) **TECHNICAL ASSISTANCE.** If requested to do so, the Secretary shall provide technical assistance to rural local educational agencies with locale codes 32, 33, 41, 42, or 43, or an educational service agency representing rural local educational agencies with locale codes 32, 33, 41, 42, or 43 on applications or pre-applications for any competitive grant program under this Act. No rural local educational agency or educational service agency shall be required to request technical assistance or include any technical assistance provided by the Secretary in any application.

**SEC. 8540. CONSULTATION WITH THE GOVERNOR. (20 U.S.C. 7920)**

(a) **IN GENERAL.** A State educational agency shall consult in a timely and meaningful manner with the Governor, or appropriate officials from the Governor's office, in the development of State plans under titles I and II and section 8302.

(b) **TIMING.** The consultation described in subsection (a) shall include meetings of officials from the State educational agency and the Governor's office and shall occur—

(1) during the development of such plan; and

(2) prior to submission of the plan to the Secretary.

(c) **JOINT SIGNATURE AUTHORITY.** A Governor shall have 30 days prior to the State educational agency submitting the State plan under title I or II or section 8302 to the Secretary to sign such plan. If the Governor has not signed the plan within 30 days of delivery by the State educational agency to the Governor, the State educational agency shall submit the plan to the Secretary without such signature.

**SEC. 8541. LOCAL GOVERNANCE. (20 U.S.C. 7921)**

(a) **RULE OF CONSTRUCTION.** Nothing in this Act shall be construed to allow the Secretary to—

(1) exercise any governance or authority over school administration, including the development and expenditure of school budgets, unless otherwise authorized under this Act;

(2) issue any regulation without first complying with the rulemaking requirements of section 553 of title 5, United States Code; or

(3) issue any nonregulatory guidance without first, to the extent feasible, considering input from stakeholders.

(b) **AUTHORITY UNDER OTHER LAW.** Nothing in subsection (a) shall be construed to affect any authority the Secretary has under any other Federal law.

**SEC. 8542. RULE OF CONSTRUCTION REGARDING TRAVEL TO AND FROM SCHOOL. (20 U.S.C. 7922)**

(a) **IN GENERAL.** Subject to subsection (b), nothing in this Act shall authorize the Secretary to, or shall be construed to—

(1) prohibit a child from traveling to and from school on foot or by car, bus, or bike when the parents of the child have given permission; or

(2) expose parents to civil or criminal charges for allowing their child to responsibly and safely travel to and from school by a means the parents believe is age appropriate.

(b) **NO PREEMPTION OF STATE OR LOCAL LAWS.** Notwithstanding subsection (a), nothing in this section shall be construed to preempt State or local laws.

**SEC. 8543. LIMITATIONS ON SCHOOL-BASED HEALTH CENTERS. (20 U.S.C. 7923)**

Notwithstanding section 8102, funds used for activities under this Act shall be carried out in accordance with the provision of section 399z-1(a)(3)(C) of the Public Health Service Act (42 U.S.C. 280h-5(a)(3)(C)).

**SEC. 8544. STATE CONTROL OVER STANDARDS. (20 U.S.C. 7924)**

(a) **IN GENERAL.** Nothing in this Act shall be construed to prohibit a State from withdrawing from the Common Core State Standards or from otherwise revising their standards.

(b) **PROHIBITION.** No officer or employee of the Federal Government shall, directly or indirectly, through grants, contracts or other cooperative agreements, through waiver granted under section 8401 or through any other authority, take any action against a State that exercises its rights under subsection (a).

**SEC. 8545. SENSE OF CONGRESS ON PROTECTING STUDENT PRIVACY. (20 U.S.C. 7925)**

(a) **FINDINGS.** The Congress finds as follows:

(1) Students' personally identifiable information is important to protect.

(2) Students' information should not be shared with individuals other than school officials in charge of educating those students without clear notice to parents.

(3) With the use of more technology, and more research about student learning, the responsibility to protect students' personally identifiable information is more important than ever.

(4) Regulations allowing more access to students' personal information could allow that information to be shared or sold by individuals who do not have the best interest of the students in mind.

(5) The Secretary has the responsibility to ensure every entity that receives funding under this Act holds any personally identifiable information in strict confidence.

(b) **SENSE OF CONGRESS.** It is the sense of the Congress that the Secretary should review all regulations addressing issues of student privacy, including those under this Act, and ensure that students' personally identifiable information is protected.

**SEC. 8546. PROHIBITION ON AIDING AND ABETTING SEXUAL ABUSE. (20 U.S.C. 7926)**

(a) **IN GENERAL.** A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(b) **EXCEPTION.** The requirements of subsection (a) shall not apply if the information giving rise to probable cause—

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) **PROHIBITION.** The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) **CONSTRUCTION.** Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

#### **SEC. 8547. SENSE OF CONGRESS ON RESTORATION OF STATE SOVEREIGNTY OVER PUBLIC EDUCATION. (20 U.S.C. 7927)**

It is the Sense of Congress that State and local officials should be consulted and made aware of the requirements that accompany participation in activities authorized under this Act prior to a State or local educational agency's request to participate in such activities.

#### **SEC. 8548. PRIVACY. (20 U.S.C. 7928)**

The Secretary shall require an assurance that each grantee receiving funds under this Act understands the importance of privacy protections for students and is aware of the responsibilities of the grantee under section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly known as the "Family Education Rights and Privacy Act of 1974").

#### **SEC. 8549. ANALYSIS AND PERIODIC REVIEW OF DEPARTMENTAL GUIDANCE. (20 U.S.C. 7929)**

The Secretary shall develop procedures for the approval and periodic review of significant guidance documents that include—

(1) appropriate approval processes within the Department;

(2) appropriate identification of the agency or office issuing the documents, the activities to which and the persons to whom the documents apply, and the date of issuance;

(3) a publicly available list to identify those significant guidance documents that were issued, revised, or withdrawn within the past year; and



(4) an opportunity for the public to request that an agency modify or rescind an existing significant guidance document.

**SEC. 8549A[.] SENSE OF CONGRESS. (20 U.S.C. 7930)**

(a) **FINDINGS.** The Congress finds as follows:

(1) This Act prohibits the Federal Government from mandating, directing, or controlling a State, local educational agency, or school's curriculum, program of instruction, or allocation of State and local resources, and from mandating a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

(2) This Act prohibits the Federal Government from funding the development, pilot testing, field testing, implementation, administration, or distribution of any federally sponsored national test in reading, mathematics, or any other subject, unless specifically and explicitly authorized by law.

(b) **SENSE OF CONGRESS.** It is the sense of the Congress that States and local educational agencies retain the rights and responsibilities of determining educational curriculum, programs of instruction, and assessments for elementary and secondary education.

**SEC. 8549B. SENSE OF CONGRESS ON EARLY LEARNING AND CHILD CARE. (20 U.S.C. 7931)**

It is the Sense of the Congress that a State retains the right to make decisions, free from Federal intrusion, concerning its system of early learning and child care, and whether or not to use funding under this Act to offer early childhood education programs. Such systems should continue to include robust choice for parents through a mixed delivery system of services so parents can determine the right early learning and child care option for their children. States, while protecting the rights of early learning and child care providers, retain the right to make decisions that shall include the age at which to set compulsory attendance in school, the content of a State's early learning guidelines, and how to determine quality in programs.

**SEC. 8549C. TECHNICAL ASSISTANCE. (20 U.S.C. 7932)**

If requested by a State or local educational agency, a regional educational laboratory under part D of the Education Sciences Reform Act of 2002 (20 U.S.C. 9561 et seq.) shall provide technical assistance to such State or local educational agency in meeting the requirements of section 8101(21).

**Subpart 3 – Teacher Liability Protection**

*[transferred from Title II-C-5]*

**SEC. 2361 8551. SHORT TITLE. (20 U.S.C. 6731)**

This subpart may be cited as the "Paul D. Coverdell Teacher Protection Act of 2001".

**SEC. 2362 8552. PURPOSE. (20 U.S.C. 6732)**

The purpose of this subpart is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment.

**SEC. 2363 8553. DEFINITIONS. (20 U.S.C. 6733)**

For purposes of this subpart:

(1) **ECONOMIC LOSS.** The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) **HARM.** The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) **NONECONOMIC LOSS.** The term "noneconomic loss" means loss for physical or emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society or companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, or any other nonpecuniary loss of any kind or nature.

(4) **SCHOOL.** The term "school" means a public or private kindergarten, a public or private elementary school or secondary school, or a home school.

(5) **STATE.** The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) **TEACHER.** The term "teacher" means—

(A) a teacher, instructor, principal, or administrator;

(B) another educational professional who works in a school;

(C) a professional or nonprofessional employee who—

(i) works in a school; and

(ii)(I) in the employee's job, maintains discipline or ensures safety; or

(II) in an emergency, is called on to maintain discipline or ensure safety; or

(D) an individual member of a school board (as distinct from the board).

**SEC. 2364 8554. APPLICABILITY. (20 U.S.C. 6734)**

This subpart shall only apply to States that receive funds under this Act, and shall apply to such a State as a condition of receiving such funds.

**SEC. 2365 8555. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY. (20 U.S.C. 6735)**

(a) **PREEMPTION.** This subpart preempts the laws of any State to the extent that such laws are inconsistent with this subpart, except that this subpart shall not preempt any State law that provides additional protection from liability relating to teachers.

(b) **ELECTION OF STATE REGARDING NONAPPLICABILITY.** This subpart shall not apply to any civil action in a State court against a teacher with respect to claims arising within that

State if such State enacts a statute in accordance with State requirements for enacting legislation—

- (1) citing the authority of this subsection;
- (2) declaring the election of such State that this subpart shall not apply, as of a date certain, to such civil action in the State; and
- (3) containing no other provisions.

**SEC. 2366 8556. LIMITATION ON LIABILITY FOR TEACHERS. (20 U.S.C. 6736)**

(a) LIABILITY PROTECTION FOR TEACHERS. Except as provided in subsection (b), no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if—

(1) the teacher was acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity;

(2) the actions of the teacher were carried out in conformity with Federal, State, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;

(3) if appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher’s responsibilities;

(4) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and

(5) the harm was not caused by the teacher operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

- (A) possess an operator’s license; or
- (B) maintain insurance.

(b) EXCEPTIONS TO TEACHER LIABILITY PROTECTION. If the laws of a State limit teacher liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a school or governmental entity to adhere to risk management procedures, including mandatory training of teachers.

(2) A State law that makes the school or governmental entity liable for the acts or omissions of its teachers to the same extent as an employer is liable for the acts or omissions of its employees.

**(3) A State** law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(c) LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF TEACHERS.—(1) GENERAL RULE. Punitive damages may not be awarded against a teacher in an action brought for harm based on the act or omission of a teacher acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by

an act or omission of such teacher that constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) CONSTRUCTION. Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(d) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—(1) IN GENERAL. The limitations on the liability of a teacher under this subpart shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18, United States Code) for which the defendant has been convicted in any court;

(B) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(C) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(D) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) HIRING. The limitations on the liability of a teacher under this subpart shall not apply to misconduct during background investigations, or during other actions, involved in the hiring of a teacher.

(e) RULES OF CONSTRUCTION.—(1) CONCERNING RESPONSIBILITY OF TEACHERS TO SCHOOLS AND GOVERNMENTAL ENTITIES. Nothing in this section shall be construed to affect any civil action brought by any school or any governmental entity against any teacher of such school.

(2) CONCERNING CORPORAL PUNISHMENT. Nothing in this subpart shall be construed to affect any State or local law (including a rule or regulation) or policy pertaining to the use of corporal punishment.

**SEC. 2367 8557. ALLOCATION OF RESPONSIBILITY FOR NON- ECONOMIC LOSS.**  
**(20 U.S.C. 6737)**

(a) GENERAL RULE. In any civil action against a teacher, based on an act or omission of a teacher acting within the scope of the teacher's employment or responsibilities to a school or governmental entity, the liability of the teacher for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—(1) IN GENERAL.—(A) LIABILITY. Each defendant who is a teacher shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable.

(B) SEPARATE JUDGMENT. The court shall render a separate judgment against each defendant in an amount determined pursuant to subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY. For purposes of determining the amount of noneconomic loss allocated to a defendant who is a teacher under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

(c) RULE OF CONSTRUCTION. Nothing in this section shall be construed to preempt or

supersede any Federal or State law that further limits the application of joint liability in a civil action described in subsection (a), beyond the limitations established in this section.

**SEC. 2368 8558. EFFECTIVE DATE. (20 U.S.C. 6738)**

(a) IN GENERAL. This subpart shall take effect 90 days after the date of enactment of the No Child Left Behind Act of 2001.

(b) APPLICATION. This subpart applies to any claim for harm caused by an act or omission of a teacher if that claim is filed on or after the effective date of the No Child Left Behind Act of 2001 without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.

**Subpart 4 – Gun Possession**

[transferred from Title IV, Part A, Subpart 3]

**SEC. 4144 8561. GUN-FREE REQUIREMENTS. (20 U.S.C. 7151)**

(a) SHORT TITLE. This subpart may be cited as the "Gun-Free Schools Act".

(b) REQUIREMENTS.—(1) IN GENERAL. Each State receiving Federal funds under any title of this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

(2) CONSTRUCTION. Nothing in this subpart shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

(3) DEFINITION. For the purpose of this section, the term "firearm" has the same meaning given such term in section 921(a) of title 18, United States Code.

(c) SPECIAL RULE. The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

(d) REPORT TO STATE. Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under any title of this Act shall provide to the State, in the application requesting such assistance—

(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and

(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including—

(A) the name of the school concerned;

(B) the number of students expelled from such school; and

(C) the type of firearms concerned.

(e) REPORTING. Each State shall report the information described in subsection (d) to the Secretary on an annual basis.

(f) DEFINITION. For the purpose of subsection (d), the term "school" means any setting that is under the control and supervision of the local educational agency for the purpose of student activities approved and authorized by the local educational agency.

(g) EXCEPTION. Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.

(h) POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL.—(1) IN GENERAL. No funds shall be made available under any title of this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

(2) DEFINITION. For the purpose of this subsection, the term "school" has the same meaning given to such term by section 921(a) of title 18, United States Code.

**Subpart 5 – Environmental Tobacco Smoke**  
[transferred from Title IV, Part C]

**SEC. 4301 8571. SHORT TITLE. (20 U.S.C. 7181)**

This part may be cited as the "Pro-Children Act of 2001".

**SEC. 4302 8572. DEFINITIONS. (20 U.S.C. 7182)**

As used in this part:

(1) CHILDREN. The term "children" means individuals who have not attained the age of 18.

(2) CHILDREN'S SERVICES. The term "children's services" means the provision on a routine or regular basis of health, day care, education, or library services—

(A) that are funded, after the date of enactment of the No Child Left Behind Act of 2001, directly by the Federal Government or through State or local governments, by Federal grant, loan, loan guarantee, or contract programs—

(i) administered by either the Secretary of Health and Human Services or the Secretary of Education (other than services provided and funded solely under titles XVIII and XIX of the Social Security Act); or

(ii) administered by the Secretary of Agriculture in the case of a clinic (as defined in part 246.2 of title 7, Code of Federal Regulations (or any corresponding similar regulation or ruling)) under section 17(b)(6) of the Child Nutrition Act of 1966; or

(B) that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds, as determined by the appropriate head of a Federal agency in any enforcement action carried out under this part,

except that nothing in clause (ii) of subparagraph (A) is intended to include facilities (other than clinics) where coupons are redeemed under the Child Nutrition Act of 1966.

(3) INDOOR FACILITY. The term "indoor facility" means a building that is enclosed.

(4) PERSON. The term "person" means any State or local subdivision of a State, agency of such State or subdivision, corporation, or partnership that owns or operates or otherwise controls and provides children's services or any individual who owns or operates or otherwise

controls and provides such services.

(5) SECRETARY. The term "Secretary" means the Secretary of Health and Human Services.

**SEC. 4303 8573. NONSMOKING POLICY FOR CHILDREN'S SERVICES. (20 U.S.C. 7183)**

(a) PROHIBITION. After the date of enactment of the No Child Left Behind Act of 2001, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) ADDITIONAL PROHIBITION.—(1) IN GENERAL. After the date of enactment of the No Child Left Behind Act of 2001, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood development (~~Head Start~~) services **education programs**.

(2) EXCEPTION. Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(c) FEDERAL AGENCIES.—(1) KINDERGARTEN, ELEMENTARY, OR SECONDARY EDUCATION OR LIBRARY SERVICES. After the date of enactment of the No Child Left Behind Act of 2001, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) HEALTH OR DAY CARE OR EARLY CHILDHOOD DEVELOPMENT SERVICES EDUCATION PROGRAMS.—(A) IN GENERAL. After the date of enactment of the No Child Left Behind Act of 2001, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (~~Head Start~~) services **education programs** to children.

(B) EXCEPTION. Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol;

(ii) any private residence.

(3) APPLICATION OF PROVISIONS. The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) NOTICE. The prohibitions in subsections (a) through (c) shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children's services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after the date of enactment of the No Child Left Behind Act of 2001, whichever occurs first.

(e) CIVIL PENALTIES.—(1) IN GENERAL. Any failure to comply with a prohibition in this

section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any title of this Act by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c), the term "person", as used in this paragraph, shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

(2) ADMINISTRATIVE PROCEEDING. A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) CIRCUMSTANCES AFFECTING PENALTY OR ORDER. In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) MODIFICATION. The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

(5) PETITION FOR REVIEW. Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) FAILURE TO COMPLY. If a person fails to pay an assessment of a civil penalty or



comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

**SEC. 4304 8574. PREEMPTION. (20 U.S.C. 7184)**

Nothing in this part is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this part.

**PART F G – EVALUATIONS**

**SEC. 9601 8601. EVALUATIONS. (20 U.S.C. 7941)**

(a) **RESERVATION OF FUNDS.** Except as provided in subsections (b) and (c), the Secretary, *in consultation with the Director of the Institute of Education Sciences*, may reserve not more than 0.5 percent of the amount appropriated ~~to carry out~~ *for each categorical program and demonstration project authorized under this Act to carry out activities under this section. If the Secretary elects to make a reservation under this subsection, the reserved amounts—*

(1) *shall first be used by the Secretary, acting through the Director of the Institute of Education Sciences, to conduct—*

(A) *conduct* comprehensive, *high-quality* evaluations of the program ~~s~~ or project; and ~~that—~~

*(i) are consistent with the evaluation plan under subsection (d); and*

*(ii) primarily include impact evaluations that use experimental or quasi-experimental designs, where practicable and appropriate, and other rigorous methodologies that permit the strongest possible causal inferences;*

(B) *conduct* studies of the effectiveness of the program ~~s~~ or project and its *the* administrative impact *of the programs* on schools and local educational agencies; *and*

*(C) widely disseminate evaluation findings under this section related to programs authorized under this Act—*

*(i) in a timely fashion;*

*(ii) in forms that are understandable, easily accessible, usable, and adaptable for use in the improvement of educational practice;*

*(iii) through electronic transfer and other means, such as posting, as available, to the websites of State educational agencies, local educational agencies, the Institute of Education Sciences, or the Department, or in another relevant place; and*

*(iv) in a manner that promotes the utilization of such findings; and*

(2) *may be used by the Secretary, acting through the Director of the Institute of Education Sciences—*

*(A) to evaluate the aggregate short- and long-term effects and cost efficiencies across—*

*(i) Federal programs assisted or authorized under this Act; and*

(ii) related Federal *early childhood programs*, preschool *programs*, elementary *school programs*, and secondary *school programs*, under any other Federal law; and

(3) (B) to increase the usefulness of *the* evaluations of grant recipients in order to ensure the continuous progress of the program or project *conducted under this section* by improving the quality, timeliness, efficiency, and use of information relating to performance under the program or project *to promote continuous improvement of programs assisted or authorized under this Act; and*

(C) *to assist recipients of grants under such programs in collecting and analyzing data and other activities related to conducting high-quality evaluations under paragraph (1).*

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

~~(b) TITLE I.~~ *The Secretary, acting through the Director of the Institute of Education Sciences, shall use funds authorized under section 1002(e) to carry out evaluation activities under this section related to title I, and shall not reserve any other money from such title for evaluation.*

~~(c) CONSOLIDATION.~~ *Notwithstanding any other provision of this section or section 1002(e), the Secretary, in consultation with the Director of the Institute of Education Sciences—*

*(1) may consolidate the funds reserved under subsections (a) and (b) for purposes of carrying out the activities under subsection (a)(1); and*

*(2) shall not be required to evaluate under subsection (a)(1) each program authorized under this Act each year.*

~~(d) EVALUATION PLAN.~~ *The Director of the Institute of Education Sciences, shall, on a biennial basis, develop, submit to Congress, and make publicly available an evaluation plan, that—*

*(1) describes the specific activities that will be carried out under subsection (a) for the 2-year period applicable to the plan, and the timelines of such activities;*

*(2) contains the results of the activities carried out under subsection (a) for the most recent 2-year period; and*

*(3) describes how programs authorized under this Act will be regularly evaluated.*

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

[END]