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

Office of Education

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### **EMERGENCY SCHOOL AID**

Notice of Proposed Rulemaking

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

Office of Education

[45 CFR Part 185]

**EMERGENCY SCHOOL AID**

**Notice of Proposed Rule Making**

Pursuant to the authority contained in the Emergency School Aid Act, Title VII of the Education Amendments of 1972, as amended by the Education Amendments of 1974 (20 U.S.C. 1601-1619), the Assistant Secretary for Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 185 of Title 45 of the Code of Federal Regulations as set forth below. The proposed regulations would amend Part 185 as that Part is set forth in the Code of Federal Regulations, revised as of April 1, 1974, and in amendments to the Part contained in 39 FR 13268 (April 12, 1974) and 39 FR 17547 (May 17, 1974). Only those provisions of Part 185 which are proposed to be amended are set forth below.

The changes made in the proposed regulations are essentially of two types: (1) changes to conform the regulations to amendments to the authorizing statute made by the Education Amendments of 1974, and (2) changes made in the light of the experience of the program during the last two fiscal years. Following are explanatory remarks on the more significant amendments proposed by this notice.

**SUBPART A—PURPOSE**

Section 185.02(k) revises the definition of "desegregation" to incorporate in the term the assignment of faculty as well as children, since "desegregation" is used in connection with both faculty and children in section 706(a)(1)(A) of the Act, relating to plans which qualify local educational agencies for assistance. In addition, in order more accurately to reflect the focus of the statute, the membership of persons in a "minority group" (defined in section 720(9) of the Act) is used in lieu of a reference to their "race, color, religion, or national origin."

**SUBPART B—BASIC GRANTS**

Section 185.11(b)(3) is amplified to define more precisely the characteristics of a plan under section 706(a)(1)(C)(iii) of the Act to prevent minority group isolation reasonably likely to occur in the absence of assistance. Under the amended regulation such plans qualify the applicant for assistance where they are supported by credible evidence that minority group isolation would occur in the absence of assistance either in the year for which assistance is sought or in the following year. Projections of isolation at a more distant future time are deemed too speculative to serve as a basis for the award of limited program funds. There are no restrictions on the kind of evidence which may be provided by the applicant to show the likelihood of minority group isolation; determinations as to the adequacy of such a showing will

be made case by case on the basis of all evidence submitted with the application.

Section 185.11(c) is amended by adding a new subparagraph (4), relating to plans to prevent minority group isolation submitted by certain applicants for assistance. Under the statute, such plans may relate only to schools with a minority group enrollment of between 20 and 50 percent. While any local educational agency may apply on the basis of such a plan, the new subparagraph requires agencies in which minority group children comprise more than 50 percent of the total enrollment to provide information to ensure that program funds are not used to reinforce significantly disproportionate racial or ethnic enrollments or to provide superior services to children in schools where the minority group enrollment is substantially smaller than that of the agency as a whole.

Section 185.11(b) is amended by the addition of a new subparagraph (6), which precludes assistance to local educational agencies implementing voluntary plans which provide for eliminating, reducing, or preventing minority group isolation in certain schools by increasing such isolation in others.

Section 185.11(d)(1) is revised to implement section 643 of the Education Amendments of 1974, relating to projects to establish or maintain one or more integrated schools. Under the amended statute such projects, where undertaken by local educational agencies in which minority group children comprise more than 50 percent of the total enrollment and which agree to apply for pilot project assistance under Subpart C, are an independent basis for eligibility for assistance under the Act. The characteristics of an integrated school for purposes of this section are set out in § 185.11(d)(2), and remain substantially the same as in previous years.

Section 185.12, which sets forth the authorized activities for basic grants, is not proposed to be amended. In view of Congressional criticism that too great an emphasis has been placed on the improvement of reading and mathematics skills as compared to human relations activities, it should be noted that the regulation closely parallels the language of section 707 of the Act and, like the statute, permits the funding of human relations activities. (Section 185.22, which sets forth authorized activities for pilot projects under Subpart C, also permits funding human relations activities, but reflects the statutory requirement in section 706(b) of the Act that pilot projects be designed to improve the academic achievement of children in minority group isolated schools.) While a change in the program regulations is not deemed appropriate, the Office of Education has, in the light of encouraging evaluation findings regarding human relations activities, set in motion administrative procedures designed to ensure that potential applicants are aware that such activities may be assisted under the Act.

Section 185.13(n) is revised to reflect the prohibition, in section 252 of the Education Amendments of 1974, against the

use of program funds for the transportation of students or teachers to overcome racial imbalance or to carry out a desegregation plan.

Section 185.14(a)(2) is revised (pursuant to section 710(c) of the Act, as amended by the Education Amendments of 1974) to include a new objective criterion, "effective net prevention of minority group isolation," for use in rating applications for assistance submitted pursuant to plans to prevent such isolation and integrated schools projects. The new measure is intended to be roughly analogous to the "effective net reduction in minority group isolation" measure used to rate other applications. Under the new regulation the degree of prevention of isolation is calculated by comparing the expected enrollments in schools affected by the plan or project assuming its implementation with expected enrollments assuming the plan or project is not implemented. Section 185.14(a)(2) is also amended to reduce from 60 to 50 the number of points assigned to reduction or prevention of isolation. This change, together with changes in the structure of the rating scales used to assign these points, will permit a more meaningful ranking of applicants that has previously been the case. Like changes are made in provisions relating to criteria for awards under other Subparts. See §§ 185.24 (pilot projects), 185.54 (bilingual projects), and 185.64 (public and nonprofit private organizations).

**SUBPART C—PILOT PROJECTS**

Section 185.21, relating to eligibility for assistance, is revised to implement the relevant provisions of the Education Amendments of 1974. The amended regulation makes clear that a local educational agency applying pursuant to an integrated schools project (see discussion of § 185.11(d)(1) above) is eligible for pilot project assistance regardless of whether it receives a basic grant, so long as it maintains during the period of its assistance one or more schools which meet the requirements of § 185.11(d)(2). In addition, § 185.24, relating to criteria for awards, is revised to reflect an approach consistent with revisions made in § 185.14(a)(2) (see discussion above).

**SUBPART D—METROPOLITAN AREA PROJECTS**

This Subpart is substantially revised to implement relevant provisions of the Education Amendments of 1974. Section 185.31 is revised pursuant to section 642 of the Amendments, which eliminates the reservation of funds for metropolitan area projects formerly contained in section 704(b) of the Act and provides for funding such projects under the special project authority contained in section 708 of the Act. Sections 185.31(c), 185.32(c) and 185.36, relating to the establishment of education parks under section 709(a)(3) of the Act, are deleted pursuant to section 222 of the Amendments, which repeals the authority for that activity.

As a result of amendments to the Act, interdistrict transfer projects and area-wide plans under §§ 185.31 (a) and (b) respectively may be funded only in competition with other special projects under section 708(a) of the Act (or, for certain interdistrict transfer projects, in competition with basic grant projects under section 706(a) of the Act). In view of the likely increase in competition for funds, the provision in § 185.34(c) that no more than 30 percent of funds for a given type of metropolitan area project be awarded to applicants in any one State is deleted.

#### SUBPART E—GENERAL REQUIREMENTS

Section 185.44(d) (3) contains requirements for waivers of ineligibility resulting from the discriminatory assignment of teachers, as prohibited by § 185.43(c) (2). The regulation is revised pursuant to the May 14, 1974, decision of the United States Court of Appeals for the District of Columbia in *Kelsey v. Weinberger*, and substantially restores the requirements for waiver in effect prior to the summer of 1973. Thus, an applicant for a waiver of ineligibility based on discriminatory faculty assignment must reassign faculty members to eliminate the effects of the discriminatory practice before the waiver may be approved.

Section 185.44(g), relating to access to information and records by officials of the Department, is amended to take into account any applicable provisions of the recently enacted sections 438 and 440 of the General Education Provisions Act.

Section 185.45, relating to termination of assistance, is revised to make it clear that the requirement for a full administrative hearing on the question of termination of assistance applies only after assistance has been formally awarded.

A new § 185.46 is added to complement § 185.45 by providing for an opportunity for an informal hearing with the Assistant Secretary or her designee where an applicant is denied assistance on eligibility grounds. Such grounds would include determinations that the applicant lacked a qualifying plan or project under section 706(a) of the Act, that it failed to meet the eligibility requirements in section 706(d) (1) of the Act, that (in the case of an applicant under section 708(b) of the Act), it was not a public or private nonprofit organization, and similar determinations resulting in the Assistant Secretary's refusal to consider the activities proposed by the applicant. Conversely, denials of assistance because, for example, the applicant's proposed activities were not authorized by law, or were of insufficient merit to warrant funding, would not trigger the provisions of the new section.

#### SUBPART F—BILINGUAL PROJECTS

In addition to revisions in the criteria for awards discussed in connection with § 185.14(a) (2) above, this Subpart is amended in two other significant respects. First, the provision in § 185.54(c) that no more than 30 percent of funds for bilingual projects be awarded for projects in any one State is deleted as

unduly inflexible. Second, § 185.56 is amended to apply the provisions of §§ 185.43 and 185.44, regarding eligibility, to local educational agencies which request assistance through private nonprofit organizations pursuant to § 185.51 (b), as well as agencies which apply for direct assistance pursuant to § 185.51(a).

#### SUBPART G—PUBLIC OR NONPROFIT PRIVATE AGENCIES

In addition to revisions in § 185.64 designed to reflect an approach consistent with that taken in § 185.14(a) (2) (see discussion of that section above), § 185.64 is amended by the deletion, as unduly restrictive, of the provision in paragraph (c) (3) that no more than 33 percent of any State's nonprofit group allotment be awarded for activities relating to a single local educational agency.

#### SUBPART H—EDUCATIONAL TELEVISION

This Subpart is revised in light of program experience during the last two fiscal years.

Section 185.72 is renamed "Authorized activities and areas of concern" and amended in the following respects:

Paragraph (a) provides that for the fiscal year 1975 the authorized areas of concern to be addressed by assisted television series include two general areas set forth last year (improvement of written and oral expression by students at the secondary level, and meeting the special needs of minority group members which may be unique to a particular geographic region) and two new areas—improvement of cognitive skills of elementary school age children and fostering inter-racial and inter-ethnic understanding among elementary school age children.

Deleted from the areas of concern for new television series (other than regional programming) set forth in paragraph (a) last year are cultural attainments of racial and ethnic groups, reduction of inter-racial and inter-ethnic conflict and tensions, and initial reading attack experiences. The reasons for these deletions include the fact that previously assisted series may be broadcast for several years and the fact that little interest was shown last year in the initial reading area.

Subparagraph (c) (1) of § 185.72 amplifies the statutory requirement in section 711(b) (2) of the Act that assisted programs be made "reasonably available for transmission, free of charge." This subparagraph provides that users of assisted programs may not be charged any cost beyond (1) the cost of tape duplication and, (2) where there is a contract between a recipient of funds under Subpart H and a talent union as described in § 185.72(c) (2) (discussed below), the cost of payments to members of the talent union for usages of the programs beyond those usages specified in the contract. The cost of tape duplication, as opposed to a charge for the content of assisted programs, is not considered to be subject to the aforementioned statutory language and is not a cost which the producer of assisted programs can

reasonably be expected to bear except to the extent specified in § 185.72(e) (discussed below).

Subparagraph (c) (2) of § 185.72 provides that any contract between a recipient of funds under Subpart H and a talent union must allow certain minimal uses of the television programs assisted, charges for which may not be passed on to users of the assisted programs. The charging of users for payments to members of talent unions for the uses specified in subparagraph (c) (2) is deemed to be inconsistent with the aforementioned statutory requirement that assisted programs be made "reasonably available for transmission, free of charge."

Subparagraph (c) (3) of § 185.72 provides that arrangements for distributing the television programs developed with funds received under Subpart H shall be undertaken by the recipient and shall be subject to the approval of the Assistant Secretary; however, the Assistant Secretary may assume the responsibility for making such arrangements if she deems such action appropriate. The purpose of these provisions is to ensure that a series may be viewed by the largest appropriate audience. Subparagraph (c) (3) also permits an agreement between a recipient of funds and a national television network providing for an exclusive right to broadcast each program in a series (in coverage areas where the network would actually broadcast such programs) until the thirteenth week following the week in which each such program is first broadcast. This provision is deemed consistent with the statutory requirement that assisted programs be made "reasonably available for transmission" in that without such minimal exclusivity rights, a network might be unwilling to broadcast assisted programs at all.

Paragraph (e) of § 185.72 stipulates that specified numbers and kinds of television program videotapes and other tangible items to be produced by a recipient of funds under Subpart H must be provided by the recipient to the Assistant Secretary, at intervals specified by the Assistant Secretary.

Paragraph (f) of § 185.72 contains a disclaimer which must be carried by each program in a series assisted under Subpart H.

Section 185.73(a) (2) requires that a proposal must make provision for production of prototypical pilot materials.

The criteria for awards under § 185.74 are revised, the chief revision being a substantial increase in the number of points allowable under paragraph (c) for "Activities," especially "Program content and design" and "Staffing." The revisions are based on a reconsideration of the elements which should be considered in evaluating proposals. Paragraph (f) of § 185.74 is amended to provide that no proposal need be approved which sets forth projected costs that are unreasonable in relation to projected outcomes, or which is not supported by a record of past activities engaged in by the proposer or its officers or employees indicating capability for implementing the proposal.

New § 185.77 provides that a recipient of funds under Subpart H which is to develop and produce a television series must produce prototypical pilot materials at times specified by the Assistant Secretary and then conduct an evaluation of such materials to serve as the formative evaluation for the series. A decision by the Assistant Secretary, on the basis of the pilot materials and the evaluation, that the production of the recipient's series should not be continued shall be a basis for termination pursuant to the procedures set forth in § 185.45. Moreover, no commitments by the recipient of funds relating to production activity beyond the conduct of the evaluation will be recognized by the Assistant Secretary unless a favorable decision on project continuation is made by the Assistant Secretary; any party with whom the recipient enters into a commitment for such production activity prior to such a favorable decision must be informed of the possibility of non-recognition at the time the commitment is entered into. The purpose of these provisions is to facilitate termination of awards which, on the basis of the aforementioned pilot materials and evaluation, appear to be of such insufficient promise for achieving the purposes of the Act or Subpart H that their continuation beyond such stage is unwarranted.

#### SUBPART I—EVALUATION

Section 185.83, entitled "Proposals" to reflect the nature of the request for funds where awards are made by contract, is amended by the deletion of requirements that offerors make certain assurances. These assurances are deemed inappropriate in the context of the procurement contracts authorized by this Subpart, and unnecessary to ensure that activities funded are properly carried out.

Section 185.84(b) is amended to apply the Federal Procurement Regulations (41 CFR Ch. 1 and 3) to the review of proposals for evaluation contracts.

#### SUBPART J—SPECIAL PROJECTS

This Subpart is reorganized so that §§ 185.91 through 185.91-3 cover "Special Arts Projects," §§ 185.92 through 185.92-4 cover "Special Mathematics Projects," §§ 185.93 through 185.93-4 cover "Special Student Concerns Projects," and §§ 185.94 through 185.94-4 cover all "Other Special Projects."

The "Special Arts Projects" regulations, §§ 185.91 through 185.91-3 (formerly §§ 185.91-1, 185.92-1, 185.93-1, and 185.94-1), no longer require that special arts activities be conducted primarily with students attending schools in which the proportion of minority group children enrolled is no greater than 50 percent. It is believed that the conduct of special arts projects in schools in which the proportion of minority group children enrolled is greater than 50 percent would be consistent with the purpose of the special arts projects.

The "Special Mathematics Projects" regulations (§§ 185.92 through 185.92-4)

derive from new section 708(a)(3) of the Act, as added by section 644 of the Education Amendments of 1974. These regulations authorize grants to private nonprofit agencies, institutions, or organizations for the conduct, in cooperation with one or more eligible local educational agencies, of special programs of instruction in advanced mathematics by qualified instructors.

The "Special Student Concerns Projects" regulations (§§ 185.93 through 185.93-4) authorize a new type of project designed to eliminate the disproportionately high incidence of suspension, expulsion, and other disciplinary action involving minority group students. Grants are authorized for this purpose to public agencies or organizations (other than local educational agencies) which would conduct projects in cooperation with one or more eligible local educational agencies. Each project assisted would have two major components: first, identifying probable causes of, and formulating remedial action for, the disproportionately high incidence of disciplinary action respecting minority group students in the schools of the cooperating local agency or agencies, and second, developing and implementing a program designed to eliminate such disproportionately high incidence in one or more schools of each cooperating local educational agency. A report of findings is required at the conclusion of the first stage. Illustrative activities are set forth in § 185.93-1 (a) (1)-(3) and (b) (1)-(3).

The "Other Special Projects" regulations (§§ 185.94 through 185.94-4, formerly set forth in parts of §§ 185.91-94) have been amended with respect to a number of technical matters.

The regulations authorizing special reading projects (formerly set forth in parts of §§ 185.91-94) have been deleted. Program experience suggests that authority for such projects under subpart J is unnecessary in light of the scope of authorized activities under Subparts B—Basic Grants, and C—Pilot Projects.

#### SUBPART K—RESERVATIONS

This Subpart is revised to implement section 642 of the Education Amendments of 1974 by deleting § 185.95(a) (providing for a separate reservation for metropolitan area projects), and by amending § 185.93(b)(1) to include metropolitan projects in the reservation for special projects under section 708(a) of the Act (see discussion of Subpart D above).

#### COMMENTS REQUESTED

Interested persons are invited to submit written comments on the proposed regulations to Dr. Herman R. Goldberg, Associate Commissioner, Equal Educational Opportunity Programs, Room 2001, 400 Maryland Avenue, SW., Washington, D.C. 20202, on or before April 28, 1975. Comments in response to this notice will be available for public inspection in the above office between the hours of 8 a.m. and 4:30 p.m., Monday through Friday of each week.

(Catalog of Federal Domestic Assistance Program Nos. 13.525, 13.526, 13.527, 13.528, 13.529, 13.530, 13.531, and 13.532—Emergency School Aid Act)

Dated: February 25, 1975.

VIRGINIA Y. TROTTER,  
Assistant Secretary for Education.

Approved: March 21, 1975.

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

It is proposed to amend 45 CFR Part 185 as follows:

1. The table of contents is amended by adding or revising the following entries:

	Subpart D—Metropolitan Area Projects
185.36	[Reserved]
	Subpart E—General Requirements
185.46	Determinations of ineligibility prior to award of assistance.
185.47-185.50	[Reserved]
	Subpart H—Educational Television
185.71	Eligibility for funds.
185.72	Authorized activities and areas of concern.
185.73	Proposals.
185.74	Criteria for awards.
185.75	Advisory committees.
185.76	Limitations on eligibility.
185.77	Required approval by Assistant Secretary of pilot materials.
185.78-185.80	[Reserved]
	Subpart I—Evaluation
185.83	Proposals.
	Subpart J—Special Projects
	SPECIAL ARTS PROJECTS
185.91	Eligibility for assistance.
185.91-1	Applications.
185.91-2	Criteria for assistance.
185.91-3	Community involvement.
	SPECIAL MATHEMATICS PROJECTS
185.92	Eligibility for assistance.
185.92-1	Authorized activities.
185.92-2	Applications.
185.92-3	Criteria for assistance.
185.92-4	Community involvement.
	SPECIAL STUDENT CONCERNS PROJECTS
185.93	Eligibility for assistance.
185.93-1	Authorized activities.
185.93-2	Applications.
185.93-3	Criteria for assistance.
185.93-4	Community involvement.
	OTHER SPECIAL PROJECTS
185.94	Eligibility for assistance.
185.94-1	Authorized activities.
185.94-2	Applications.
185.94-3	Criteria for assistance.
185.94-4	Community involvement.

AUTHORITY: Except as specifically noted below, the provisions of this Part 185 are issued under Title VII of Public Law 92-316, 88 Stat. 354-371, as amended by sections 222, 641-646, and 845 of Public Law 93-380, 88 Stat. 484-613 (20 U.S.C. 1601-1619).

2. In § 185.02, paragraph (c) is added and paragraphs (k) and (n) are revised to read as follows:

§ 185.02 Definitions.

(c) The term "equipment" means machinery, utilities and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and other related material.

(Public Law 92-318, section 720(4))

(k) The term "desegregation" means the assignment of children or faculty to public schools and within such schools without regard to their membership in a minority group, but "desegregation" does not mean the assignment of such persons to or within public schools in order to overcome racial imbalance.

(Public Law 92-318, sections 706(a), 720(9))

(n) The term "the Act" means the Emergency School Aid Act (title VII of Public Law 92-318, as amended by Public Law 93-380).

3. In § 185.11, (b) (3), (c) (1) and (2), and (d) (1) and (2) (ii) are revised; and new (b) (6) and (c) (4) are added as follows:

§ 185.11 Eligibility for assistance.

(b) (3) (i) A local educational agency may apply for assistance under this subpart if it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to prevent minority group isolation reasonably likely to occur (in the absence of assistance under this subpart) in any school operated by such agency in which school at least 20 percent, but not more than 50 percent, of the enrollment consists of minority group children.

(ii) For purposes of this subparagraph, minority group isolation will not be deemed reasonably likely to occur (in the absence of assistance under this subpart) in any school unless the applicant demonstrates by credible evidence that minority group children will comprise more than 50 percent of the enrollment of such school during the fiscal year for which such assistance is sought or during the next succeeding fiscal year. Such evidence may include, but is not limited to, enrollment figures for such school during previous fiscal years, enrollment figures of schools from which the enrollment of such school is drawn, demographic data concerning the attendance area served by such school, and school board resolutions or other evidence of final official action likely to affect the enrollment of such school dur-

ing the fiscal year for which assistance is sought or the next succeeding fiscal year.

(6) A plan described in subparagraphs (2), (3), or (4) of this paragraph or a project described in paragraph (d) of this section shall not be deemed to meet the requirements of this section where the elimination, reduction, or prevention of minority group isolation accomplished or to be accomplished in schools to which such plan or project relates results in an equal or greater degree of minority group isolation in other schools operated by the local educational agency or agencies to which such plan or project relates.

(Public Law 92-318, sections 702(a) (2), 706(a) (1) (B), (C), and (D), 720(10))

(c) *Implementation of a plan or project.* (1) For purposes of determining eligibility for assistance under this subpart, a local educational agency shall be deemed to be implementing a plan or project if it is operating its school system in accordance with the requirements of such plan or project. The eligibility of a local educational agency for consideration under the Act shall not be affected by the date on which its plan was adopted, or ordered to be adopted, or by the fact that the steps to be taken under the plan have been completed.

(2) Where the eligibility of a local educational agency is based on a plan described in paragraphs (b) and (d) of this section, such agency shall provide assurances and information satisfactory to the Assistant Secretary that such plan has been adopted and implemented, or will be adopted and implemented if assistance is made available to it under this subpart, including:

(i) A copy of a school board resolution or other evidence of final official action adopting and implementing such plan, or agreeing to adopt and implement such plan upon the award of assistance under the Act; and

(ii) In the case of a plan to be implemented upon the award of assistance under the Act, including a plan or project described in paragraphs (b) (3) and (d) of this section, evidence that notice of the contents of such plan or project and of the intent to implement it upon the award of such assistance has been published in a newspaper of general circulation serving the school district of such agency no later than 20 days prior to submission by such agency of an application for such assistance.

(4) An application of a local educational agency pursuant to a plan to prevent minority group isolation described in paragraph (b) (3) of this section shall, where minority group children constitute more than 50 percent of the enrollment of all the schools operated by such agency, be accompanied by (i) a statement of the enrollment, by race, in any school operated by the applicant in which minority group children constitute more than 70 percent of the enrollment; (ii) a statement of the reasons for such

disproportionate minority group enrollment in each such school; and (iii) a statement of instructional and other services to be provided to children enrolled in each such school which will ensure that services to such children are comparable to services to be provided to children enrolled in any school to which the plan described in paragraph (b) (3) of this section relates.

(Public Law, 92-318, sections 706(a) (1), 706(d) (1) (D), 710(a) (9))

(d) *Integrated schools projects.* (1) A local educational agency in the schools of which more than 50 percent of the number of children enrolled are minority group children may apply for assistance under this subpart for the establishment or maintenance of one or more integrated schools: *Provided, however,* That such agency has agreed to apply for an equal amount of assistance under subpart C of this part.

(2) (ii) For purposes of this paragraph, an integrated school must have a faculty in which (a) the percentage of minority group teachers, supervisors, and administrators, taken together, is within 10 percent of the percentage of minority group members residing in the school district served by the local educational agency (or the appropriate governmental unit for which such information is available), or (b) where the percentage of minority group teachers, supervisors, and administrators, taken together in the school district served by the local educational agency, has increased by 10 percent or more over the 3 fiscal years immediately preceding the year or years for which assistance is sought under this paragraph, the percentage of such personnel of such school is within 10 percent of the percentage which exists in the faculty of such agency as a whole.

(Public Law 92-318, sections 706(a), 720(7); Public Law 93-380, section 643)

4. In § 185.13, the introductory text and authority to paragraph (k), and (1) (2) and (n) are revised as follows:

§ 185.13 Applications.

(k) *Reports and information.* An assurance that the applicant will submit such reports containing such information in such form as the Secretary or the Assistant Secretary may require in order to carry out their functions under the Act, and that the applicant will keep such records and afford such access thereto as will be necessary to assure the correctness of such reports and to verify them; and a description of provisions for the evaluation of the activities for which assistance is sought.

(Public Law 92-318, sections 706(d), 710(a) (15), 710(a) (16); 20 U.S.C. 1232c)

(2) (i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such

date, any practice, policy, or procedure with respect to minority group personnel in violation of § 185.43(b) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a statement of the number of principals, full-time classroom teachers, and athletics head coaches, by race, for the academic year immediately preceding (a) the year in which the applicant first implemented any portion of a plan for desegregation or for elimination or reduction of minority group isolation in its schools pursuant to an order of a Federal or State court or administrative agency, or (b) the year in which the applicant first implemented any portion of a plan or project described in § 185.11, whichever is earlier, and of the number of principals, full-time classroom teachers, and athletics head coaches, by race, as of the date of its application;

(n) *Transportation.* An assurance that no funds made available under the Act will be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system or to carry out a plan for racial desegregation of any school or school system.

(Public Law 93-380, section 252)

5. Paragraph (a) of § 185.14 is revised as follows:

§ 185.14 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance by local educational agencies under this subpart, the Assistant Secretary shall apply the following objective criteria (80 points):

(1) The need for such assistance, as indicated by the number and percentage of minority group children enrolled in the schools of such agency (or, in the case of an application submitted pursuant to a plan described in § 185.11(b)(4), the number and percentage of such children enrolled in the schools of local educational agencies to which such plan relates) for the fiscal year or years for which assistance is sought, or the most recent fiscal year for which such figures are available, as compared to other school districts in the State (30 points); and

(2) (i) Except for applications submitted pursuant to a plan or project described in § 185.11(b)(3) or § 185.11(d), the effective net reduction in minority group isolation (in terms of the number and percentage of children affected), in the schools operated by such agency (or, in the case of an application submitted pursuant to a plan described in § 185.11(b)(4), in the schools operated by local educational agencies to which such plan relates) accomplished or to be accomplished by the implementation of a plan described in § 185.11 and the program, project, or activity to be assisted (50 points). The term "effective net reduction in minority group isolation," for purposes of this division, means the weighted net change effected or to be effected by

such plan in the number of minority group children enrolled in minority group isolated schools operated by such agency or agencies, and the weighted net total of minority group children placed or to be placed as a result of such plan in a school in which the proportion of such children has been reduced (but remains greater than 50 percent). Minority group children placed as a result of such plan in schools in which the proportion of such children has been increased (and is greater than 50 percent) shall be counted against the reduction credited to such agency under this division. Such effective net reduction shall be computed between the fiscal year (or relevant portion thereof) immediately preceding implementation of such plan and the first fiscal year (or relevant portion thereof) for which assistance is sought under the Act, or the most recent fiscal year for which such figures are available.

(ii) In the case of an application submitted pursuant to a plan or project described in § 185.11(b)(3) or § 185.11(d), the effective net prevention of minority group isolation (in terms of the number and percentage of children affected) in the schools operated by such agency likely to be accomplished by the implementation of such plan or project and the program, project, or activity to be assisted (50 points). The term "effective net prevention of minority group isolation," for purposes of this division, means the weighted net change likely to be effected by such plan or project in the number of minority group children who would be enrolled in minority group isolated schools operated by such agency during the fiscal year for which assistance is sought (or, in the case of a plan to prevent minority group isolation reasonably likely to occur during the fiscal year immediately succeeding the fiscal year for which assistance is sought, during succeeding fiscal year) and, in the case of applications submitted pursuant to a project described in § 185.11(d), the weighted net change likely to be effected by such project during the fiscal year for which assistance is sought in the number of minority group children who would be enrolled in schools in which the proportion of such children would be prevented from increasing (but would remain greater than 50 percent). Minority group children to be placed as a result of a plan or project described in § 185.11(b)(3) or § 185.11(d) in schools in which the proportion of such children would be increased (and would be greater than 50 percent) shall be counted against the prevention credited to such agency under this division. Such effective net prevention shall be computed on the basis of a comparison between enrollments likely to occur in the relevant fiscal year or years in the absence of a plan or project described in § 185.11(b)(3) or § 185.11(d), and the enrollments likely to occur during such fiscal year or years as a result of the implementation of such plan or project.

(Public Law 92-318, sections 710(c) (1), (2) and (3); Public Law 93-380, section 643)

6. Section 185.21 is revised as follows:

§ 185.21 Eligibility for assistance.

(a) A local educational agency which is eligible for assistance under § 185.11 may apply for assistance by grant or contract for funds reserved pursuant to § 185.95(c), for unusually promising and innovative pilot programs or projects specially designed to overcome the adverse effects of minority group isolation by improving the academic achievement of children in one or more minority group isolated schools, if the number of minority group children enrolled in the schools of such agency for the fiscal year preceding the fiscal year for which assistance is to be provided (1) is at least 15,000, or (2) constitutes more than 50 percent of the total number of children enrolled in such schools.

(Public Law 92-318, sections 705(a)(2), 706(b); Public Law 93-380, section 643(b))

(b) (1) A local educational agency shall be considered eligible for assistance under this subpart if it is implementing a plan described in § 185.11(a) or is implementing or will (if assistance is made available to it under the Act) adopt and implement a plan described in § 185.11(b), regardless of whether it applies for or receives assistance under subpart B of this part.

(2) In the case of applications submitted pursuant to a project described in § 185.11(d), a local educational agency shall be considered eligible for assistance under this subpart if it will (if such assistance is made available) establish or maintain one or more integrated schools as defined in § 185.11(d)(2), regardless of whether such agency receives assistance under subpart B of this part.

(Public Law 92-318, section 706(b); Public Law 93-380, section 643)

7. Paragraph (a) of § 185.24 is revised as follows:

§ 185.24 Criteria for assistance.

(a) In approving applications for assistance under this subpart, the Assistant Secretary shall apply the objective criteria set out in § 185.14(a), except that a maximum of 25 points shall be awarded to any applicant under § 185.14(a)(2),

(Public Law 92-318, sections 706(b), 710(c) (1), (2), and (3))

8. In § 185.31, (a) (1) and the authority for paragraph (a), and (b) (1) and the authority for paragraph (b) are revised as set forth below, and paragraph (c) is deleted.

§ 185.31 Eligibility for assistance.

(a) *Interdistrict transfers.* (1) A local educational agency (i) which is located within a Standard Metropolitan Statistical Area, or which serves a school district adjacent to a school district which is located wholly within such an area, and (ii) whose total student enrollment includes a percentage of minority group members which is smaller than the percentage of minority group members enrolled as students in

all schools of the local educational agencies within such an area, may apply for assistance, by grant or contract, from funds reserved pursuant to § 185.95(b) (1), for the purpose of a joint arrangement with a cooperating local educational agency located within the same Standard Metropolitan Statistical Area (whose student enrollment includes a percentage of minority group members which is greater than the percentage of minority group members enrolled as students in all schools of the local educational agencies within such area) for the establishment or maintenance of one or more integrated schools.

(20 U.S.C. 1603(b), 1605(a)(2), 1606(a)(1), 1619(f); Senate Rept. No. 92-61, p. 16)

(b) *Area-wide plans.* (1) Two or more local educational agencies located within a Standard Metropolitan Statistical Area may apply for a grant from funds reserved pursuant to § 185.95(b) (1) for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in such area. Such a plan shall, at a minimum, provide that by a certain date (no later than July 1, 1983), the percentage of minority group children enrolled in each public elementary and secondary school in such area shall be at least 50 percent of the percentage of such children enrolled in all such schools in such area, and shall specify in detail the means by which such objective is to be achieved.

(20 U.S.C. 1603(b), 1608(a)(2))

§ 185.32 [Amended]

9. Paragraph (c) of § 185.32 is deleted.  
10. Section 185.33 is revised to read as follows:

§ 185.33 Applications.

An applicant desiring to receive assistance under this subpart for any fiscal year shall submit to the Assistant Secretary an application therefor for that fiscal year, which application shall set forth a program, project, or activity under which, and such policies and procedures as will assure that, the applicant will use the funds received under this subpart only for the activities set forth in § 185.32. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and the Assistant Secretary. Such application shall comply with the requirements of § 185.13 (a) through (n), except that applications submitted pursuant to this subpart need not comply with § 185.13(f) (2), and applications for assistance under § 185.31 (b) comply with § 185.13(l) (2), and applications for assistance under § 185.31(b) need not comply with § 185.13(h) (with respect to the statement of procedures described therein).

(20 U.S.C. 1608(a)(2); Public Law 93-360, section 252)

11. Paragraph (c) of § 185.34 is revised to read as follows:

§ 185.34 Criteria for assistance (inter-district transfers).

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance pursuant to § 185.31(a), the Assistant Secretary shall consider the additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed program, project, or activity, in relation to the amount of funds available for assistance under this subpart and the other applications pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this subpart, or which sets forth a program, project, or activity, of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to applicants (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section, except that where there is pending before the Assistant Secretary an application for assistance under § 185.31(b) which meets the requirements of the Act and this subpart, and which sets forth a program, project, or activity of such sufficient promise for achieving the purposes of the Act that its approval is warranted, the Assistant Secretary shall ensure that at least one grant is made for the purposes of § 185.31 (b) prior to the award of any assistance for the purposes of § 185.31(a).

(20 U.S.C. 1608(b), 1609(c)(1)(C), 1609(c)(5).)

§ 185.36 [Reserved]

12. Section 185.36 is deleted and reserved.

13. Paragraph (b) (1) of § 185.37 is revised to read as follows:

§ 185.37 Advisory committees.

(b) *Area-wide plans.* (1) Applications for assistance under § 185.31(b) shall comply with the requirements of §§ 185.41(a) through (g) as to advisory committee participation and public hearings. For purposes of this paragraph, the references in § 185.41 to "the community" or "communities to be served" shall be understood to refer to the entire area to be affected by the plan to be developed under § 185.31(b). Where the affected Standard Metropolitan Statistical Area includes members of minority groups in insubstantial proportions, applicants for assistance under § 185.31(b) may establish a committee pursuant to this paragraph which includes equal numbers of non-minority group members and of members from each minority group substantially represented in the community, and an equal number of members, taken

together, from other minority groups represented in the community.

Subpart E—General Requirements

14. The heading of Subpart E is revised to read as set forth above.

15. Paragraphs (c) (3) and (d) of § 183.41 are revised as follows:

§ 185.41 Advisory committees.

(c) . . . .  
(3) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and members from each minority group substantially represented in the community. (For example, in a school district containing both Negro and Spanish-surnamed communities, the committee shall be composed of equal numbers of Negro, Spanish-surnamed American, and nonminority group members.) At least 50 percent of the members of the committee shall be parents of children directly affected by the program, project, or activity for which assistance is sought. In addition to members appointed pursuant to subparagraphs (1) and (2) of this paragraph, and taking into account the students to be appointed pursuant to subparagraph (4) of this paragraph, such agency shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph. (For example, if in a biracial community the civic or community organizations designate three minority groups members and two nonminority group members, three of whom are parents; and two teachers who are not parents are also selected, and two students are to be selected pursuant to subparagraph (4) of this paragraph, the agency must select two non-minority parents and one minority parent to complete the committee.)

(d) *Comments by committee; hearings.* No application by a local educational agency for assistance under subpart B, C, D, H, or J of this part shall be approved which is not accompanied by the written comments of a committee formed in accordance with paragraph (c) of this section. If a majority of the members of such committee requests an informal hearing with the Assistant Secretary with respect to such application, an opportunity for such a hearing shall be afforded to such committee prior to approval of such application. The Assistant Secretary or his designee shall hold such hearing in or near the school district served by such agency, and in no case at a greater distance from such school district than the appropriate Regional Office of the Department. The affected local educational agency shall be afforded an opportunity to respond to the comments or criticisms offered by the committee. The Assistant Secretary or his designee shall communicate his findings as to the matters presented by such committee at such hearing,

and his action or decision on the basis of such findings, to the committee and the affected local educational agency, in writing, prior to approval of such agency's application for assistance.

(Public Law 92-318, section 710(b))

16. Paragraphs (d)(3) and (g) of § 185.44 are revised as follows:

§ 185.44 Waiver of ineligibility.

(d) \* \* \*

(3) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by § 185.43(b)(2), such applications for waiver shall contain evidence that such agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin. Such non-discriminatory assignments shall, in the case of a local educational agency implementing a plan described in § 185.11(a), conform to the requirements of such plan with respect to the assignment of faculty. In the case of local educational agencies not implementing such a plan, or implementing such a plan which contains no provision as to assignment of faculty, such assignments shall be made so that the proportion of minority group full-time classroom teachers at each school is between 75 per centum and 125 per centum of the proportion of such minority group teachers which exists on the faculty as a whole.

(g) Access to information and records: Agencies applying for assistance under the Act or for a waiver under this section shall furnish to the Secretary or the Assistant Secretary such information and such access to their facilities or records as such official may deem necessary for the administration of the Act, or for a determination as to eligibility or as to whether or not a waiver should be granted. Consideration of applications for assistance under this part may be delayed pending submission or collection of such information. Such information may include confidential or other records maintained by such agency on personnel and students, with racial or other identification of such personnel or students, and financial and other records maintained by such agency. Subject to any applicable provisions of section 438 of the General Education Provisions Act (20 U.S.C. 1232 g) as added by section 513 of P.L. 93-380 and amended by P.L. 93-568 and section 440 of such Act (20 U.S.C. 1232i) as added by section 515 of P.L. 93-380, limitations on access to information or records based on considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with any provision of the Act, this regulation, grant terms or conditions, or other applicable laws. Information of a confidential nature obtained by the Department in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforce-

ment proceedings or as otherwise required by law. The Assistant Secretary shall not approve an application under this part which requires a waiver by the Secretary unless the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives have been given notice of the intention to grant such a waiver at least 15 days prior to such approval.

(Public Law 92-318, sections 706(d)(2), (3), (5), and (6); Public Law 93-380, section 513)

17. In § 185.45, (a)(6) and the authority to paragraph (a) are revised, and paragraphs (b), (c)(1), and the authority to paragraph (c) are revised as follows:

§ 185.45 Termination of assistance

(a) \* \* \*

(6) The procedures and requirements set out in this section shall apply to any assistance awarded to any recipient under this part. Assistance shall not be deemed to have been awarded unless such award is supported by an award document on file with the Department.

(Public Law 92-318, sections 702-720; Public Law 93-380, section 511)

(b) *Additional sanctions.* In an appropriate case such as one involving violations of the eligibility limitations set out in § 185.43 arising subsequent to approval of an application for assistance under this part or a failure to comply with the terms of a waiver granted pursuant to § 185.44 or other eligibility requirements, the Assistant Secretary shall declare the award of such assistance to be null and void as of the date of such violation or failure, and shall refuse to recognize any obligation incurred after such date or to reimburse the recipient for any costs incurred or expenditures made after such date, regardless of the date of obligation. Such sanctions shall be imposed in accordance with the provisions of this section.

(Public Law 92-318, sections 702-720; Senate Report No. 92-61, pp. 18, 41-42)

(c) *Proceedings.* (1) If the recipient requests an opportunity to show cause why a suspension of assistance pursuant to paragraph (a)(1) of this section should not be imposed, the Assistant Secretary or his designee shall, within 7 days after receiving such request, hold an informal meeting for such purpose. After such meeting has been held, the Assistant Secretary or his designee shall promptly notify the recipient of his determination regarding suspension of assistance to the recipient.

(Public Law 92-318, sections 702-720; Public Law 93-380, section 511)

18. Section 185.46 is added, and §§ 185.47-185.50 remain reserved as follows:

§ 185.46 Determinations of ineligibility prior to award of assistance.

(a)(1) Upon a determination by the Assistant Secretary that an applicant

for assistance under this part is ineligible for the assistance sought by such applicant, the Assistant Secretary shall notify the applicant in writing of such determination and the reasons therefor. (2) Such notification shall offer the applicant an opportunity to show cause why such determination should be revoked and its application considered for funding.

(b) If the applicant requests an opportunity to show cause why the determination of ineligibility referred to in paragraph (a)(1) of this section should be revoked and its application considered for funding, the Assistant Secretary or his designee shall, within 7 days after receiving such request, hold an informal meeting for such purpose. After such meeting has been held the Assistant Secretary or his designee shall promptly notify the applicant of his determination regarding the eligibility of the applicant.

(c) This section shall apply to determinations of ineligibility with respect to any applicant for assistance under this part. Except as provided in this section or as otherwise provided by law, the Assistant Secretary shall not be required to afford any such applicant an opportunity for hearing with respect to a determination of ineligibility referred to in paragraph (a)(1) of this section.

(Public Law 92-318, sections 702-720; Public Law 93-380, section 511)

§§ 185.47-185.50 [Reserved]

19. Section 185.51 is revised to read as follows:

§ 185.51 Eligibility for assistance.

(a) Any local educational agency which is implementing a plan or project described in § 185.11 or § 185.31(a) may apply for assistance, by grant or contract, from funds reserved pursuant to § 185.95(b)(2), (1) to develop educational programs designed (i) to meet the educational needs of minority group children who are from environments in which a dominant language is other than English for the development of reading, writing, and speaking skills in the English language and their primary language, and (ii) to meet the educational needs of such children and their classmates to understand the history and cultural background of the minority groups of which such children are members; or (2) to carry out activities authorized by § 185.12 to implement the educational programs described in this paragraph (whether or not developed with assistance made available under this subpart).

(20 U.S.C. 1607(c)(1)(B) and (C))

(b) Any nonprofit private agency, institution, or organization may apply for assistance, by grant or contract, under this subpart to develop the educational programs described in paragraph (a) of this section: *Provided however,* That such development is requested by one or more local educational agencies which are implementing a plan or project described in § 185.11 or § 185.31(a).

(20 U.S.C. 1607(c)(1)(A))



(c) For purposes of determining eligibility for assistance under this subpart, the Assistant Secretary may determine that members of any specific ethnic group with limited English-speaking ability constitute a "minority group," as that term is used in this subpart and in § 185.11, upon a finding that such group has been denied equal educational opportunity because of language barriers and cultural differences. Applications for assistance under this subpart relating to local educational agencies which are implementing plans or projects described in § 185.11 or § 185.31(a) with respect to Negroes, American Indians, Spanish-surnamed Americans, Portuguese, Orientals, Alaskan natives, or Hawaiian natives shall be considered only on the basis of such plans or projects. No plan or project affecting a minority group other than those named in the preceding sentence shall be deemed to qualify an applicant for assistance under this subpart if it results in any increase in minority group isolation for any member of any minority group named in the preceding sentence.

(20 U.S.C. 1619(g)(A))

20. Paragraph (c) (2) of § 185.53 is revised to read as follows:

§ 185.53 Applications.

(c) \* \* \*

(2) In the case of nonprofit private applicants, evidence that the proposed activity has been requested by one or more local educational agencies which are implementing a plan or project described in § 185.11 or § 185.31(a). Such evidence may include (i) a copy of a school board resolution or other final official action requesting the assistance of the applicant, or (ii) a letter from the school board chairman or superintendent of a local educational agency requesting such assistance. No application by a nonprofit private applicant shall be approved less than 10 days after a copy of said application has been submitted by the Assistant Secretary to the appropriate State educational agency for comment, unless the Assistant Secretary has received comments from such agency upon such application prior to expiration of the 10-day period.

21. Paragraphs (a) and (c) of 185.54 are revised as follows:

§ 185.54 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance under this subpart, the Assistant Secretary shall apply the following objective criteria (55 points):

(1) The need for such assistance, as indicated by the number and percentage of minority group children enrolled in the schools of the local educational agency or agencies with respect to which assistance is sought for the fiscal year or years for which assistance is sought who are from environments in which a dominant language is other than English (30 points); and

(2) The effective net reduction or effective net prevention of minority group isolation, as defined in § 185.14(a) (2), in terms of the number and percentage of children affected, in all the schools operated by such agency or agencies accomplished or to be accomplished by the implementation of a plan described in § 185.11 or § 185.31(a) (25 points).

(20 U.S.C. 1607(c)(1))

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall consider the additional cost to such applicant (as such cost is defined in § 185.13(a)) or effectively carrying out its proposed program, project, or activity, in relation to the amount of funds available for assistance under this subpart and the other applications for such assistance pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth a program, project, or activity of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to applicants (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums available for the purposes of this subpart have been exhausted.

(20 U.S.C. 1607(c)(1))

22. Paragraphs (a) (2) (iv) and (b) (2) (iii) of § 185.55 are revised to read as follows.

§ 185.55 Program or project committees.

- (a) \* \* \*
- (2) \* \* \*

(iv) At least 50 per centum of the members of a committee formed under this subparagraph must be members of a minority group as described in subdivision (ii) of this subparagraph. At least 50 per centum of the members of the committee shall be parents of children directly affected by the program, project or activity for which assistance is sought. In addition to members appointed pursuant to paragraph (a) (2) (i), (ii), and (iii) of this section, and taking into account the students to be appointed pursuant to paragraphs (a) (2) (v) of this section, such agency shall select the minimum number of additional persons as may be necessary to meet the requirements of this subdivision.

- (b) \* \* \*
- (2) \* \* \*

(iii) At least 50 per centum of the members of the board formed under this subparagraph must be members of a minority group as described in paragraph (a) (2) (ii) of this section. Such board shall have at least 10 members. At least

50 per centum of the members of such board shall be parents of children directly affected by a plan or project described in § 185.11 or § 185.31(a), or a program, project, or activity assisted under this subpart. In addition to members appointed pursuant to paragraphs (b) (2) (i) and (ii) of this section, and taking into account the students to be appointed pursuant to paragraph (b) (2) (iv) of this section, the applicant shall select the minimum number of additional persons as may be necessary to meet the requirements of this division.

23. Section 185.56 is revised to read as follows:

§ 185.56 Limitations on eligibility; non-public participation.

The limitations on eligibility set forth in § 185.43 shall apply to local educational agencies applying for, or requesting that a nonprofit private agency, institution, or organization apply for, assistance under this subpart. The provisions of § 185.44 as to waiver of ineligibility shall apply to such local educational agencies. The provisions of § 185.45 as to termination of assistance shall apply to all recipients of assistance under this subpart. The provisions of § 185.42 as to participation of children or staff enrolled in or employed by non-public schools shall apply to local educational agencies applying for assistance under this subpart.

(20 U.S.C. 1606(d), 1607(c)(1), 1609(a) and (b), 1611(c))

24. Paragraphs (a) and (d) (1) of § 185.61 are revised as follows:

§ 185.61 Eligibility for assistance.

(a) *Eligible applicants.* (1) Any public agency, institution, or organization (other than a local educational agency) and any nonprofit private agency, institution, or organization may apply for assistance, by grant or contract, from funds reserved pursuant to § 185.95(d) (1) (i) to carry out programs, projects, or activities designed to support the development or implementation of a plan or project described in § 185.11 or § 185.31(a).

(2) Any such agency, institution, or organization (other than a local educational agency or a nonpublic elementary or secondary school) may apply for such assistance from funds reserved pursuant to § 185.95(d) (1) (ii) to carry out such programs, projects, or activities.

(Public Law 92-318, sections 706(a)(3) and 708(b); Public Law 93-380, section 645)

(d) *Relation to local educational agency.* (1) A program, project, or activity designed to support the implementation of a plan or project described in § 185.11 or § 185.31(a) may be assisted under this subpart if the local educational agency with respect to which the applicant proposes to carry out its program, project, or activity is implementing such a plan or project, regardless of

whether such local educational agency applies for or receives assistance under the Act.

25. In § 185.62, the introductory text and paragraphs (a), (d), (e), (g), (h), (i), (j), and (k) are revised as follows:

§ 185.62 Authorized activities.

Financial assistance under this subpart shall be available for programs or projects which would not otherwise be funded and which involve activities designed to support the development or implementation of a plan or project described in § 185.11 or § 185.31(a) and to carry out the purposes described in § 185.01. Such programs or projects shall include one or more of the following activities:

(a) Supplemental remedial services beyond those provided by the local educational agency, including student to student tutoring, to meet the special need of children (including gifted or talented children) in schools which are affected by a plan or project described in § 185.11 or § 185.31(a) when such services are necessary to the success of such plan or project.

(d) Community activities, including public information and parental involvement efforts, regarding matters related to a plan or project described in § 185.11 or § 185.31(a);

(e) Administrative and auxiliary services to facilitate the success of the applicant's program or project, where such services are part of, and in conjunction with, a comprehensive program or project designed to support the development or implementation of a plan or project described in § 185.11 or § 185.31(a);

(g) Programs designed to deal with the problems of dropouts, academic failures, and increased suspensions or expulsions resulting from or attendant to the implementation of a plan or project described in § 185.11 or § 185.31(a);

(h) Interracial programs or projects relating to the social and recreational needs of children attending schools affected by a plan or project described in § 185.11 or § 185.31(a);

(i) Cultural enrichment activities which promote interracial and intercultural understanding among children attending schools affected by a plan or project described in § 185.11 or § 185.31(a) and, where appropriate, the parents of such children;

(j) Home-focused projects for the enrichment of the educational atmosphere in the homes of children attending schools affected by a plan or project described in § 185.11 or § 185.31(a), including parent-child home reading projects and school-related family or neighborhood activities;

(k) At the request of a local educational agency, assistance or support in the development of a plan or project described in § 185.11 or § 185.31(a); or

26. Subparagraphs (4), (6), and (7) of § 185.63(b) are revised as follows:

§ 185.63 Applications.

(b) . . . .

(4) A statement of (i) the extent to which other public or nonprofit private agencies, institutions, or organizations in the school district or school districts affected by a plan or project described in § 185.11 or § 185.31(a) have been consulted in the preparation of the application, and (ii) the provisions which have been made by the applicant for effective liaison with such agencies, institutions, or organizations which have applied for, or received, assistance under the Act with regard to coordination of programs, projects, or activities so assisted.

(6) A statement of past activities engaged in by the applicant or its officers or employees in the appropriate school district with respect to such matters as education, human relations, desegregation or elimination, reduction, or prevention of minority group isolation in public elementary or secondary schools or other community activities or concerns; and

(7) A copy of the plan or project described in § 185.11 or § 185.31(a) with respect to which assistance is sought under this subpart or a complete description of such plan or project.

(Public Law 92-318, section 708(b))

27. In § 185.64, paragraphs (a), (b) (1) (i), and (b) (3) (iv) are revised as set forth below, and paragraph (c) (3) is deleted.

§ 185.64 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance under this subpart, the Assistant Secretary shall apply the following objective criteria (40 points):

(1) The number and percentage of minority group children enrolled in the schools operated by the local educational agency or agencies with respect to which the applicant proposes to carry out its program project, or activity for the fiscal year or years for which assistance is sought (15 points);

(2) The effective net reduction or effective net prevention of minority group isolation (in terms of the number and percentage of children affected), as defined in § 185.14(a) (2), in all the schools operated by such agency or agencies accomplished or to be accomplished by the implementation of the plan or project described in § 185.11 or § 185.31(a) with respect to which assistance is sought by the applicant (25 points).

(Public Law 92-318, section 708(b))

(b) . . . .

(1) *Needs assessment (6 points).* (i) The degree to which the applicant has cooperated with, or complemented the efforts of, the appropriate local educational agency, in assessing the needs of the community with respect to desegregation or the elimination, reduction, or

prevention of minority group isolation; and

(3) . . . .

(iv) *Parent and community involvement (6 points).* The extent to which the application for assistance (a) reflects efforts to include persons broadly representative of the community to be served as members of the advisory committee established pursuant to § 185.65(a), and to utilize the contributions of such persons who are concerned with the problems of education and desegregation or the elimination, reduction, or prevention of minority group isolation; (b) delineates specific responsibilities for the advisory committee in addition to those required in § 185.65(d); and (c) sets forth procedures for involving parents and residents of the community to the maximum extent possible in all aspects of the proposed program, project, or activity.

28. Paragraph (b) (3) of § 185.65 is revised to read as follows:

§ 185.65 Advisory committees.

(b) . . . .

(3) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and of members from each minority group substantially represented in the community or in the student body of the appropriate local educational agency. At least 50 per centum of the nonstudent members of such committee shall be parents of children directly affected by a plan or project described in § 185.11 or § 185.31(a). In addition to members appointed to the committee by civic or community organizations, and those selected pursuant to subparagraph (2) of this paragraph, the applicant shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph.

29. Subpart H is revised to read as follows:

Subpart H—Educational Television

§ 185.71 Eligibility for funds.

(a) Any public or private nonprofit agency, institution, or organization with the capability of providing expertise in the development of television programming and with access to facilities necessary for such development may apply for a contract from funds reserved pursuant to § 185.95(b) (3) to pay the cost of development and production of integrated children's television programs of cognitive and affective educational value. For purposes of this subpart, "programs of cognitive and affective educational value" are those which teach concrete academic skills and encourage interracial and interethnic understanding.

(20 U.S.C. 1610(a), (b)(1); Senate Rept. No. 92-61, p. 24)

(b) No more than seven contracts shall be awarded pursuant to this subpart during the fiscal year ending June 30, 1975. (20 U.S.C. 1610(b)(1))

§ 185.72 Authorized activities and areas of concern.

(a) Funds made available under this subpart during the fiscal year ending June 30, 1975 shall be used to pay the normal and necessary expenses of researching, planning, writing, editing, staging, directing, performing, producing, reproducing, and distributing integrated children's television programs where such activities would not otherwise be funded and are designed to carry out the purposes described in § 185.01. Such programs shall be a standard-length series addressing one of the following areas of concern:

(1) Improvement of written and oral expression by students at the secondary level with linguistic and grammatical deficiencies;

(2) Improvement of cognitive skills of minority and non-minority group elementary school age children in one or more areas, such as mathematics, science, social studies, or language, including language skills of children from non-English dominant backgrounds;

(3) Fostering of inter-racial and inter-ethnic understanding among elementary school age children; and . . .

(4) Meeting the special needs of sub-groups of minority groups as defined in § 185.02(f) which may be unique to a particular geographic region through a program series intended for less than nation-wide utilization.

(20 U.S.C. 1610(b)(1))

(b) (1) No more than one contract for a standard-length series shall be awarded for any one of the areas of concern described in subparagraphs (a) (1) and (2), and (3) of this section in any fiscal year, and no more than four contracts shall be awarded for "regional" programming as described in subparagraph (a) (4) of this section in any fiscal year, unless the Assistant Secretary determines that the proposals pending before him for additional contracts for programming directed to the same area of concern are of exceptional merit or promise.

(2) No more than one contract shall be awarded for television programming directed to a particular racial or ethnic group in a particular geographical area in any fiscal year, unless the Assistant Secretary determines that the proposals pending before him for additional contracts for programming directed to the same group in the same area are of exceptional merit or promise.

(3) No contract awarded for "regional" programming as described in paragraph (a) (4) of this section shall exceed \$250,000 in amount.

(20 U.S.C. 1610(b)(1))

(c) (1) Television programs developed in whole or in part with funds made available under this subpart shall be made reasonably available for transmission, free of charge, and shall not be

transmitted under commercial sponsorship. Broadcast and nonbroadcast users of such programs may not be charged any cost beyond (i) the cost of tape duplication and, (ii) where there is a contract between a recipient and a talent union as described in paragraph (c) (2) of this section, the cost of payments to members of such talent union for usages beyond those usages specified in such contract.

(2) Any contract between a recipient of funds under this subpart and a talent union must allow at least the following usages of the television programs assisted, charges for which may not be passed on to users:

(i) Six years of usage by public television stations (a year of usage being defined, for this purpose, as unrestricted use during three separate weeks of any given program within a series);

(ii) Six years of usage (as defined in paragraph (c) (2) (i) of this section) by a commercial station where there is no public television station serving that station's coverage area or where all public television stations serving that station's coverage area have exercised a right of first refusal;

(iii) Unrestricted perpetual rights for use in in-school audiovisual contexts, including transmission by education-dedicated, local origination CATV channels and Instructional Television Fixed Service systems; and

(iv) One broadcast in each of two three-year periods over commercial stations.

(3) Arrangements for making the television programs developed with funds under this subpart reasonably available for transmission, free of charge, shall be undertaken by the recipient and shall be subject to the approval of the Assistant Secretary; however, the Assistant Secretary may assume the responsibility for making such arrangements if he deems such action appropriate. A recipient may not restrict usages, except as provided in paragraph (c) (1) of this section or by an agreement with one national television network providing for an exclusive right to broadcast each program in a series (in coverage areas where the network would actually broadcast such programs) until the thirteenth week following the week in which each such program is first broadcast.

(4) For purposes of this paragraph, where the costs of transmission are met by a commercial firm, a brief statement to that effect at the beginning or end of such transmission shall not be considered commercial sponsorship.

(5) No television program developed in whole or in part with funds made available under this subpart shall be used or transmitted in such a manner as to result in a financial benefit to any person or organization.

(20 U.S.C. 1610(b)(2); Senate Rept. No. 92-61, pp. 24-25)

(d) Funds made available under this subpart shall not be used for construction, repair, or remodeling of any building or facility, or for the purchase of

any equipment which has a useful life of more than one year and is not consumed in use, except where it can be demonstrated that the purchase of specific items of equipment will cost less than their rental. For purposes of this paragraph, "construction, repair, or remodeling" includes construction of buildings and facilities and structural alterations, renovations, and remaking of existing buildings and facilities or space therein.

(20 U.S.C. 1610(b)(1))

(e) *Deliverables.* Recipients of funds under this subpart must provide the following items to the Assistant Secretary at intervals specified by the Assistant Secretary:

(1) One master two-inch color highband videotape of each production in the series;

(2) Four first generation two-inch color highband videotape dubs of each production in the series (except that only two dubs shall be required for programming described in § 185.72(a)(4));

(3) One three-quarter-inch cassette tape of each production in the series;

(4) One three-quarter-inch cassette tape of a pilot production;

(5) Three one-minute promotional spots, with a 30-second liftout of each, to be delivered as:

(i) A composite tape of all six spots on a two-inch highband color, master videotape;

(ii) Four composite tapes of all six spots as first generation two-inch highband color, videotape dubs (except that only two tapes shall be required for programming described in § 185.72(a)(4)); and

(iii) A three-quarter inch composite videotape of all six spots;

(6) Five copies of teacher guide material consisting of one typewritten page in final form for each production;

(7) Five copies of pilot production test results; and

(8) One set of final scripts.

(20 U.S.C. 1610(b)(1))

(f) *Disclaimer.* Each program in a series assisted under this subpart must carry the following disclaimer: "This program was produced by [Name of Recipient] under a contract from the U.S. Department of Health, Education, and Welfare, Office of Education. The content of this program is the responsibility of the contractor and no official endorsement by the Department, or the Office of Education, is to be inferred."

(20 U.S.C. 1610(b)(1))

§ 185.73 Proposals.

(a) *General.* (1) A proposer for a contract under this subpart for any fiscal year shall submit to the Assistant Secretary a proposal therefor for that fiscal year, which proposal shall be in a form specified by the Assistant Secretary and shall contain such information and set forth such policies and procedures as will assure that the proposer will use funds received under this subpart only for the activities described in § 185.72.

(2) The proposal must make provision for production of prototypical pilot materials.

(20 U.S.C. 1610(b)(1))

(b) *Basic assurances.* Proposals for funds under this subpart shall comply with the requirements of § 185.13 (a), (b), (c), (d), (f), (h), (k)(1) (i), and (ii), (k)(2), and (m).

(20 U.S.C. 1609(a), 1610(b)(1))

(c) *Assurances by local educational agencies.* Proposals by local educational agencies for funds under this subpart shall comply with the requirements of § 185.13(g), (i), (j), (k)(1) (iii), (k)(3), (l), and (n), in addition to the requirements specified in paragraphs (b) and (e) of this section. Such proposals, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the proposer and the Assistant Secretary.

(20 U.S.C. 1609(a), 1610(b)(1))

(d) *Assurances by other proposers.* Proposals by public or private nonprofit agencies, institutions, or organizations (other than local educational agencies) under this subpart shall comply with the requirements of § 185.63(b)(2) and (5) in addition to the requirements specified in paragraphs (b) and (e) of this section.

(20 U.S.C. 1610(b)(1))

(e) *Additional information and assurances.* Proposals for funds under this subpart shall contain the following information, in addition to the assurances and information required by the other applicable paragraphs of this section:

(1) A detailed description of the integrated children's television programs to be developed and produced with funds made available under this subpart, together with an identification of the audience to be reached by such programs and a statement of the educational and other gains to be achieved;

(2) A statement of the name, address, position, duties, prior experience in educational television and school and community affairs, and race of all persons permanently employed (or to be employed) in positions of responsibility by the proposer on the development, production, and administrative staffs of the project;

(3) A detailed description of the evaluation procedures to be employed by the proposer pursuant to § 185.77 in measuring and evaluating the program appeal of, and the educational and other changes to be achieved by, the television programs for which funds are sought;

(4) A statement of (i) past activities engaged in by the proposer or its officers or employees indicating the relative capability of the proposer to provide expertise in the development of integrated children's television programming, and to develop and produce the proposed television programs, and (ii) the access of the proposer to facilities necessary for such development and production; and

(5) A budget detailing all costs of the proposed project.

(20 U.S.C. 1610(b)(1) and (3))

(f) *Proposal procedure.* The Assistant Secretary may require the information described in this section to be submitted either in a single proposal or sequentially, and may require additional information and assurances of selected proposers.

(20 U.S.C. 1610(b)(1))

#### § 185.74 Criteria for awards.

In reviewing and approving proposals for contracts under this subpart, the Assistant Secretary shall apply the following criteria:

(a) *Needs assessment (10 points).* The extent to which the proposer has undertaken a comprehensive assessment, on the basis of test data, audience surveys, and other objective evidence, of the educational and other needs of the target population, and the magnitude of the needs so assessed.

(20 U.S.C. 1610(b)(1))

(b) *Statement of objectives (15 points).* The degree to which the proposer sets forth specific objectives which:

(1) articulate with the needs described by the proposer in its proposal;

(2) are capable of attainment through the proposed television series; and

(3) are shown to have been derived by persons possessing relevant professional and experiential background, and who include, to a significant degree, persons representative of the racial and ethnic populations to be served by the series.

(20 U.S.C. 1610(b)(1), 1610(b)(3)(A))

(c) *Activities (63 points)*—(1) *Program content and design (33 points).* The extent to which the proposed television programming promises to reach the expected or potential target audience and to encourage and sustain the participation, interest, and educational and other growth of such audience, and the extent to which the programming can stand by itself as effective instruction without the necessity for teacher assistance;

(2) *Staffing (22 points).* (i) The extent to which the proposal sets out an overall staff plan clearly delineating positions and responsibilities and maximizing staff capabilities;

(ii) The extent to which minority group persons will occupy key creative, administrative and executive decision-making project positions; and

(iii) The extent to which provision is made for on-the-job-training for minority group persons to enable them to become qualified to assume positions of technical and professional responsibility.

(3) *Supplementary materials (2 points).* The extent to which the proposal sets forth a plan for developing a guide which will provide teachers employing the series in classroom work with suggestions for varied, realistic and effective ancillary classroom activity; and

(4) *Advisory committee participation (6 points).* The extent to which the proposal (i) clearly delineates specific op-

portunities for continuing advisory committee participation in the development and evaluation of the proposed television programming in addition to those required by § 185.75, and (ii) includes evidence that such participation has been encouraged and has in fact occurred.

(20 U.S.C. 1610(b)(1), 1610(b)(3)(A))

(d) *Management (7 points).* The quality of a detailed flow chart or milestone chart, submitted with the proposal, of activities sufficient to accomplish all proposed tasks.

(e) *Formative evaluation (5 points).* The extent to which the proposal sets out a detailed format, including specific study design, for applying formative evaluation techniques prior to and during a pilot phase of production of the proposed television programming, in order to determine the production and presentation techniques which offer the greatest promise of achieving the stated objectives.

(20 U.S.C. 1610(b)(1), 1610(b)(3)(C))

(f) *Funding criteria.* In determining amounts to be awarded to proposers for funds under this subpart, the Assistant Secretary shall consider the additional cost to such proposer (as such cost is defined in § 185.13(a)) of effectively developing and producing its proposed television programming, in relation to the amount of funds available under this subpart and the other proposals for such funding pending before him. The Assistant Secretary shall not be required to approve any proposal which does not meet the requirements of the Act or this part, or which sets forth proposed television programming of such insufficient promise for achieving the purposes of the Act that its approval is not warranted, or which sets forth projected costs that are unreasonable in relation to projected outcomes, or which is not supported by a record of past activities engaged in by the proposer or its officers or employees indicating capability for implementing the proposal. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to proposers (whose proposals meet such requirements and are of sufficient promise to warrant approval) in order of their ranking on the basis of the criteria set out in this section until the sums available for the purposes of this subpart have been exhausted.

(20 U.S.C. 1610(b)(1))

(g) In making the determinations required under this section, the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of education, educational television, and human relations from the Department, other Federal agencies, State or local governmental units, or the private sector.

(20 U.S.C. 1610(b)(1) and (3))

#### § 185.75 Advisory committees.

(a) Public or private nonprofit agencies, institutions, or organizations (other than local educational agencies) submit-

ting proposals for contracts under this subpart shall comply with the requirements as to advisory committee participation set forth in § 185.65, except as follows:

(1) References in said section to a "district-wide advisory committee" shall be understood to be references to an advisory committee representing the entire area to be served by the proposed television programming, and references in said section to a "program, project, or activity" shall be understood to refer to the proposed television programming for which funds are sought.

(2) (i) The requirements of § 185.65(b) shall not apply to proposals submitted under this subpart. References in § 185.65 to paragraph (b) of said section shall be understood to refer to the provisions of this subparagraph (2).

(ii) A proposer shall designate at least five civic or community organizations, each of which shall select a member of the proposer's advisory committee. The civic or community organizations which participate in the selection process shall, when taken together rather than considered individually, be broadly representative of the minority and nonminority communities to be served.

(iii) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and of members from each minority group substantially represented in the area to be served by the proposed television programming. At least 50 percent of the nonstudent members of such committee, to be selected by the proposer, shall be parents of children at whom the proposed television programming for which funds are sought will be directed.

(iv) Where the proposed television programming will be directed at secondary school age students, at least 50 percent of the total membership of the committee, to be selected by the proposer, must be secondary school students enrolled in a secondary school or schools located within the area to be served by the proposed television programming. Among such student members there must be equal numbers of nonminority group persons and persons from each minority group substantially represented in the area to be served by the proposed television programming.

(3) The post-award consultation described in § 185.65(d) shall be at least once every three months.

(20 U.S.C. 1610(b)(1))

(b) Local educational agencies submitting proposals for contracts under this subpart shall comply with the requirements as to advisory committee participation and public hearings set forth in § 185.41 (a) through (g), except as follows:

(1) References in said section to a "district-wide advisory committee" shall be understood to be references to an advisory committee representing the entire area to be served by the proposed television programming, and references in said section to a "program, project, or

activity" shall be understood to refer to the proposed television programming for which funds are sought.

(2) The designation of teachers pursuant to § 185.41(c)(2) and students (who must be designated only where the proposed television programming will be directed at secondary school age students) pursuant to § 185.41(c)(4) shall be with reference to the entire area to be served by the proposed television programming.

(3) The post-award consultation described in § 185.41(e) shall be at least once every three months.

(20 U.S.C. 1609(a)(2) and (3), 1609(b))

§ 185.76 Limitations on eligibility.

The limitations on eligibility set forth in § 185.43 shall apply to educational agencies submitting proposals for funds under this subpart. The provisions of § 185.44 as to waiver of ineligibility shall apply to local educational agencies submitting proposals for funds under this subpart. The provisions of § 185.45 as to termination of assistance shall apply to all recipients of assistance under this subpart.

(20 U.S.C. 1605(d), 1609(a) and (b), 1610(b)(1))

§ 185.77 Required approval by Assistant Secretary of pilot materials.

A recipient of funds under this subpart must produce prototypical pilot materials at times specified by the Assistant Secretary. The recipient must then conduct an evaluation of such materials to serve as the formative evaluation for the series. No commitments by the recipient relating to production activity beyond the conduct of this evaluation will be recognized by the Assistant Secretary unless a favorable decision on project continuation is made by the Assistant Secretary. Any party with whom the recipient enters into a commitment for such production activity prior to such a favorable decision must be informed of this possibility of non-recognition at the time the commitment is entered into. An unfavorable decision on project continuation shall be a basis for termination pursuant to § 185.45.

(20 U.S.C. 1609(a)(15), 1610(b)(1), 1610(b)(3)(C))

§§ 185.78-185.80 [Reserved]

30. The section title and introductory text of paragraph (a) of § 185.83 are revised as follows:

§ 185.83 Proposals.

(a) *Information.* Proposals submitted pursuant to this subpart shall contain such information, and set forth such policies and procedures, as will assure that the offeror will use funds received under this subpart only for the activities described in § 185.82. In addition, such proposals shall contain the following information:

31. Paragraph (b) of § 185.84 is revised as follows:

§ 185.84 Criteria for awards.

(b) *Funding criteria.* In awarding contracts under this subpart, the Assistant Secretary shall apply the provisions of the Federal Procurement Regulations (41 CFR Ch. 1 and 3), except that he shall not be required to approve any proposal which does not meet the requirements of the Act or this subpart, or which sets forth a proposed evaluation of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. From the funds reserved pursuant to § 185.95(b)(4) for any fiscal year, the Assistant Secretary may award one or more contracts under this subpart.

(20 U.S.C. 1612)

32. Subpart J is revised to read as follows:

Subpart J—Special Projects

SPECIAL ARTS PROJECTS

§ 185.91 Eligibility for assistance.

(a) Any public agency or organization responsible for the administration of statewide public arts programs, such as a State Arts Council or State Arts and Humanities Commission, may apply for assistance by grant from funds reserved pursuant to § 185.95(b)(1) for special projects that would through the arts provide opportunities for interracial and intercultural communication and understanding to help meet the special needs incident to the implementation of a plan or project described in § 185.11 or § 185.31(a). Activities assisted under this section must be conducted primarily with students who attend schools affected by such plan or project, in which the proportion of minority group children enrolled is no less than 20 percent. Such schools must be located in local educational agencies which are in compliance with the requirements described in § 185.43 or § 185.44.

(b) No more than \$1,000,000 from funds reserved pursuant to § 185.95(b)(1) shall be awarded for grants pursuant to this section during any fiscal year.

(20 U.S.C. 1605(d) and 1607(a))

§ 185.91-1 Applications.

(a) Applications by public agencies or organizations pursuant to § 185.91 shall comply with the requirements of § 185.13 (a), (b), (c), (d), (f), (g), (h), (j), (k) (1) (i), (k) (1) (ii), (k) (2) and (m). Applications submitted by public agencies or organizations which are local educational agencies shall also comply with the requirements of § 185.13 (e), (i), (k) (3), (l), and (n). The provisions of § 185.42 as to participation of children or staff enrolled in or employed by non-public schools shall apply to local educational agencies applying pursuant to § 185.91. All applications for assistance under § 185.91, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary.

(20 U.S.C. 1605(d), 1607(a), 1609(a))

(b) In addition to the information and assurances required by paragraph (a) of this section, applications by public agencies and organizations pursuant to § 185.91 shall contain the following information:

(1) A letter from each local educational agency implementing a plan or project described in § 185.11 or § 185.31 (a) in which the applicant proposes to conduct activities which gives evidence that the local educational agency has reviewed the proposed project and has agreed to participate in the program activities, if funded, and which contains a list of those schools operated by such local educational agency which would be served by the applicant's proposed activities;

(2) A copy of the plan or project described in § 185.11 or § 185.31(a) for each local educational agency which the applicant proposes to serve unless such local educational agency has previously applied for assistance under the Act;

(3) A statement, signed by the appropriate official of each local educational agency in which the applicant proposes to conduct activities, that such local educational agency is in compliance with the requirements described in § 185.43 or § 185.44;

(4) A statement of the name, position, and prior experience in education, the arts, and interracial/intercultural relations of the State level project director employed (or to be employed) by the applicant in connection with the proposed activities;

(5) A copy of the statutory provision, State executive order or other evidence establishing the status of the applicant agency as a public agency or organization responsible for the administration of statewide public arts programs.

(20 U.S.C. 1607(a), 1609(a))

#### § 185.91-2 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance pursuant to § 185.91, the Assistant Secretary shall apply the following criterion: the need for such assistance, as indicated by the number and percentage of minority group children within the State in which the applicant is located (10 points).

(20 U.S.C. 1607(a), 1609(c) (1))

(b) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational, artistic, and programmatic merits of applications for assistance by public agencies or organizations pursuant to § 185.91 on the basis of the following criteria (90 points):

(1) *Needs assessment (14 points).* The magnitude of needs, in the schools to be served, assessed jointly by the applicant and the appropriate local educational agency or agencies, for intercultural/interracial arts activities as such activities relate to the special needs incident to the implementation of a plan or project described in § 185.11 or § 185.31(a).

(2) *Statement of objectives (10 points).* (i) The degree to which the applicant sets out specific measurable objectives for its activities in relation to

the needs identified (5 points); and (ii) the degree to which the activities to be assisted afford promise of achieving the objectives identified in the application (5 points).

(3) *Activities (55 points).* (i) *Project design (20 points).* The extent to which the proposed activities are clearly related to the needs identified and to the stated objectives, which activities (a) complement activities being carried out by the appropriate local educational agency or agencies (5 points); (b) provide opportunities for artists to assist students in the development of artistic expression (5 points); (c) provide opportunities for artists to create, and arts groups to present, activities that promote interracial and intercultural understanding (5 points); and (d) provide opportunities for the artists to serve as a resource to the appropriate school, local educational agency, and community (5 points).

(ii) *Staffing (20 points).* At a minimum, the proposed activities must set out a plan to utilize qualified minority group artists and arts groups. Points will be awarded on the basis of the extent to which the application demonstrates that:

(a) (1) at least 50% of the artists and art group members (when taken together as a group) to be utilized by the applicant are minority group members (5 points); and (a) (2) the proportion of members of each minority group among such artists and art groups (when taken together as a whole) represents the proportion of such minority groups in the minority population of the State in which the applicant is located (5 points); (b) qualified artists and art groups who have demonstrated the ability to work effectively with students and teachers in interracial/intercultural educational settings will be utilized (5 points); (c) the presence or availability of a State level project director with experience in education, the arts, and interracial/intercultural relations is indicated (3 points); and (d) adequate training and orientation will be provided for students, teachers, and other educational personnel in the uses of artists and arts experiences, and for artists in the need of students, teachers and administrators (2 points).

(iii) *Delivery of services (10 points).* The extent to which the proposed activities (a) involve to the fullest extent practicable the total educational and artistic resources already existing in the community or communities to be served, including those of other public or non-profit private agencies, organizations, or institutions (2 points); (b) describe available facilities which are adequate for the performance of the proposed activities and are convenient and accessible to the persons involved in such activities (2 points); (c) provide for effective notification of and communication with the intended beneficiaries of proposed activities (2 points); (d) give evidence of coordination with, and mutual support of, the State education agency's arts education programs (2 points); and (e) give evidence that they will be documented so that successful models can be replicated (2 points). For

purposes of this subdivision, "community or communities to be served" shall mean the community or communities in which are located local educational agencies in which activities are to be conducted with assistance made available under § 185.91.

(iv) *Parent and community involvement (5 points).* The extent to which the application (a) provides for increased communication between parents and the school system (2 points); and (b) provides for specific opportunities for community and parental participation in the implementation of the proposed activities in addition to those required by § 185.91-3 (3 points).

(4) *Resource management (6 points).* The extent to which the application contains evidence that (i) the amount of funds requested is of sufficient magnitude to give substantial promise of achieving the stated objectives (2 points); (ii) the costs of project components are reasonable in relation to the expected benefits (2 points); and (iii) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed activities (2 points).

(5) *Evaluation (5 points).* The extent to which the application sets out a format for objective measurement of the results of the proposed activities, including (i) a timetable for compilation of data for evaluation and a method of reviewing the activities in the light of such data (2 points); and (ii) a description of the instruments to be used for evaluation of the proposed activities, or a description of the procedure to be employed in selecting such instruments (3 points).

(6) In making the determinations required under this paragraph the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of the arts, education, and human relations from the Department, other Federal agencies, State or local governmental units, or the private sector.

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance pursuant to § 185.91 the Assistant Secretary shall consider the additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed activities, in relation to the amount of funds available for assistance pursuant to § 185.91 and the other applications for such assistance pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth activities of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to applicants (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this

section. Awards of assistance made pursuant to § 185.91 will be limited to an approximate range of \$50,000 to \$100,000. No more than one award of assistance pursuant to § 185.91 will be made for activities in any State.

(20 U.S.C. 1601(b), 1607(a), 1609(c) (1), (2), (4), and (6))

#### § 185.91-3 Community involvement.

(a) *Advisory committee.* A public agency or organization applying for assistance pursuant to § 185.91 shall, prior to submission of such an application, consult with a State level advisory committee formed in accordance with paragraph (b) of this section in identifying problems and assessing the needs to be addressed by such application. Such applicant shall afford such committee a reasonable opportunity (not less than 10 days) in which to review and comment upon such application, and shall establish such committee at least 5 days prior to the commencement of such review period. In connection with the establishment of such committee, the applicant shall furnish to each member of such committee a copy of the Act and this regulation.

(20 U.S.C. 1607(a))

(b) *Composition.* (1) In order to establish a State level advisory committee as required by this section, the applicant shall designate four State level civic or community organizations (which when taken together rather than considered individually, are broadly representative of the minority and non-minority communities in the State), one State level teacher organization, and one State level parent organization, each of which shall select one member of their organization to serve as a member of the State level advisory committee. In addition the applicant shall designate a State level student organization or organizations to select student members so that the membership of the State level advisory committee will include one nonminority group student and one student from each minority group substantially represented in the State.

(2) The State level advisory committee formed pursuant to paragraph (a) of this section must be composed of equal numbers of nonminority group members and of members from each minority group substantially represented in the State, including at least one member with arts or arts related experience. In addition to members selected pursuant to subparagraph (1), the applicant shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph.

(20 U.S.C. 1607(a))

(c) *Public hearing and publication.* Public agencies or organizations apply-

ing for assistance pursuant to § 185.91 shall hold at least one open, public hearing with parents, teachers, and secondary school students, including but not limited to the members of a committee formed in accordance with paragraph (b) of this section, at which hearing such persons are afforded a full opportunity to understand the activities for which assistance is being sought and to offer recommendations thereon. Such hearing shall be held no less than 7 days prior to submission of an application under the Act, and shall be advertised in a newspaper of statewide circulation or otherwise made public not less than 7 days prior to the date of such hearing. Such publication shall include the names of the members of the State level advisory committee established pursuant to paragraph (a) of this section and a statement of the purpose of such committee. Evidence of such publication and a copy of the minutes of the hearing required by this subparagraph shall be submitted with such agency's application for assistance. At a minimum, such minutes shall include a statement of the date, time and location of such hearings, the number of persons in attendance, and a brief summary (not a verbatim transcript) of the views expressed at such hearing.

(20 U.S.C. 1607(a))

(d) *Comments and suggestions by advisory committee.* No application for assistance pursuant to § 185.91 shall be approved which is not accompanied by the written comments of a committee formed in accordance with paragraph (b) of this section. No amendment to activities assisted under § 185.91 shall be approved, and no additional funds made available, unless such committee has been consulted and involved in the development of and has been given an opportunity to comment upon, such amendment of or addition to such activities. Such comments shall be included with any application submitted by such applicant for such amendments or additions.

(e) *Post-award consultation.* Each application for assistance pursuant to § 185.91 shall contain an assurance that the applicant will consult at least monthly with its State level advisory committee established under this section with respect to policy matters arising in the administration and operation of any activities for which funds are made available under § 185.91, and that the applicant will provide such committee with a reasonable opportunity to periodically observe and comment upon all such activities.

(20 U.S.C. 1607(a))

#### SPECIAL MATHEMATICS PROJECTS

##### § 185.92 Eligibility for assistance.

Any private, nonprofit agency, institution, or organization, or a combination of such agencies, institutions, or organi-

zations, may submit an application for a grant from sums reserved pursuant to § 185.95(b)(1) for the conduct, in cooperation with one or more local educational agencies implementing a plan or project described in § 185.11 or § 185.31 (a), of special programs for the teaching of standard mathematics to both minority and nonminority group children attending schools affected by such a plan or project in which the proportion of minority group children enrolled is no less than 20 percent. Such special programs shall consist of instruction in advanced mathematics by qualified instructors with bachelor degrees in mathematics or the mathematical sciences from colleges or other institutions of higher education, or with equivalent experience. A cooperating local educational agency must be in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1605(d) and 1607(a)(3))

##### § 185.92-1 Authorized activities.

Funds made available for special mathematics projects described in § 185.92 may be used for compensation for instructors described in said section, purchase of textbooks, materials, and supplies necessary to conduct the instructional program, rental of space and equipment, compensation for auxiliary personnel, and administrative costs. Such funds shall not be used for construction, repair or remodeling of any building or facility, or for the purchase of any equipment which has a useful life of more than one year and is not consumed in use, except where it can be demonstrated that the purchase of specific items of equipment will cost less than their rental. For purposes of this section, "construction, repair, or remodeling" includes construction of buildings and facilities and structural alterations, renovations, and remarking of existing buildings or space therein.

(20 U.S.C. 1607(a)(3))

##### § 185.92-2 Applications.

(a) Applications for funds for special mathematics projects shall comply with the requirements of § 185.63, except as follows:

(1) The term "activities set forth in § 185.62" in § 185.63(b)(1) shall be understood to refer to activities set forth in § 185.92-1;

(2) The statement of past activities required by § 185.63(b)(6) shall be supplemented by a statement of past activities engaged in by the applicant or its officers or employees with respect to mathematics and to the teaching thereof; and

(3) The phrase "under this subpart" in § 185.63(b)(7) shall be understood to mean "under § 185.92".

(b) All applications for assistance under this subpart, together with all correspondence and other written materials relating thereto, shall be made readily

available to the public by the applicant and by the Assistant Secretary.

(c) In addition to the information and assurances required by paragraph (a) of this section, applications shall contain the following:

(1) A letter from each local educational agency with which the applicant proposes to conduct activities, indicating that the local educational agency has reviewed the proposed project and the application and has agreed to participate in the program activities, if funded, and containing a list of those schools within such local educational agency which are eligible for assistance pursuant to § 185.92 and whose students are to participate in the project.

(2) A statement, signed by an authorized official of each local educational agency with which the applicant proposes to conduct activities, that such local educational agency is in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1605(d), 1607(a)(3), 1609(a))

#### § 185.92-3 Criteria for assistance.

(a) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational and programmatic merits of applications for funds for special mathematics projects on the basis of the following criteria:

(1) *Needs assessment (10 points).* (i) The magnitude of needs in the schools to be served, assessed jointly by the applicant and the appropriate local educational agency or agencies, for special programs for the teaching of advanced mathematics within multiethnic classroom situations as such programs relate to the special needs incident to the implementation of a plan or project described in § 185.11 or § 185.31(a) (5 points);

(ii) The degree to which the applicant has demonstrated, by standardized achievement test data or other objective evidence, the existence of such needs (5 points).

(2) *Statement of objectives (10 points).* (i) The degree to which the applicant sets out specific measurable objectives for its project in relation to the needs identified (5 points) and (ii) the degree to which the project to be assisted affords promise of achieving the objectives specified in the application (5 points).

(3) *Activities (50 points).* (i) *Project design (30 points).* (a) The extent to which the proposed project sets out activities clearly related to the needs identified and to the stated objectives, (b) the extent to which the proposal demonstrates that the use of techniques in advanced mathematics will result in the successful teaching of standard mathematics to the intended beneficiaries, (c) the extent to which the project fits into the overall goals of the mathematics program within the individual schools to be served, (d) the extent to which the applicant demonstrates a coordinated effort

on the part of the applicant and the local educational agency or agencies to be served in the development and planning of the proposed project, (e) the extent to which the proposed project is sufficiently concentrated and specific as to give promise of measurable growth for each participant, and (f) the extent to which the proposed project will be adaptable to the individual needs of students and will allow for flexibility in approach based on an ongoing assessment of project goals and the progress of individual students.

(ii) *Staffing (10 points).* The extent to which the proposed project (a) provides for a multi-ethnic staffing plan so that the instructional staff implementing the project reflects the racial and ethnic composition of the student body, (b) includes provisions for making maximum use of present staff capabilities, (c) provides for qualified (beyond the extent required pursuant to § 185.92) instructors to implement the program, and (d) provides adequate training and orientation for students, teachers, and other educational personnel with regard to the proposed project.

(iii) *Delivery of services (5 points).* The extent to which the proposed project (a) sets out a plan for meeting the logistical requirements of the proposed activities including a description of adequate and conveniently available facilities and equipment and (b) involves to the fullest extent practicable the total educational resources already existing in the community or communities to be served.

(iv) *Parent and community involvement (5 points).* The extent to which the application provides for specific opportunities for community and parental participation in the implementation of the proposed project in addition to those required by § 185.92-4.

(4) *Resource management (6 points).* The extent to which the application contains evidence that (i) the amount of funds requested is of sufficient magnitude to give substantial promise of achieving the stated objectives; (ii) the costs of project components are reasonable in relation to the expected benefits; and (iii) the project includes activities of modest to average cost.

(5) *Evaluation (10 points).* The extent to which the application sets out a format for objective, quantifiable measurement of the success of the proposed project in achieving the stated objectives, including (i) a timetable for compilation of data for evaluation and a method of reviewing the project in the light of such data; (ii) a description of instruments to be used for evaluation of the proposed project (and of the method for validating such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; and (iii) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards; and

(iv) the extent to which the applicant provides for effective collection and organization of information on the educational results of the proposed project.

(6) In making the determinations required under this paragraph the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of mathematics, education, and human relations from the Department, other Federal agencies, State, or local governmental units, or the private sector.

(b) *Funding criteria.* In determining amounts to be awarded to applicants for assistance pursuant to § 185.92 the Assistant Secretary shall consider the additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed project in relation to the amount of funds available for assistance pursuant to § 185.92 and the other applications for such assistance pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth a project of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to applicants (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section. However, in determining the amount of assistance to be awarded to applicants described in § 185.92, the Assistant Secretary may consider whether there is, or is expected to be, pending before him an application submitted pursuant to § 185.91, § 185.93, or § 185.94 which meets the requirements of the Act and this part and which sets forth a project of sufficient promise for achieving the purposes of the Act that its approval is warranted.

(20 U.S.C. 1601(b), 1607(a)(3), 1609(c)(1), (2), (4), and (6))

#### § 185.92-4 Community involvement.

Applicants shall comply with the requirements for advisory committee participation set forth in § 185.85. Where the primary area to be served by the project is larger than that of one local educational agency, members of the advisory committees required by this section, and civic or community organizations designated to select such members, shall be selected to represent the larger area to be served.

(20 U.S.C. 1607(a)(3))

#### SPECIAL STUDENT CONCERNS PROJECTS

##### § 185.93 Eligibility for assistance.

(a) Any public agency or organization (or a combination of such agencies or organizations) other than a local educational agency may apply for assistance by grant from funds reserved pursuant to § 185.95(b)(1) for the conduct of spe-



cial student concerns projects designed to eliminate the disproportionately high incidence of suspension, expulsion, and other disciplinary action involving minority group students in the schools of cooperating local educational agencies. Projects must be conducted in cooperation with one or more local educational agencies implementing a plan or project described in § 185.11 or § 185.31(a). Cooperating local educational agencies must be in compliance with the requirements described in § 185.43 or § 185.44.

(b) No more than one-half of one percent of the funds appropriated under the Act for any fiscal year shall be awarded pursuant to this section.

(20 U.S.C. 1605(d), 1607(a))

#### § 185.93-1 Authorized activities.

A grant for a special student concerns project described in § 185.93 must be used both for the cost of activities described in paragraph (a) of this section and the cost of activities described in paragraph (b) of this section, as follows:

(a) Identifying probable causes of, and formulating remedial action for, the disproportionately high incidence of suspension, expulsion, and other disciplinary action involving minority group students enrolled in the schools of the cooperating local educational agency or agencies. Such activities may include, but are not limited to, the following:

(1) Analysis of the cooperating local educational agencies' student enrollment and absentee files, suspension, expulsion, and other disciplinary records, and other pertinent existing data;

(2) Identification and analysis of State, local, and school policies, practices, procedures, rules, or regulations which may bear on the disproportionately high incidence of disciplinary action respecting minority group students in the schools of cooperating local educational agencies; and

(3) Gathering of observational data, interviews with students, parents, and school personnel, and other survey techniques, and analysis of the results thereof.

At the conclusion of the activities described in this paragraph a report of findings must be prepared and made available to the cooperating local educational agencies and to school personnel, parents, and students in the community served by those agencies.

(b) Developing and implementing a program designed to eliminate the disproportionately high incidence of suspension, expulsion, and other disciplinary action involving minority group students in one or more schools in each cooperating local educational agency. Such a program must be innovative, operable at a reasonable cost, and replicable. Such a program may include, but is not limited to, the following:

(1) Development and use of new curricula and instructional methods, prac-

tices, and techniques (and the acquisition of instructional materials relating thereto) to support instruction specifically designed to eliminate the disproportionately high incidence of disciplinary action involving minority group students, such as instruction in the language, cultural heritage, and contemporary history of minority groups;

(2) The provision of additional professional or other staff members specially trained in problems related to expulsions, suspensions, and other disciplinary action;

(3) Training for the community (including school staff, parents, students, school board members, and government, civic, and business leaders) in methods of preventing circumstances that result in the disproportionately high incidence of disciplinary action involving minority group students;

(4) Comprehensive guidance, counseling, and other personal services for students;

(5) Innovative interracial educational projects involving the joint participation of minority groups and other students, including extracurricular activities;

(6) Development of a model "Student Bill of Rights" or adaptation of a previously developed "Student Bill of Rights" to establish general guidelines for students and school personnel;

(7) Development of proposed revisions to State, local and school board policies, practices, procedures, rules, and regulations;

(8) Innovative activities developed and conducted by students and designed to identify causes of, and to develop remedies for, the disproportionately high incidence of disciplinary action involving minority group students.

(c) All activities authorized under this section must be conducted in a manner consistent with sections 438-440 of the General Education Provisions Act (including the "Family Educational Rights and Privacy Act of 1974"), as amended, and any regulations promulgated thereunder.

(20 U.S.C. 1232g-1232i, 1607(a))

#### § 185.93-2 Applications.

(a) Applications pursuant to § 185.93 shall comply with the requirements of § 185.13(a), (b), (c), (d), (f), (g), (h), (j), (k) (1) (i), (k) (1) (ii), (k) (2), and (m). All applications for assistance under § 185.93, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary.

(b) In addition to the information and assurances required by paragraph (a) of this section, applications shall contain the following information:

(1) A description of the proposed project and of such policies and procedures as will insure that the applicant will use funds received under § 185.93 only for the activities described in § 185.93-1;

(2) A letter from each local educational agency with which the applicant proposes to conduct activities, indicating that the local educational agency has reviewed the proposed project and the application and has agreed to participate in the program activities, if funded;

(3) A statement, signed by an authorized official of each local educational agency with which the applicant proposes to conduct activities, that such local educational agency is in compliance with the requirements described in § 185.43 or § 185.44.

(20 U.S.C. 1605(d), 1607(a), 1609(a))

#### § 185.93-3 Criteria for assistance.

(a) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational and programmatic merits of applications for funds for special student concerns projects on the basis of the following criteria:

(1) *Needs assessment (25 points).* (i)

The extent to which the applicant has undertaken a preliminary assessment of the needs to be addressed by the proposed project and has obtained objective data as to suspension, expulsion, and other forms of disciplinary action respecting minority group students in the cooperating local educational agencies;

(ii) The difference in magnitude between the extent of such disciplinary action prior to implementation of a plan or project described in § 185.11 or § 185.31 (a) and the extent of such disciplinary action during implementation of such plan or project, a greater difference indicating greater need;

(iii) The percentage of such disciplinary action involving students who are members of minority groups as opposed to the percentage of students in attendance in the schools of the cooperating local educational agency or agencies who are minority group members, a greater difference indicating greater need.

(2) *Statement of objectives (6 points).*

(i) The degree to which the applicant sets out specific measurable objectives for its project in relation to the needs identified;

(ii) The degree to which the project promises realistically to address the needs identified.

(3) *Activities (43 points).* (i) *Project design (28 points).* (a) The extent to which students are involved in assessing disciplinary pattern problems and involved in devising solutions; (b) the extent to which the cooperating local educational agencies will be actively involved in the project's implementation, (c) the quality of any data collection and analysis methods outlined in the application, and (d) the extent to which principals, teachers, and other personnel of the schools to participate in the program described in § 185.93-1(b) will be involved in the development of such program;

(ii) *Staffing (3 points).* The extent to which the application sets out an ade-

quate staffing plan for the project and provides that staff members will be selected who have had experience in dealing with disciplinary pattern problems;

(iii) *Delivery of services (3 points)*. The extent to which the proposed project sets out a plan for meeting the logistical requirements of the proposed activities, including a description of adequate and conveniently available facilities and equipment;

(iv) *Parent and community involvement (9 points)*. The extent to which the application (a) delineates specific opportunities for community and advisory committee participation in the development and implementation of the proposed project in addition to those required by § 185.93-4, and (b) includes evidence that such participation has been encouraged and has in fact occurred.

(4) *Resource management (4 points)*. The extent to which the application contains evidence that (i) the costs of project components are reasonable in relation to the expected benefits; (ii) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed project; and (iii) the proposed project will be coordinated with existing efforts in the same area.

(5) *Evaluation (12 points)*. The extent to which the application sets out a format for objective, quantifiable measurement of the success of the proposed project in achieving the stated objectives, including (i) a timetable for compilation of data for evaluation and a method of reviewing the project in the light of such data; and (ii) a description of instruments to be used for evaluation of the proposed project (and of the method for validating such instruments), or a description of the procedure to be employed in selecting such instruments.

(6) *Replicability (5 points)*. The extent to which the project may be easily replicated in other schools, both within the cooperating local educational agency or agencies and in other local educational agencies.

(7) *Dissemination (5 points)*. The extent to which adequate provision is made to disseminate information regarding the progress and findings of the project, including results of the program described in § 185.93-1(b), to other educational agencies and other interested agencies and organizations.

(8) In making the determinations required under this paragraph, the Assistant Secretary is authorized to purchase or utilize the services, recommendations, and advice of experts in the areas of student discipline patterns, education, and human relations from the Department, other Federal agencies, State or local governmental units, or the private sector.

(b) *Funding criteria*. In determining amounts to be awarded to applicants for

assistance pursuant to § 185.93, the Assistant Secretary shall consider the additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed project in relation to the amount of funds available for assistance pursuant to § 185.93 and the other applications for such assistance pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth a project of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this paragraph, the Assistant Secretary shall award funds to applicants (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section. No more than one award shall be made for any fiscal year to applicants proposing to carry out projects with respect to local educational agencies in any one State, unless the Assistant Secretary determines that several applications for such State are of exceptional merit or promise.

(20 U.S.C. 1601(b), 1607(a), 1609(c) (1), (2), (4), and (6))

#### § 185.93-4 Community involvement.

Applicants shall comply with the requirements for advisory committee participation set forth in § 185.65. Where the primary area to be served by the project is larger than that of one local educational agency, members of the advisory committees required by this section, and civic or community organizations designated to select such members, shall be selected to represent the larger area to be served.

(20 U.S.C. 1607(a))

#### OTHER SPECIAL PROJECTS

##### § 185.94 Eligibility for assistance.

(a) (1) The Assistant Secretary may assist, by grant or contract, any State or local educational agency or other public agency or organization (or a combination of such agencies and organizations), from funds reserved pursuant to § 185.95 (b) (1) for the purpose of conducting special programs or projects which the Assistant Secretary determines will make substantial progress toward achieving the purposes of the Act.

(2) No more than two and one-half percent of the funds appropriated under the Act for any fiscal year shall be awarded pursuant to this section for projects in Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1607(a))

(b) *Limitations on eligibility; non-public participation*. The limitations on eligibility set forth in § 185.43 shall apply to educational agencies applying for assistance under this section. The provisions of § 185.44 as to waiver of ineligibility shall apply to local educational agencies applying for assistance under

this section. The provisions of § 185.45 as to termination of assistance shall apply to all recipients of assistance under this section. The provisions of § 185.42 as to participation of children or staff enrolled in or employed by non-public schools shall apply to local educational agencies applying for assistance under this section.

(20 U.S.C. 1605(d), 1607(a), 1609(a), 1611(c))

##### § 185.94-1 Authorized activities.

(a) Assistance made available pursuant to § 185.94 shall be used for activities described in or authorized by §§ 185.12, 185.22, 185.32, 185.52, 185.62, and 185.72 which would not otherwise be funded and which are designed to carry out the purposes described in § 185.01.

(b) The provisions of § 185.12(b), (c), and (d) shall apply to assistance made available under § 185.94.

(20 U.S.C. 1607(a))

##### § 185.94-2 Applications.

Applications by local educational agencies for assistance under this subpart shall comply with the requirements of § 185.13(a) through (n). Applications by other public agencies or organizations shall be in such form, and contain such information and assurances, as may be required by the Assistant Secretary. All applications for assistance under this subpart, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary.

(20 U.S.C. 1607(a), 1609(a))

##### § 185.94-3 Criteria for assistance.

The merits of applications for assistance pursuant to § 185.94 shall be determined on the basis of the criteria set forth in § 185.14, to the extent that such criteria are applicable to the proposed program, project, or activity.

(20 U.S.C. 1607(a), 1609(c))

##### § 185.94-4 Community involvement.

Applicants for assistance pursuant to § 185.94 which are local educational agencies shall comply with the requirements of § 185.41, to the extent that such requirements are applicable to the proposed program, project, or activity. Other applicants for assistance pursuant to § 185.94 shall comply with the requirements for advisory committee participation set forth in § 185.65. Where the primary area to be served by the project is larger than that of one local educational agency, members of the advisory committees required by this section, and civic or community organizations designated to select such members, shall be selected to represent the larger area to be served.

(20 U.S.C. 1607(a), 1609(a)(2) and (3), 1609(b))

33. In § 185.95, paragraph (a) is deleted and (b) (1) and the authority to paragraph (b) are revised as follows:

§ 185.95 Reservations of funds.

(a) [Reserved]

(b) The Assistant Secretary hereby reserves:

(1) An amount no less than 4 percent nor more than 5 percent of the sums appropriated under the Act for any fiscal year for the purposes of special projects under subparts D and J of this part;

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(20 U.S.C. 1603(b), 1607(a) and (c), 1610, 1612; Public Law 93-380, section 642)

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