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## **HEALTH, EDUCATION, AND WELFARE DEPARTMENT Office of Education**

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**EDUCATIONALLY DEPRIVED  
CHILDREN; FINANCIAL  
ASSISTANCE TO MEET SPECIAL  
EDUCATIONAL NEEDS**

**Comparability of Services;  
Proposed Rule Making**

**DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE**

Office of Education

[ 45 CFR Part 116 ]

**FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN**

**Comparability of Services**

Pursuant to the authority contained in section 141(a)(3) of the Elementary and Secondary Education Act, section 109, 84 Stat. 124, 20 U.S.C. 241e(a)(3), the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to revise § 116.26 of Part 116 of Title 45 of the Code of Federal Regulations as set forth below.

The proposed revision would effect the following changes in the regulations implementing the comparability requirement in title I of the Elementary and Secondary Education Act:

(a) The three staff ratios (§ 116.26(c)(1), (2), and (3) of the present regulations) would be superseded by a single ratio of the number of enrolled children to the total number of instructional staff members. The three separate ratios by which comparability is currently determined tend to restrict local educational agencies to conventional staffing patterns which are not necessarily the most effective for schools serving children from low-income areas.

(b) The requirement to collect and report data on the expenditure per pupil for other instructional costs (textbooks, materials, etc., § 116.26(c)(5) of the present regulations), would be deleted from the criteria for determining comparability, except for those local educational agencies which fail to meet one or more of the other indicators of comparability. However, all applicants would be required to provide an assurance that such materials are being distributed on a comparable basis.

(c) Under the proposed regulation, school districts would be required to collect data for comparability determinations as of a particular date (to be specified annually by the Commissioner) in the fall of each school year and to report that data to the State educational agency by mid-year. The use of such data on an annual basis would eliminate the necessity of using obsolete data from the second preceding fiscal year.

(d) The term "corresponding grade levels" has been defined.

(e) Provision has been made for the separate comparison of schools enrolling 100 students or less.

(f) Local educational agencies would be required to maintain and have readily available the records from which the required comparability data were obtained.

Additional comparability regulations affecting school districts serving substantial numbers of migratory children of migratory agricultural workers will be proposed in the near future as part of a comprehensive set of regulations for the

program for migratory children under section 141(c) of the Act.

Interested persons who wish to submit comments, suggestions, or objections pertaining to this proposal may present their views in writing to the U.S. Commissioner of Education, Department of Health, Education, and Welfare, 400 Maryland Avenue SW., Washington, DC 20202, on or before April 20, 1973. Comments may be inspected in Room 3642, Seventh and D Streets SW., Washington, D.C., between 8 a.m. to 4:30 p.m. Monday through Friday.

Dated: February 20, 1973.

JOHN OTTINA,  
Acting U.S. Commissioner  
of Education.

Approved: March 13, 1973.

CASPAR W. WEINBERGER,  
Secretary of Health, Education,  
and Welfare.

Section 116.26 is revised to read as follows:

**§ 116.26 Comparability of services.**

(a) A State educational agency shall not approve an application of a local educational agency for a grant under section 141(a) of the Act, or make payments of title I funds under a previously approved application of such agency, unless that local educational agency has demonstrated, in accordance with paragraph (c) of this section, that services provided with State and local funds in title I project areas are at least comparable to the services being provided with State and local funds in schools serving attendance areas not designated as title I project areas. Such approval shall not be given unless the local educational agency also provides the assurance and the additional information required by paragraph (d) of this section with respect to the maintenance of comparability. For the purpose of this section, State and local funds include those funds used in the determination of fiscal effort in accordance with § 116.45.

(b) The State educational agency shall require each local educational agency, except as provided in paragraph (g) of this section, to submit a report in such form as the Commissioner will prescribe, containing the information required by the State educational agency to make the determinations specified in paragraph (c) of this section. Such report shall include the following data for each public school serving a project area and, on a combined basis, for all other schools of corresponding grade levels (as grouped in accordance with paragraph (e) of this section):

(1) The number of children enrolled,  
(2) The full-time equivalent number of certified and noncertified instructional staff members who are paid with State or local funds, assigned to such public school or schools,

(3) The total portion of salaries for such instructional staff members which is based on length of service (longevity),

(4) The total amount of State and local funds being expended on an annual

basis for salaries for such instructional staff members less the amount of such salaries based on length of service (longevity),

(5) The number of enrolled children as reported under subparagraph (1) of this paragraph per instructional staff member as reported under subparagraph (2) of this paragraph,

(6) The amount expended per enrolled child for salaries for instructional staff as reported under paragraph (b)(4) of this section.

The data required by this paragraph shall be current data as of a date specified annually by the Commissioner. Such date will be no later than April 15 for fiscal year 1973 and no later than November 1 of each succeeding fiscal year. Such reports shall be filed with the State educational agency not later than May 15 of fiscal year 1973 and not later than December 1 of each succeeding fiscal year. All data reported to the State educational agency in accordance with this paragraph shall be as of the same date. The term "instructional staff members" as used in this section means staff members who render direct and personal services which are in the nature of teaching or the improvement of the teaching-learning situation. The term includes teachers, principals, consultants, or supervisors of instruction, librarians, and guidance and psychological personnel; it also includes aides or other paraprofessional personnel employed to assist such instructional staff members in providing such services.

(c) The services being provided by the local educational agency with State and local funds in a title I project area shall be deemed to be comparable to the services being provided with such funds in areas not being served under said title I upon the determination by the State educational agency that for schools serving corresponding grade levels;

(1) The number of children enrolled per instructional staff member reported in accordance with paragraph (b)(5) of this section for each public school serving a title I project area is not more than 105 percent of the average number of children per instructional member in all other public schools in the applicant's district;

(2) The annual expenditure per child determined in accordance with paragraph (b)(6) of this section in each public school serving a title I project area is not less than 95 percent of such expenditure per child in all other public schools in the applicant's district;

(3) Such local educational agency has provided an assurance that the expenditure per child for textbooks, library resources, instructional equipment, supplies, and other instructional materials actually available for use in each school serving a title I project area, for the fiscal year for which the report specified in paragraph (b) of this section is filed, will be at least comparable to such expenditure per child during such fiscal year in all other public schools in the applicant's district. In addition, a local educational agency which fails to meet

the requirements of either paragraph (c) (1) or (2) of this section shall include in the report required by paragraph (b) of this section a seventh category, which shall be the amount expended per enrolled child (in the most recent school year for which such data are available) for textbooks, library resources, instructional equipment, supplies, and other instructional materials.

If any school serving a title I project area is deemed not to be comparable under this paragraph, no further payments of title I funds shall be made to the local educational agency until that agency has demonstrated that it has taken sufficient action to overcome such lack of comparability.

(d) On or before July 1, 1973, and July 1 of each succeeding year each local educational agency shall file with the State educational agency:

(1) An assurance that the comparability of services previously demonstrated with respect to title I project areas in accordance with paragraph (c) of this section will be maintained in all such areas including areas serving migratory children of migratory agricultural workers, that will be designated as title I project areas for the fiscal year beginning that July 1, and

(2) Data on schools serving attendance areas, if any, that will be designated for title I projects for the fiscal year beginning that July 1 but were not designated for such projects in the preceding fiscal year. Such data shall show either that such schools would have been comparable during the preceding fiscal year if those areas had been designated for projects or will, as the result of specific action by the local educational agency, be comparable during the fiscal year beginning that July 1.

(e) For purposes of this section a local educational agency shall group its schools by corresponding grade levels not to exceed three such groups (generally designated as elementary, intermediate or junior high school, and high school or secondary) for all the schools in the agency's district. A school serving grades in two or three such groups shall be included in that group with which it has the greatest number of grades in common. Where the number of grades in common are equal between two or more

groups, the school shall be included in the lower grade division. For example, a local educational agency might have the following grade span organization: K-6 (elementary), 7-9 (junior high), and 10-12 (senior high). In addition, the local educational agency might have an intermediate school serving grades 5-8. Since this intermediate school has two grades in common with the elementary division (grades 5 and 6) and two grades in common with the junior high division (grades 7 and 8), it would be included in the lower grade division (elementary) for determining comparability.

(f) A school with an enrollment of 100 children or less (as of the date or dates the data required by paragraph (b) of this section are collected) shall not be included for purposes of this section unless the local educational agency operates schools of such size with corresponding grade levels both for areas to be served and areas not to be served under title I of the Act, in which event such schools shall be considered as a separate group.

(g) The requirements of this section are not applicable to a local educational agency which is operating only one school serving children at the grade levels at which services under said title I are to be provided or which has designated the whole of the school district as a project area in accordance with § 116.17(d).

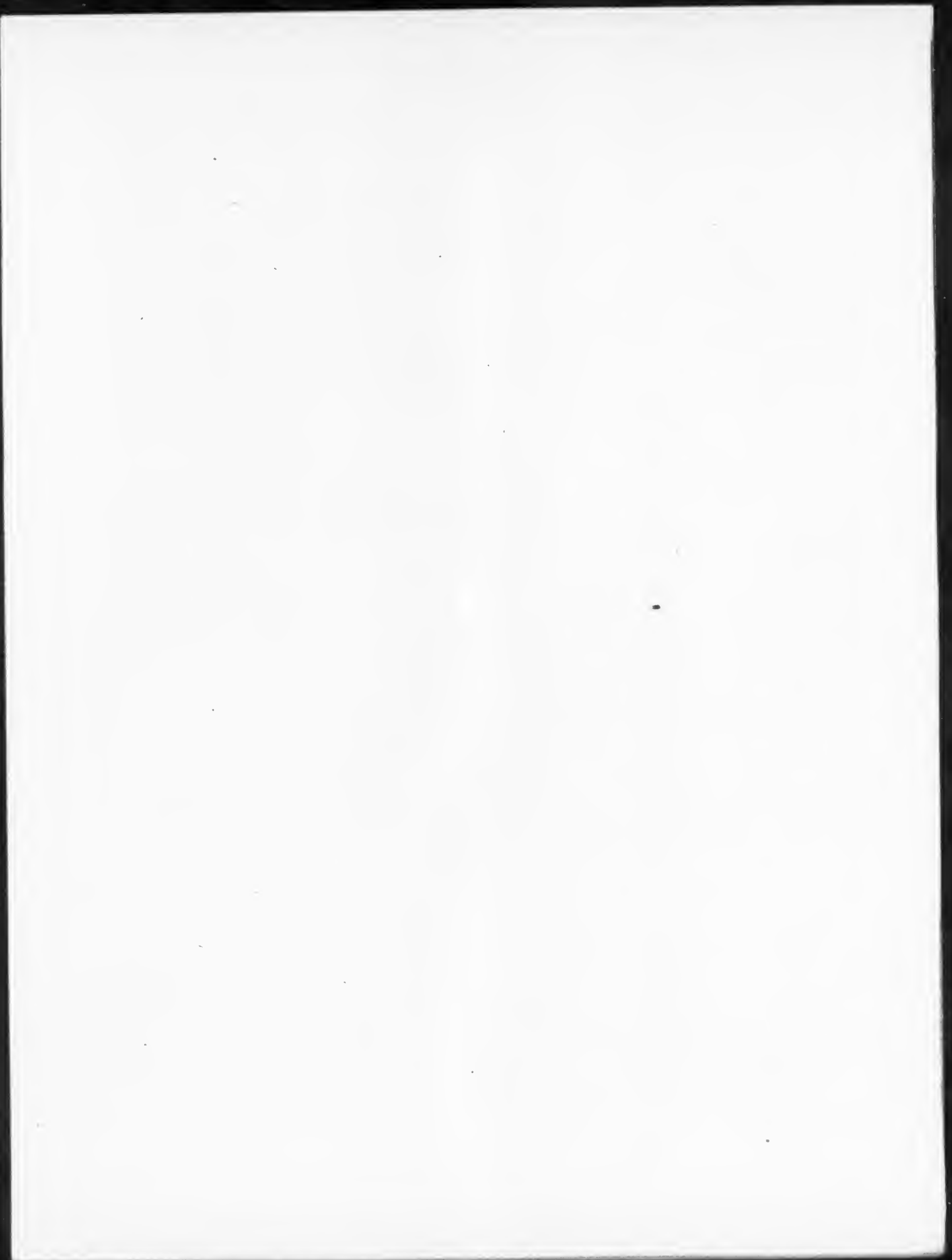
(h) Local educational agencies required to report under this section shall maintain, by individual schools (1) appropriate resource records, including records of children's enrollment, the total expenditure for salary and the amount thereof based solely on longevity for each full-time instructional staff member and the prorated total salary less the amount thereof based solely on longevity for each part-time instructional staff member; (2) worksheets showing the total number of full-time instructional staff members, and the total amount of State and local funds being expended for salaries for such full-time and part-time staff members less the total amount of such salaries based solely on longevity; and (3) appropriate records documenting the amount expended per pupil during the year for textbooks, library resources, instructional equipment, supplies, and other instructional materials. Such rec-

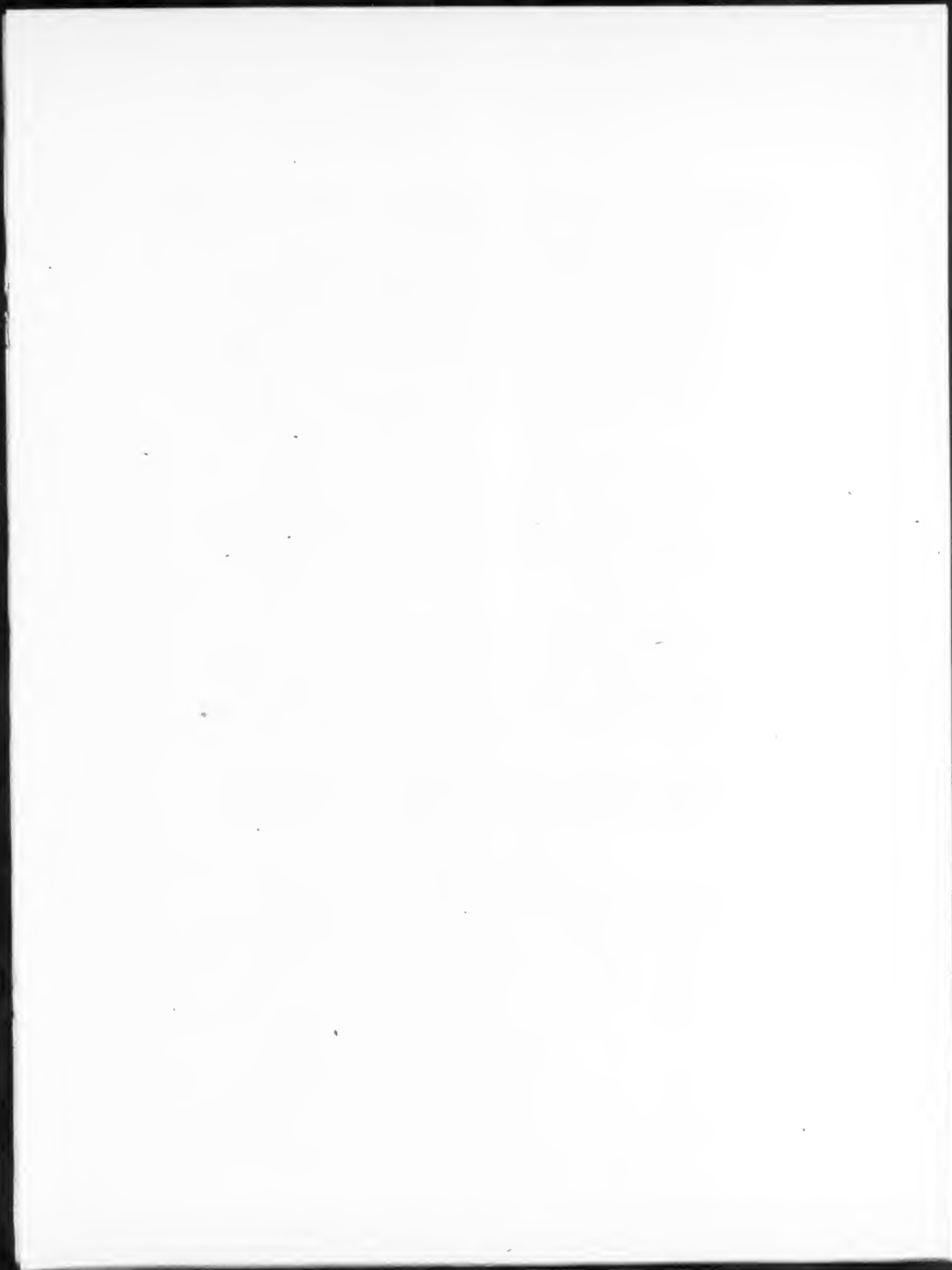
ords and worksheets, demonstrating the maintenance of comparability for the entire school year, shall be filed, indexed, and maintained in such a manner that they may be readily reviewed by appropriate local, State, and Federal authorities and shall be retained in accordance with applicable record retention requirements.

(1) By January 1 of each year the State educational agency shall submit to the Commissioner in such form as he will prescribe a copy of the comparability report for each local educational agency in the State which he has determined to be in a national sample of such agencies for that year. The State educational agency shall also submit to the Commissioner by January 1 of each year a report identifying each local educational agency that failed to meet the comparability requirement of paragraph (c) of this section on the date specified by paragraph (b) of this section and indicating for each such agency either (a) that such local educational agency has allocated or reallocated sufficient additional resources to title I project areas so as to come into compliance with such requirements and has filed a revised comparability report reflecting such compliance or (b) that the State educational agency is withholding the payment of title I funds to the non-complying local educational agency. A copy of each revised comparability report in such form as the Commissioner will prescribe shall be included with the State educational agency's report to be submitted by January 1. Not later than March 31, the State educational agency shall report to the Commissioner whether any noncomplying local educational agencies have come into compliance, and if so, the State educational agency shall include revised comparability reports for such local educational agencies reflecting such compliance. If local educational agencies remain out of compliance as of that date, the entitlements of such agencies shall be made available for reallocation to complying local educational agencies in the State in accordance with the procedures set forth in § 116.9.

(20 U.S.C. 241e(a) (3))

[FR Doc. 73-5106 Filed 3-20-73; 8:45 am]





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