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PART II:

**DEPARTMENT OF
HEALTH,
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WELFARE**



OFFICE OF EDUCATION

**Libraries and Learning Resources:
Educational Innovation and Support**

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

LIBRARIES AND LEARNING RESOURCES: EDUCATION INNOVATION AND SUPPORT

Final Regulations

Notice of proposed rulemaking was published in the FEDERAL REGISTER on March 12, 1975 (40 FR 11686) which set forth regulations for Title IV of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 1801 et seq.), added by section 401 of Pub. L. 93-380. The notice of proposed rulemaking also proposed to revise § 100c.1 of 45 CFR.

Title IV of the Elementary and Secondary Education Act (hereinafter referred to as ESEA) provides for the consolidation of certain education programs into two parts, B and C. Part B consists of the programs authorized by Title II of the ESEA (school library resources, textbooks, and other instructional materials), so much of Title III of ESEA as relates to testing, counseling, and guidance, and Title III (except for section 305 thereof) of the National Defense Education Act of 1958 (financial assistance for strengthening instruction in academic subjects). Part C consists of Title III (except for programs of testing, counseling, and guidance) of ESEA (supplementary educational centers and services), Title V of ESEA (strengthening State and local educational agencies), section 807 of ESEA (dropout prevention), and section 808 of ESEA (demonstration projects to improve school nutrition and health services for children of low-income families). Under Title IV, State, educational agencies are required to submit an annual program plan under which subgrants are made by the State to local educational agencies. The statute provides for the participation of children from nonprofit private schools.

It should be noted that the District of Columbia and Puerto Rico are not presently eligible for Title IV grant funds. A technical amendment to the Education Amendments of 1974 has been proposed which would correct this situation if enacted by Congress. In anticipation of these amendments becoming law, the District of Columbia and Puerto Rico are included in the definition of State in the final regulations (see § 134.2). However, funds for these jurisdictions for Part B and Part C of the Act will not be allotted until action on the technical amendment is completed.

The notice of proposed rulemaking contained "comment" sections which explained many of the substantive sections of the proposed rules. These comment sections have been retained in the final regulations.

A. Summary of comments; changes in the regulations. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed rules. Numerous comments were submitted to the Office of Education in writing. A summary of the comments follows. After each comment,

a response is set forth stating changes which have been made in the regulations or the reason why no change is deemed necessary. General comments on the regulations are set forth first, followed by specific comments arranged in order of the sections of the final regulations to which they pertain. Where the section number in the final regulations differs from that in the proposed rule, the proposed section number is also identified.

1. General Comments. Five comments were received which questioned the statement in the preamble to the proposed regulations which stated, in part: "With respect to this material, comments should be directed to the need (or lack of a need) for regulations, rather than to its substance." The comments objected to the limitation on the extent of their comments.

Response. The sentence to which these comments objected was the second sentence in the paragraph. The first sentence reads: "Reviewers should also note that where statutory language has been repeated in these proposed rules, it is to be indicated by the use of quotation marks which will be deleted when the final regulations are published." If these two sentences are read together, it should be clear that the second sentence means that with respect to statutory language, comments should be directed to the need (or lack of a need) for regulations which will further explain the statutory language, rather than to the substance of the statutory language.

Comment. One comment noted that section 403(a) of the Act, which requires the annual program plan to contain information "in such detail as the Commissioner deems necessary" should not be misused to the extent of legislating by regulation. The comment stated that had the Congress desired extensive reporting requirements and paperwork, it would have authorized additional funds for these purposes instead of reducing funds for administration of the annual program plan.

Response. There is no intent to legislate by regulation. The regulations do not go beyond legislative authority. The "type of detail" required in the annual program plan is needed to administer the program. For example, § 134.13(b), in repeating the statutory requirement that any State unable to meet the requirements of section 406 of the Act must submit a certification to that effect, requires that the certification be from the State attorney general or other appropriate legal officer. It is reasonable to require that a certification relating to a State's legal authority be from such an official.

Comment. A commenter stated that sections 403(b)(1), (3), and (4) of the Act regarding approval of State plans, the annual public meeting of the State advisory council, and the authorization for the State advisory council should be reflected in the regulations.

Response. Since these requirements are stated in the statute, and the Office of Education does not intend at this time to supplement them with regula-

tions, it is not necessary to repeat the requirements in the regulations.

Comment. One comment suggested that the requirement in section 432 of the Act that persons broadly representative of the cultural and educational resources of the area to be served shall be involved in the planning and carrying out of all programs and projects funded under Part C (except those referred to in section 431(a)(3) of the Act) is not set forth in the regulations. The reviewer suggested that regulatory language incorporating this requirement should be included.

Response. A new § 134b.3 has been added relating to applications by local educational agencies which should satisfy the request of the comment.

Comment. One comment was received which suggested that the provisions of section 403(c) of the Act regarding the Commissioner's responsibility to approve State plans and modifications are not, but should be, set forth in the regulations.

Response. The language in section 403(c) imposes a requirement on the Commissioner. It is the general practice not to use the regulations to repeat statutory requirements which do not require action on the part of the recipient of Federal funds. Therefore, there is no change in the regulations.

Comment. A commenter suggested that a provision be added to the regulations allowing State educational agencies to reallocate funds allocated but not used by local educational agencies.

Response. The addition of a new section which would accomplish this purpose is being considered and if the suggestion is adopted, will be published as a proposed rule subject to public comment.

Comment. A comment stated that no additions should be made to the proposed regulations since they already exceed the intent and language of the statute. Two comments stated that the intent to consolidate programs, provide forward funding, and develop a single application was useful but the proposed regulations present administrative difficulties. Another reviewer commented that inviting comment on proposed rules that merely repeat the statute without interpretation is wasteful of the time of both the Office of Education and the public and delays promulgation of meaningful regulations. A comment suggested that guidelines for Title IV should be subjected to the same review process as regulations. One reviewer inquired about the opportunities, implications, and limitations in Title IV for a professor seeking funds to conduct research in teacher education. Three reviewers stated that the proposed regulations carry over the provisions of earlier statutory language of categorical programs, indicating continuance of categorical programs with no real intent to consolidate. Another reviewer said that the Office of Education has made no visible attempt to provide the administrative structure necessary for Title IV and has not informed State educational agencies which unit in the Office will approve annual program plans. Another

reviewer stated that by allowing annual program plans to flow through the various categorical program offices, the time constraints will be prohibitive. This reviewer said that the split consolidation-categorical program for fiscal year 1976 is wasteful of staff time and funds.

Response. The changes made in the revised regulations are intended to clarify the proposed rules and resolve some of the administrative difficulties referred to in the comments received by the Office of Education. It is the position of the Office of Education that it is always useful to obtain comments on proposed rules. Generally, since guidelines are limited to suggestions and recommendations and do not contain the rules for the operation of the program, proposed rulemaking procedures are not required by law. Whether public comments would be solicited would be a matter for consideration when a particular set of guidelines is developed. Title IV of the Act is intended to support elementary and secondary school programs rather than provide funds for research in teacher education. The regulations do incorporate some of the provisions of the categorical programs consolidated under Title IV. The authorities for incorporating these provisions are sections 421(b) and 431(b) of Title IV of the Act. The Office of Education has developed an appropriate structure for receiving, reviewing, and approving Title IV annual program plans. The memorandum from Thomas J. Burns and Dick W. Hays to the Chief State School Officers dated April 8, 1975, provided directions to State educational agencies for submitting annual program plans to the Office of Education. The split categorical-consolidated program which will be in effect for fiscal year 1976 is required by section 401(c) of the Act.

Comment. Two reviewers commented that the sequence of preparation and release of the Title IV regulations put States at an extreme disadvantage in commenting because of the fact that the regulations for section 434(b) of GEPA were published later. The commenter suggested that the Commissioner should accept the assurances in the general application until the State plan assurances are completed, precluding the loss or suspension of Federal funds for education at State and local levels and allowing State educational agencies sufficient lead time for development of the annual program plan.

Response. While it would undoubtedly have been more convenient to be able to review the regulations implementing the provisions of section 434(b) of the General Education Provisions Act (hereinafter referred to as GEPA) at the same time as the regulations governing Title IV of the Act, it was felt that the latter regulations were too important to delay their publication any longer than necessary. Regulations for section 434(b) of GEPA have since been published in proposed form (see 40 FR 19204, May 2, 1975). By statute, certain assurances and provisions are necessary for approval of

the Title IV annual program plan. A State is not permitted to obligate its Title IV funds until its annual program plan is received by the Office of Education in substantially approvable form. (See 45 CFR 100b.32.)

Comment. A reviewer suggested that the annual program plan format should have been given to the States in final form early enough to allow more than token participation of the Advisory Council in preparation of the plan. A reviewer commented that the proposed regulations appear to be in conflict with the concept of consolidation and the simplified administrative arrangement. Another reviewer stated that in view of the delay in publishing regulations, the time allowed for drafting an annual program plan and developing guidelines and application forms is insufficient. Another reviewer stated that an extension should have been made for the period allowed for public comment to allow all interested parties time to prepare an indepth analysis and react more intelligently.

Response. Since it was believed that the development of proposed regulations had a greater priority than the design of the format for the annual program plan, the format design was delayed somewhat; however, the annual program plan format has been developed and distributed. The proposed regulations are fully consistent with the provisions of the applicable statutes. Though it is recognized that the time for implementation of the Title IV program is short, the proposed regulations were published as soon as they were ready. Even though the time for formal comments was not as long as some reviewers would have wished, the time satisfies all rulemaking requirements. The administration of Title IV will continue to be scrutinized and amendments or additions to the regulations may be proposed at a future date.

Comment. Three comments on the Title IV regulations concerned section 437 of GEPA, added by section 512, Pub. L. 93-380 (Responsibility of States to furnish information). Two of the comments stated that States should have had available the regulations for this requirement when commenting on the proposed Title IV regulations, in order to provide for a coordinated approach to data collection. The second comment stated that the proposed Title IV regulations should reflect the requirements of Section 437 of GEPA, in order to facilitate early gathering and compilation of the required information by State and local educational agencies.

Response. At this time, it does not appear that any regulations will be necessary to implement the provisions of section 437 of the General Education Provisions Act. The statute is clear and probably can stand without implementing regulations.

2. § 134.2 *Definitions.* *Comment.* Three comments were received which suggested that the term "academic subjects" be defined in § 134.2 as including only those subjects which are included in the definition for the NDEA Title III program.

Response. A definition of the term "academic subjects" has been added to these regulations which includes, but is not limited to, the original twelve subjects. Given the broader purpose for which Part B funds can be spent under the consolidation, it is felt that a broader definition is both legally supportable and more appropriate from an administrative standpoint.

Comment. Two comments were received which questioned the use of the word "imperfect" in the definition of "children with specific learning disabilities," stating that perfection cannot be attained by any child.

Response. The definition of "children with specific learning disabilities" is the same as the definition in section 602(15) of the Education of the Handicapped Act (20 U.S.C. 1402(15)). That definition is being used to provide consistency in the administration of Federal programs. No change has been made in the definition.

Comment. There was a comment which suggested that the definition of the word "construction" included the erection of new structures. The reviewer went on to state that limited funds in the program prohibit the erection of new structures and the definition should be changed accordingly.

Response. It should be noted that construction is authorized only in section 431(a)(1) of Title IV of the Act. If in any State the level of funding effectively prevents the erection of new structures, then the definition should cause no problem. The definition has not been changed.

Comment. One comment suggested that there was no need to define "cultural and educational resources" since it was defined by a direct quotation from the Act.

Response. While there may be no need to quote a definition directly from the Act, it is included as a matter of convenience and completeness and to show that the term as used in the regulations has the same meaning as used in the statute.

Comment. Five commenters suggested that the definition for "handicapped children" should be the same as the definition in the regulations governing the Education of the Handicapped Act. Two commenters suggested that the definitions of "handicapped children" and "children with specific learning disabilities" be combined and one asked why the two definitions were separated.

Response. The definition of "handicapped children" has been reworded so that it is the same as the definition in 45 CFR Part 121 (the general regulations which govern the administration of the Education of the Handicapped Act (EHA)). There is a separate definition for "children with specific learning disabilities" because the two terms are used in section 403(a)(8)(B) of the Act.

Comment. Several reviewers were interested in the definition of "local educational agency" and the question of whether funds under Part B would be allocated to local school districts, to intermediate units, or to both. One reviewer

questioned whether the terms included non-public schools; another questioned whether it included teacher-training institutions.

Response. The definition of "local educational agency" includes local school districts and certain types of intermediate units. An intermediate unit is generally an administrative organization established to function between the State educational agency and local school districts serving both the State educational agency and local school districts, and usually serves two or more local school districts. It will be necessary for the State educational agency to designate the type of local educational agency that will be a recipient of funds under Part B. In some States, intermediate units that have been recipients of funds under other Federal programs have been chiefly concerned with the distribution of audiovisual materials and equipment. Selecting such agencies as recipients of funds under Part B might create a problem in relation to section 403(a)(5) of the Act which gives local educational agencies complete discretion in determining how the funds it receives under Part B will be spent among the three consolidated purposes: school library resources, textbooks, and other instructional materials; equipment and minor remodeling; and testing, counseling, and guidance. It would be difficult for an intermediate unit concerned only with the distribution of audiovisual materials and equipment, for example, to reflect accurately the full range of choices of local school districts and private school representatives. It is the interpretation of the Commissioner that a local educational agency that is the recipient of funds under Part B must have the authority to provide all materials, equipment, and services authorized under section 421(a) of the Act. (20 U.S.C. 1803(a)(5)). The term "local educational agency" does not include non-public schools. If "teacher-training institutions" means colleges and universities that train teachers, such institutions are not local educational agencies. However, a laboratory school of a public teacher-training institution could qualify as a local educational agency if, for example, it has administrative control or direction of a public elementary or secondary school.

Comment. One comment suggested that the regulations should define "school" to include only those schools that are recognized by the State educational agency to prevent the possibility of Federal funds being used by unapproved schools. A similar comment was made about private nonprofit schools. Another commenter said that the Office of Education should not define "school."

Response. Section 100.1 of the General Provisions Regulations (45 CFR 100.1) defines the terms "elementary school" and "secondary school" as day or residential schools which provide elementary or secondary school education as determined under State law. The term "private" and "nonprofit" are also defined

in § 100.1 of the General Provisions Regulations. Section 134.3 of the proposed regulations provides that assistance under Title IV of the Act is subject to the applicable provisions of the General Provisions Regulations.

Comment. Five comments were received on the definition of "school library resources." Two comments suggested that the omission of the words "processed and organized for use" weakened the definition and that the force of regulations was useful in having schools get library materials organized for ease of use. One reviewer suggested that the word "suitable" be omitted from the definition. Another reviewer suggested that the definition of the term should include non-reusable workbooks. The final comment concerned the interpretation that "school library resources" includes only those materials that are in existence at the time of acquisition and prohibits advance subscription even if actual delivery of materials is within the time period for liquidation of obligations.

Response. As the comment section following the proposed rule indicated, the definition of "school library resources" in the proposed rules was not intended to make any change in the types of library resources and instructional materials eligible under Title IV of the Act from those which were purchased under Title II of the Act. The definition of "school library resources" has been changed to conform to that used in the Title II regulations (45 CFR 117.1). Items consumable in use such as non-reusable workbooks are not eligible for acquisition under either Title II or Title IV of the Act. With respect to the last comment, the general concept that a fiscal year's allotment may be used only for a need for that fiscal year would not prohibit subscribing to a publication for a reasonable period of time, e.g., three years, if the rate is less under those circumstances. This could be treated as a current need whereas a long-term subscription, e.g., ten years, would not be so treated.

Comment. Three comments were received on the definition of "teacher." The first suggested that the definition of "teacher" should include school principals. The second suggested that the term "school library/media specialist" be substituted for "school librarian." The third inquired about the meaning of supervisory staff.

Response. The definition of "teacher" has been clarified by explicitly including any person who is engaged in carrying out the instructional program of an elementary or secondary school, including a principal, guidance counselor, school librarian/media specialist, or other member of the instructional or supervisory staff.

Comment. Four comments were received suggesting that the definition of "testing" should be expanded to include educational achievement. Two comments suggested that the definition be expanded to include interest tests or inventories; one of these comments also wished to include self-concept scales. Another comment suggested that the definition be

stricken from the regulations and left to the discretion of State educational agencies.

Response. The varied interpretations of the proposed definition indicate the need to revise the definition for testing. The definition proposed was not intended to exclude achievement testing interest inventories, or self-concept scales if they pertain to an individual's educational or career development. The definition has therefore been altered for clarification.

Comment. Two comments were received about the definition of "textbook." The first comment stated that the proposed definition allows schools to purchase a variety of materials as basic resources rather than as supplementary resources and that such a definition would not require the local educational agency to provide basic resources. The reviewer questioned whether the intent of the Act is to permit a school to put all its Part B funds into textbooks. The second reviewer suggested deleting the last part of the definition: "a copy of which is expected to be available for the individual use of each student in such class or group."

Response. Section 134.15, which sets forth statutory language, gives local educational agencies discretion in the division of funds among Part B purposes. Therefore, the statute permits local educational agencies to put all Part B funds into textbooks (taking into account the requirements of section 406 of the Act). The language in the definition quoted by the second reviewer which is identical with that used in the regulations applicable to Title II of the Act (45 CFR 117.1) is not intended to preclude the use of multiple textbooks, such as two or more books designed for different academic levels.

Comment. One comment suggested that all terms used in Title IV which have been defined in the General Provisions Regulations (Parts 100-100c) be repeated in § 134.2. Another comment suggested that the term "secondary" be defined.

Response. The purpose of the General Provisions Regulations in Parts 100, 100a, 100b, and 100c, is to collect in one place all of the regulations which are generally applicable to Office of Education programs so that they will not have to be set forth or repeated in the regulations for separate programs, which in the past had led to varied practice and interpretation. Therefore, it is not considered appropriate to repeat those definitions in this section. Since the term "secondary school" is defined in § 100.1 of the General Provisions Regulations, it is not repeated here.

Comment. A comment was received which requested that the word "equitable" and the term "severe educational disadvantage" be defined.

Response. To define any term is necessarily to limit it. It is felt that with respect to these terms, it is better to retain flexibility. No change has been made in the regulations.

3. § 134.10 *Submission.* **Comment.** Three comments were received relating

to the provisions in § 134.10 with respect to an annual program plan. One comment suggested that paragraph (a) be changed to require both a general application and an annual program plan. A second comment suggested that an annual program plan should be required only for the consolidated programs under Title IV and not for the separate categorical programs which are being consolidated under Title IV. The third suggested that the last ten lines of the comment printed with the proposed rules be deleted. A fourth comment suggested that only one annual program plan should be submitted which would cover all of the programs identified by a State educational agency in the general application. Three comments suggested that the annual program plan requirements in the regulations require an excessive amount of paperwork, would increase reporting requirements, necessitating employing additional State educational agency personnel, thus detracting from providing technical assistance to local educational agencies. A final comment suggested that the provisions of section 434(b) of GEPA do not apply to Hawaii, the District of Columbia, Puerto Rico, and the Outlying Areas (in that funds are not granted to local educational agencies through, or under the supervision of, the State educational agency, since these jurisdictions are legally both State and local educational agencies), and therefore, the sections of the regulations which refer to annual program plans should be declared not applicable to these jurisdictions. The comment suggested that either specific State plan requirements be declared applicable, or that the general application and annual program plan requirements be extended to these jurisdictions under the provisions of section 434(b) of the General Education Provisions Act.

Response. With respect to the first comment, the general application requirement will be subject to 45 CFR Part 100b, proposed rules for which have been published and appear on pages 19204-19207 of the FEDERAL REGISTER of May 2, 1975. The requirement for annual program plans for the categorical programs which are consolidated under Title IV for fiscal year 1976 is likewise included in 45 CFR 100b. That question should not be dealt with in these regulations which govern only Title IV of the Act. With respect to the third comment, the language in the printed comment on § 134.10 in the proposed rules was intended to be explanatory only and does not constitute a regulatory requirement in and of itself. The idea is to allow State educational agencies to submit annual program plans when they are ready in order to facilitate meeting the requirements for submission of these plans. The proposed amendments to Part 100b (referred to above) state that "where a particular State does not administer the funds provided under a particular program through its State educational agency, or does not make grants to local educational agencies with any of those funds, that State would not be required to submit an

annual program plan with respect to such program" (FEDERAL REGISTER, Vol. 40, No. 86, p. 19204 (May 2, 1975)). With respect to the District of Columbia, Puerto Rico, and Hawaii, it is the view of the Office of Education that section 434(b) of GEPA applies, since each has an agency which acts as both the State and the local educational agency. The same arrangement is being made with respect to the Outlying Areas. The authority of the Commissioner under the provisions of section 402 of the Act to allot funds to the Outlying Areas for the purpose of Title IV gives him authority to establish the requirements those jurisdictions must meet to obtain such funds. It is therefore under this authority that the Commissioner has established the requirements in Subpart D of Part 134 for annual program plans from the Outlying Areas.

4. § 134.11 *State educational agency.* *Comment.* A comment stated that if the State files a general application it should be evident that it is the "sole agency" and the requirement of § 134.11 that this detail be provided in the annual program plan is not necessary.

Response. The language used in § 134.11 is based on the statutory requirement of section 403(a)(1) of the Act. The requirements of section 434(b) of GEPA state that an annual program plan shall be submitted in lieu of a State plan and " * * * be prepared and administered in a manner consistent with specific State plan requirements of the appropriate applicable statutes affecting the program for which the annual program plan is applicable * * * ". It is therefore necessary that State educational agencies state that they are the sole agency in the annual program plan submitted under Title IV of the Act.

5. §§ 134.11-134.21 *Provisions to be included in annual program plan.* *Comment.* A commenter stated that the funds available for schools under Part B are so limited for fiscal year 1976 and that the possibilities for leadership on the part of the State educational agencies so hampered by the regulations of §§ 134.11-134.21, that the general impact upon the learning and teaching environment is questionable.

Response. The provisions to be included in the annual program plan as required in §§ 134.11, 134.12(a), 134.13, 134.14, 134.15, 134.16(a), 134.17, 134.18, 134.19, 134.20, and 134.21 are required by section 403(a) of the Act. It should be noted that § 134.12 (b) and (c) apply only to Part C, and not to Part B.

6. § 134.12 *Allowable expenditures.* *Comment.* Ten comments were received concerning the use of measurable objectives with concerns expressed regarding the mandating of a system of management by objectives. Another reviewer objected to the requirements of § 134.12(b) in relation to Part B of the Act because it would violate the requirements of section 403(a)(5) of the Act with respect to complete discretion of local educational agencies.

Response. The intent of this section is to provide a uniform method for writing

descriptions of the programs which will be carried out under funds authorized for Part C of Title IV. Receiving uniform information in this format will expedite the review process for the annual program plans in the Office of Education. There is no intent to prescribe a method, system, or style of administration or management and this requirement will not do so. Section 134.12 (b) and (c) have been changed to require specific objectives rather than measurable objectives and § 134.12 (b), (c), and (d) has been changed to require inclusion in the annual program plan of *estimated* amounts of funds to achieve objectives and to carry out activities. With respect to the last comment, sections 134.12 (b) and (c) refer only to activities related to Part C of Title IV of the Act. The local discretion required by section 403(a)(5) of the Act only applies to Part B.

7. § 134.12(d) *Allowable expenditures.* *Comment.* Eight comments were received concerning the use of the word "detailed" in relation to a description of the activities of the State advisory council and/or a listing of the funds which will be available to carry out those activities. A final comment stated that § 134.12(d) should be deleted as it lacked statutory authority and placed restrictions on the State educational agency which should be within the purview of the State advisory council.

Response. Section 403(b) mandates several important functions of the State advisory council, and authorizes each State advisory council to obtain the services of such professional, technical, and clerical personnel, and to contract for such other services as may be necessary to carry out their function. Further, the Commissioner is required to assure that funds sufficient for these purposes are made available to each council. In order for the Commissioner to assure that the funds are sufficient for the purposes, he must know (1) what activities have been planned and (2) the estimated amount of funds which will be provided for carrying out those activities. No change has been made in the regulations.

8. § 134.13 *Participation of children and teachers in private schools.* *Comment.* One comment suggested that if a State cannot meet the requirements of section 406 of the Act and of § 134.13 of the regulations regarding participation of private school children, it should so indicate in the general application. The comment observed that there is no provision in section 434(b) of GEPA to indicate such inability to serve.

Response. The requirements for the general application will be set forth in the regulations in part 100b, and are not set forth separately with the regulations for each program covered. If the State cannot meet the requirements of section 406 of the Act, section 403(a)(3) of the Act requires that that State so indicate in the annual program plan (see § 134.13 (b)). There is no need to change the wording of the regulation in this section.

9. § 134.14 *Distribution of funds to local educational agencies.* *Comment.* One comment was received which asked that a State be prohibited from imposing re-

quirements on Part C funds (e.g., requiring local contributions). Three comments on § 134.14 stated that under the previous categorical programs that are now consolidated under Title IV, some States funded projects among two or more local educational agencies when it was mutually beneficial and economically feasible to do so. The reviewers suggested that this same arrangement should be allowed under Title IV. One reviewer suggested that if such an arrangement is allowed, it should be completely voluntary on the part of the participating local educational agencies and should not constitute a violation of § 134.15. Another of the reviewers suggested that a project of this type should be under the supervision of the State educational agency.

Response. The statute provides that Part C funds are to be distributed on an "equitable basis recognizing the competitive nature of grant-making." The State must publish the criteria it has developed and will apply in distributing funds on this basis. Certain criteria might preclude the possibility of an equitable competition. It is possible that such a problem could occur if a State imposed matching requirements which only the wealthier local educational agencies could meet. The Office of Education will review these questions on a case-by-case basis in reviewing the annual program plans. The need for further regulations will be considered if problems develop. There is nothing in the regulations or the Act which would preclude local educational agencies from contracting with other local educational agencies for services or from jointly applying for funds with such agencies if this is believed to promote a better program. This would not violate the provisions of § 134.15. All local educational agency projects are under the supervision of the State educational agency.

10. § 134.14(a)(1) *Distribution of funds to local educational agencies. Comment.* A commenter stated that the distribution of funds as required in § 134.14(a)(1) in a State with large numbers of school districts would result in the allocation of insignificant amounts under Part B, especially in small districts. The reviewer stated that the regulations should limit an eligible local educational agency to one with a minimum of 10 pupils. This reviewer also stated that the regulations should permit an intermediate unit to serve groups of small schools in its area. A third reviewer stated that the term "substantial" should be defined in order to carry out the intent of Congress. A final comment stated that the regulations should clarify whether or not the requirements of § 134.14(b) violate the requirement concerning complete discretion (§ 134.15).

Response. Funds made available under Part B of Title IV of the Act are to be distributed on the basis of enrollment, relative tax effort, and numbers or percentages of children whose education imposes a higher than average cost. Eligible children in public and private nonprofit elementary and secondary schools must be permitted an opportunity to participate in the program, regardless of the

size of the school they attend. The definition of "local educational agency" includes operating school districts and certain intermediate units. The terms "substantial," "substantially greater," and "sparsely populated" have not been defined. National quantitative criteria or measures concerning relative amounts to be made available to local educational agencies based on differences in tax effort and numbers or percentages of children whose education imposes a higher than average cost have not been added to the regulations under an interpretation, based on a statement in the legislative history of Title IV (H.R. No. 93-805 (p. 28)), that each State should write its own formula. The requirements of § 134.14(a)(1) and (b) apply to the distribution of Part B funds and do not violate the intent of § 134.15 (which repeats statutory language in section 403(a)(5) of the Act). Once Part B funds are allocated to a local educational agency, that local educational agency has complete discretion over the division of funds among the Part B purposes, subject to the requirements of Section 406 of the Act.

11. § 134.14(a)(2) *Distribution of funds to local educational agencies. Comment.* One comment suggested that "equitable basis" as applied to Part C funds should not mean equal or proportional amounts but should mean an equal opportunity to compete. The commenter also suggested that each State educational agency should set forth criteria in its annual program plan which it will use in providing this equal opportunity to local educational agencies. Another reviewer noted that funds under Title II of the Act were allocated according to relative need and the reviewer felt that § 134.14(a)(2) ties it to competitive nature of the grantmaking. The reviewer felt that State educational agency resources could be put to better use than helping local educational agencies compete for funds they need.

Response. The first comment correctly states the proper meaning of § 134.14(a)(2). That is, the section provides for an equal opportunity to compete. Further, the language in § 134.14(b) calls for setting forth the criteria the State educational agency will apply in meeting the requirements of § 134.14(a)(2); thus, the State educational agency will include the criteria to be used in providing this equal opportunity within its annual program plan. Therefore, there is no need to change the language of this section. With respect to the last comment, § 134.14(a)(2) applies to Part C rather than Part B funds. The requirements for the distribution of Part B funds are set forth in section 403(a)(4)(A) of the Act and § 134.14(a)(1) and (b) of the regulations. The requirements which were objected to in the comment are mandated for Part C by Section 403(a)(4) of the Act.

12. § 134.15 Part B Funds: *Discretion of local educational agencies. Comment.* Seven comments were received concerning § 134.15 of the proposed regulations. One comment suggested that the section

should offer more specific guidance in giving local educational agencies complete discretion in the use of Part B funds. Two comments suggested changing the wording of the proposed rule to: "The annual program plan shall provide an assurance that each * * *" A final group of comments stated that § 134.15 was explicit in giving local educational agencies complete discretion in the division of Part B funds among the three purposes set forth in section 421(a) of the Act. These comments questioned the relationship of this requirement to section 434(b) of GEPA which requires State educational agencies to provide assurances that Federal funds will not supplant State and local funds.

Response. This section repeats the statutory requirement in Section 403(a)(5) of the Act. The statute is clear that discretion over the division of funds among the program purposes of Part B is given to local educational agencies and not to the State. Further, the statute does not use the term "assurance" in relation to this requirement. In response to the final group of comments, local educational agencies are given complete discretion in the distribution of Part B funds among the three purposes in section 403(a)(5) of the Act. They are, however, still precluded from supplanting non-Federal funds by section 434(b)(1)(A)(IV) of the General Education Provisions Act, as amended.

13. § 134.16 *Evaluation, dissemination, and adoption of promising practices. Comment.* Two comments suggested that an assurance concerning effective procedures would be sufficient. Nine comments were concerned primarily with the requirement for a calendar of activities because too much specificity would be required. Two reviewers commented on the requirement of § 134.16 that the State advisory council evaluate " * * * programs and projects assisted under the annual program plan." These comments suggested that the regulations should allow a State educational agency to develop an application form requiring sufficient information relative to evaluation criteria and data related to local expenditures in the programs included under Part B. These reviewers also suggested that the regulations should allow the State educational agency to collect and report evaluative data deemed necessary to fulfill the State advisory council evaluation requirements.

Response. Section 403(a)(6) of the Act requires that the State plan provide for the adoption of effective procedures for evaluation, dissemination, and adoption. This requirement is not in the form of an assurance. The three major activities referred to in § 403(a)(6) of the Act involving both the State advisory council and State educational agency staff indicate a need for planning and coordinating these activities. The description and calendar required by § 134.16(b) are the type of detail which the Commissioner deems necessary to carry out his responsibilities. The Commissioner needs a calendar in order to be informed about the schedule of activ-

ities. The calendar would, of course, be a projected schedule. For example, it could be a projection of activities on the basis of quarters of the fiscal year. In response to the last group of comments, the regulations do not prohibit the State educational agency from requiring that local educational agencies submit whatever information is necessary for an adequate evaluation of Title IV programs. (See § 134.37(a).)

14. § 134.17 *Single application. Comment.* Eleven reviewers commented on § 134.17 of the proposed regulations. Six comments suggested that § 134.17 should allow State educational agencies to develop a single application with separate sections for Parts B and C. Two comments suggested that Parts B and C are separate programs with separate authorizations and should have separate applications from local educational agencies for the two parts. Three comments suggested separate due dates for application. Two comments suggested that the requirement of § 134.17 be treated as an assurance in the annual program plan.

Response. The proposed regulation repeated the statutory language. Section 134.17(a) permits State educational agencies to develop a single application with separate sections for Parts B and C. The submission date for the application can be established to accommodate the longer preparation time needed for a competitive proposal under Part C. A local educational agency may, but cannot be required to, submit more than one application or submit separately the separate sections for Parts B and C. The section therefore remains as written.

15. § 134.18 *Use of funds. Comment.* A reviewer stated that the comment following § 134.18 implied that administration funds could be weighted heavily toward Part B. The reviewer suggested that such a determination should be made by State educational agencies without specific direction in Federal regulations.

Response. The material which follows § 134.18 is merely intended as an example of the mathematical calculations which must be made to determine the various set-asides. Parts B and C may be administered separately or together at the State's discretion; but in either case the expenditure for such administration must be attributable to the respective Part B or C allotment.

16. § 134.18(b) *Use of funds. Comment.* A reviewer stated that the proposed regulations for Title IV do not recognize the requirement of section 613 of the Education of the Handicapped Act (EHA) which requires State educational agencies to develop plans for extending education to all handicapped children. The reviewer stated that there is further elaboration of this requirement in H.R. 93-805, p. 64-65 which stated that it was the committee's intention that this plan include " * * * a resource allocation plan that details how the State intends to finance the implementation of the plan. It is also the Committee's intent that all Federal funds for the education of the

handicapped under the various Federal acts which go directly to the States or which require State approval, should be included in the resource allocation plan * * * " A second comment stated that State educational agencies should require that appropriate State personnel responsible for the education of handicapped children and children with specific learning disabilities should review recommendations on all aspects of the annual program plan and all projects pertaining to the set-aside for such children under Title IV. The commenter also recommended that the innovative and exemplary concept pertaining to the set-aside for special education which prevailed under ESEA Title III should be continued under Title IV.

Response. The requirements of section 613 of EHA with respect to plans for education for all handicapped children relate only to the content of the annual program plan under that program (EHA Part B). Therefore, no specific reference in the Title IV regulations is necessary. There is nothing in these regulations which would preclude a review within the State educational agency of plans for programs for handicapped children by any official which the chief State school officer wishes. Nor is there anything in the regulations which could prevent the inclusion of the plan for the use of Title IV funds for handicapped children from being included within the annual program plan for EHA. With respect to the final comment, the Act does not require that all projects funded under section 431(a)(1), (2), and (3) of the Act, including projects for handicapped children and children with learning disabilities, be innovative and exemplary.

17. § 134.19 *Use and access by handicapped persons. Comment.* Two comments were received suggesting that "accessible to" and "usable by" refers only to the portions of the facilities which are repaired or remodeled.

Response. It is the view of the Office of Education that the statute means that only those portions of the facilities which are repaired, remodeled, or constructed under a Title IV project are required to be accessible to and usable by handicapped persons.

18. § 134.20 *Commingleing of funds. Comment.* A comment was received which suggested that provision should be made to authorized investment of advanced funds together with "other monies" to ensure a greater return as long as there is an assurance that the Federal funds will be returned in the original amount.

Response. The obligation of Federal funds by the Office of Education at the beginning of the fiscal year does not mean that funds are available to States in advance of need. The transfer of Federal funds to a State by means of a letter of credit is intended to make funds available at the time the funds are needed. Thus, there is no occasion for a State to invest Federal funds. There is no need to change the language of this section.

19. § 134.21 *Maintenance of expenditures from non-Federal sources. Com-*

ment. The numerous comments on § 134.21 fit into seven general areas. The first group of comments suggested that the statutory requirements be interpreted to mean that the "aggregate amount" refers to the separate totals of State and local expenditures for each of the three Part B program purposes. A second group of comments requested that maintenance of per pupil expenditures be required rather than aggregate expenditures. The third set of comments requested that exceptions be granted to the requirement of section 403(a)(11) of the Act when unusual circumstances occur in a State or local educational agency (such as where there was a very large outlay in one year for non-recurring expenditures or because of economic conditions). The fourth group of commenters felt that since maintenance of expenditures by a State and its local educational agencies is required, an entire State might be out of compliance with this requirement because of large reductions in expenditures in one or more local educational agencies. Several of these commenters suggested that the State educational agency should be able to require that each local educational agency maintain expenditures from State and local sources for programs described in section 421(a) of the Act. These commenters felt that unless the State educational agency can make this requirement, it will be difficult for the State to comply with the assurance. The fifth group of comments requested whether nonpublic schools are included in this requirement. The sixth group of comments suggested that because of a lag in collecting expenditure date for "the preceding fiscal year," the second preceding fiscal year should be used. A final group of comments questioned the relationship of the provision of section 403(a)(11) of the Act and section 434(b)(1)(A)(IV) of GEPA. One commenter questioned whether section 434(b)(1)(A)(IV) of the General Education Provisions Act applied to nonpublic schools. A final comment suggested either omitting or clarifying the term "satisfactory."

Response. It is the interpretation of the Office of Education that the term "aggregate amount" refers to the total amount expended for all of the three Part B program purposes combined. State and local school administrators are free to budget and expend funds from State and local sources among any one or more of the purposes so long as the total support is not less than the amount expended in the preceding year. In response to the second group of comments, the statute refers to the aggregate amount of expenditures rather than per pupil expenditures. Although local and State effort may be maintained on the basis of per pupil expenditures, State and local educational agencies are required to report only the total amount of funds derived from non-Federal sources to assure compliance with this provision. If a State cannot comply with the section 403(a)(11) assurance, the Office of Education will review the problems of State and local educational agencies (e.g., unusual circumstances) on a case-by-case

basis. With respect to the fourth group of comments, State educational agencies may require that each local educational agency maintain its local expenditure from State and local sources for the Part B program purposes. In response to the fifth group of comments, the expenditures of non-public schools enrolling children who benefit under Part B of Title IV of the Act are not included in the requirement of section 403(a)(11) of the Act because such expenditures are not made by "the State and its local educational agencies." In response to the sixth group of comments, regulations cannot alter the statutory requirement that the "preceding fiscal year" be used in determining compliance with the requirement. In response to the final group of comments, Section 434(b)(1)(A)(IV) of GEPA requires that the State assure in its general application that it will implement policies to prevent non-Federal funds from being supplanted by Federal funds. No supplant restrictions such as this provision prohibit State and local educational agencies from using Federal funds to replace specific expenditures that were previously paid from non-Federal sources. Section 403(a)(11) of ESEA, on the other hand, requires that the State assure that the aggregate amount of non-Federal expenditures by State and local educational agencies for Part B purposes be maintained. As stated, these two assurances are separate requirements and must be complied with separately. Finally, the term "satisfactory assurance" is statutory in origin. The Office of Education will determine on a case-by-case basis what constitutes "satisfactory assurance" that the requirements of section 403(a)(11) of the Act will be met. Usually, an assurance which repeats the statutory language would be sufficient. No change has been made in the regulations.

20. § 134.37 *Application by a local educational agency. Comment.* One comment suggested the insertion of the words "receiving applications and" immediately following the word "from."

Response. The purpose of such a change would be to establish two separate applications—for Part B and Part C—with the attendant opportunity to establish two separate due dates for the receipt of the two applications. This matter is addressed in the response under § 134.17 above, and for the reasons set forth in that response there is no change in the language of this section.

21. Subpart C—*State Advisory Council. Comment.* Several comments suggested that provision be made for the funding of the costs of the State Advisory Council from April through June 1975.

Response. A technical amendment concerning financial support to the State Advisory Councils during fiscal year 1975 has been introduced as H.R. 3801. Also, funds available to the State educational agency under Section 503 of Title V of the Act may be used to pay the costs of the State advisory council before July 1, 1975, if the Title V application was appropriately amended. Furthermore, Title

IV funds may be used to pay for the activities of State Advisory councils occurring before July 1, 1975, through a reimbursement process. This conclusion is based on two provisions of the General Provisions Regulations (45 CFR 100b), which set forth the rules for determining allowable costs and the effective dates of State plans and amendments. These regulations will be applicable to Title IV (See § 134.3 of these regulations and section 100b.10(d) of the General Provisions Regulations as well as a proposed updating of the list of programs to which Part 100b applies (40 FR 19205)) (1) Subpart (c)(6) of Part II of Appendix B—Cost Principles for State and local governments—which is incorporated into the General Provisions Regulations by § 100b.81 (45 CFR 100b.-81) provides for preagreement costs, which are only allowable with the approval of the grantor agency when specifically provided for in the annual program plan. (2) Section 100b.32, which sets forth the basic rule for determining the effective dates of State plans and amendments, places a limit on preagreement costs allowable in a State administered program. It states that: "Federal funds, except funds made available expressly for the development of State plans, shall not be available for obligation with respect to binding comments * * * prior to the effective date of the State plan (or State application as the case may be)." (Emphasis added.) The activities of a State advisory council mandated by Title IV and occurring in fiscal year 1975 would be primarily, if not wholly, for the development of State plans to be submitted for fiscal year 1976 funding. Therefore, if specifically set forth in the annual program plan and approved by the Commissioner, these costs could be paid for out of Title IV funds.

22. § 134.51 *Membership. Comment.* There were 47 comments on § 134.51 of the proposed regulations pertaining to the membership of the State Advisory Council. Twenty-seven of these comments stated that the regulations should require specific representation on the State Advisory Council of the school library/media field or libraries and learning resources. Three comments stated that the membership of the State Advisory Council should be representative of the various educational disciplines, two of these emphasizing representation of the programs consolidated under Title IV of the Act. One reviewer asked for specific regulatory authority to permit State educational agency personnel to serve on the council. Another reviewer stated that one individual should be allowed to represent more than one particular area on the council so long as the council is broadly representative of the cultural and educational resources of the State. Two comments stated that the proposed regulations could possibly result in a large and unwieldy council. Thirteen comments were directed to the interpretation of section 403(b)(1)(A)(iii) of the Act by § 134.51(a)(5), (6), (7), (8),

and (9) of the regulations. Two of these comments stated that one person to represent each of the five fields of professional competence in dealing with children needing special education for various reasons (section 403(b)(1)(A)(iii) of the Act) was not the intent of the legislation. Another comment stated that the State Advisory Council as proposed would be made up of a disproportionately large number of people with interests in special education. Another comment made a similar statement and noted that the representatives of special interests far outweigh the one representative of public elementary and secondary schools whose constituents make up 85 percent of the recipients of benefits under Title IV of the Act. One of the comments further suggested that the use of the word "or" between "limited English-speaking ability" and "gifted and talented" in section 403(b)(1)(A)(iii) of the Act meant that either of these two representatives is required but not both. This reviewer also noted that it was not useful to have a representative for children needing special education because of limited English-speaking ability when there are no bilingual programs or problems in a State. One reviewer stated that in § 134.51(a), the repetition of the category of professional educators tended to diminish lay participation on the council and commented on the values of non-professional representation. A final comment stated that the proposed rules inverted the order and emphasis of section 403(b)(1)(A) of the Act, noting that the proposed rules skip over the first part of that section and go first to section 403(b)(1)(A)(i) of the Act.

Response. There is no basis in the statute for a regulation requiring specific representation on the State Advisory Council of the school library/media field or libraries and learning resources. However, these and other groups including the public must be represented on the council if necessary to make it broadly representative of the cultural and educational resources of the State and of the public. "State educational agencies" are included in the definition of "cultural and educational resources." State educational agency personnel may therefore serve on the State Advisory Council. The interpretation in § 134.51(a) that the membership of the State Advisory Council must include at least one person representative of each of the areas cited in § 134.51(a)(1)-(9) is based on the following legislative history in H.R. No. 93-805, p. 28: "The Committee intends that the interests which are listed as those having to be represented on the State Advisory Council are each meant to represent a different person. For instance, there must be a person representing public schools and a different person representing private schools" (Emphasis added). This legislative history is reflected in the citation of legal authority following § 134.51. With respect to representatives of fields of professional competence in dealing with children needing special education because of "limited English-speaking ability or be-

cause they are gifted or talented," the legislative history cited above suggests that these two interests are both to be represented on the council. It is the interpretation of the Office of Education that both should be represented on the council because all States have gifted and talented children who should be represented and all or nearly all States have children of limited English-speaking ability who also should be represented. In changing the order, there was no intent to shift the emphasis from that provided in section 403(b)(1)(A) of the Act. The suggestion in the comment is accepted and the regulation has been changed.

23. § 134.52. *Certification and qualification of members*; § 134.54. *Notification of acceptance of certification*. *Comment*. There were nine comments on §§ 134.52 and 134.54 of the proposed rules. Two comments on § 134.52 suggested that the State educational agency should designate the chairman of the State Advisory Council. The remaining comments stated that the requirement in § 134.52 that the address of the chairman be furnished to the Commissioner and the requirement in § 134.54 that the Commissioner notify the chairman of acceptance of the certification of the State Advisory Council should be deleted. The Commissioner should not by-pass the State educational agency in any contact with the chairman of the State Advisory Council.

Response. Section 403(b)(1) of the Act states: "The State Advisory Council, established pursuant to subsection (a) shall (A) be appointed by the State educational agency or as otherwise provided by State law." Section 403(b)(2) of the Act states: "Not less than ninety days prior to the beginning of any fiscal year for which funds will be available for carrying out this title, each State shall certify the establishment of, and membership of (including the name of the person designated as chairman), its State advisory council to the Commissioner." If there is a State law that governs the establishment of advisory councils and the selection of a chairman, then that State law should be followed. If there is no such State law governing advisory councils, then the statute provides for the State educational agency to appoint the State Advisory Council and the Chairman. The regulations have been modified by deleting the requirement for furnishing the address of the Chairman of the State Advisory Council to the Commissioner. The Chairman of the Council will be notified of acceptance of certification of the Council through the State educational agency.

24. § 134.53. *Advisory functions*. *Comment*. Six comments objected to the comment section following § 134.53 from which they inferred that the Advisory Council should review each local educational agency application. One comment suggested that no language from the printed comment section should appear in the final regulations. One comment suggested that the words "including the development of criteria for the distribution of funds and the approval of appli-

cations for assistance under Title IV of the Act" should be deleted as repetitious. Several comments were received which suggested that the State Advisory Councils should not review activities under section 431(a)(3) of the Act.

Response. There was no intent to require the Advisory Council to review each local educational agency application. The State educational agency at its discretion may request the State advisory council to perform this function. The written comment section was intended to make that clear. With respect to the next comment, the language of the comment sections is being printed with the revised regulations for clarification. As for the last comment, the language proposed for deletion is statutory. Therefore, there is no need to make any changes in the language of this section. Section 403(b)(1)(B) of the Act requires that the State advisory council "advise the State educational agency in the preparation of, and policy matters arising in the administration of, the State plan * * * Activities under section 431(a)(3) are described in the annual program plan (which is submitted in lieu of the State plan under section 434(b) of GEPA) and therefore are subject to review by the State advisory council.

25. § 134.55. *Evaluation of programs and projects*. *Comment*. Two comments objected to the terms "scope and quality." Three comments stated that the evaluation design should be determined by the State Advisory Council and the State educational agency. One comment stated that the evaluation should relate in a comprehensive way to § 134.12(b). One comment suggested that Part C project budgets designate up to 5 percent for evaluation.

Response. Section 403(b)(1)(C) of the Act requires the State Advisory Council to evaluate all programs and projects assisted under Title IV of the Act. In addition, the State educational agency has the responsibility of evaluating the operation of programs to meet the requirements of the performance reports under § 100b.432 of the General Provisions Regulations (45 CFR 100b.432). In view of the work load and the amount of administrative funds available, it is assumed that there will be careful cooperative planning by the State Advisory Council and the State educational agency in the area of designing and carrying out the evaluation of programs and projects. Certainly the scope (the range of the project) and the quality (the essential character) of the activities would be included in the evaluation of a project. The evaluation may also include the extent to which project objectives were met. States have the authority to permit local educational agencies to spend a portion of individual project funds for evaluating Part C project activities. A phrase has been deleted from § 134.55(b) because it referred to § 134.12(b) which applies only to sections 431(a)(1), (2), and (4) of the Act. Since § 134.55 applies to both Parts B and C of the Title IV of the Act, it appeared appropriate to delete the ref-

erence to § 134.12(b). There is no statutory authority for requiring that a specified portion of funds be set aside for evaluation.

26. § 134.56. *Report to the Commissioner*. *Comment*. A reviewer suggested that §§ 134.55 and 134.56 be combined under § 134.53, and that the objectives indicated in § 134.55 should be deleted. The reviewer also felt that Part B evaluation will be very different from Part C and suggested the difficulty of evaluating all Part B projects annually. The reviewer also recommended that the reports of State advisory councils be carefully reviewed and responded to. The reviewer stated that it would be helpful to have this requirement included in the revised regulations.

Response. Sections 134.53, 134.55, and 134.56 each relate to a different function of the State advisory council, and therefore, it was thought appropriate to use separate sections. The reference to objectives as set forth pursuant to § 134.12(b) has been deleted, with the intent that this aspect of evaluation be made permissive under the regulations rather than mandatory. A State advisory council is required under § 134.16(a)(1) to evaluate Part B and C programs and projects annually on a Statewide basis. However, it need not evaluate every local educational agency project annually; the requirements of § 134.55(a) are satisfied if the State advisory council evaluates each local educational agency project at reasonable intervals. The Office of Education will review the State advisory council reports.

27. § 134.72. *Single application*. *Comment*. One comment suggested that, if an outlying area chose to designate administrative units as applicants for Title IV funds under § 134.70, it should be free to accept applications for one Part and still make all the allocations for the other Part without the need for a single application for Parts B and C together.

Response. Since local educational agencies can be required to submit only one application for funds under Title IV of the Act, the same requirement is made as a matter of policy for the Outlying Areas and the Departments of Defense and Interior if they designate administrative units as recipients of funds.

28. § 134.81. *Standards for selection of personal property*. *Comment*. There were five comments on § 134.81. Three reviewers questioned the statutory authority for this provision. One comment asked whether the standards for selection of personal property applied to Part C as well as Part B, and suggested a change in language for clarification. Two reviewers questioned the use of the language: "The State educational agency shall develop standards which may be used * * *" (Emphasis added.) One reviewer stated that § 134.81 was confusing and should be rewritten to make it clear that the subject is education standards.

Response. Section 203(a)(2) of Title II of the Act provided for the development and revision of standards for school library resources, textbooks, and other

instructional materials acquired under ESEA Title II, and Section 303(a)(4) of the National Defense Education Act of 1958 provided for the establishment of standards on a State level for laboratory and other special equipment acquired with assistance furnished under that title. These purposes are incorporated in Title IV regulations under the authority of Section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modification imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part *must be used only for the same purposes* and for the same types of programs authorized under this provision." (Emphasis added.) The use of the language, "The State educational agency *shall* develop standards which *may* be used * * *" is intentional (Emphasis added.) The State educational agency must develop standards for selection of personal property; however, local educational agencies may, but are not required to, use them in assessing needs under Part B and making divisions with respect to the division of funds among the Part B purposes and selection of the personal property to be acquired because of requirement in § 134.15. Section 134.81 applies only to Section 421(a) (1) and (2) of Part B of the Act and the language of the regulation has been changed to make this clear.

29. § 134.89 Scope of subpart. *Comment.* One reviewer asked that this section be clarified to indicate whether or not private school children could be served if the local educational agency in which eligible private school children attended school is not a recipient of funds. A second reviewer suggested that a second local educational agency could agree to serve private school children if the local educational agency in which the private school children attended school did not apply. A third reviewer commented that confusion would be created because under Title IV, private school participation is limited to children in both profit and nonprofit children in both profit and nonprofit schools can participate in Title I programs.

Response. Title IV of the Act does not provide for the participation of private school children who are in the area served by a local educational agency which is not an applicant and recipient of funds under the program. In response to the third comment, private nonprofit schools in Title IV is limited to children in private nonprofit schools because of the requirements of section 406(a) of the Act.

30. § 134.90 Consultation with private school officials, (proposed § 134.95). *Comment.* Two comments asked that § 134.95 be renumbered and placed in the regulations immediately following § 134.-

89 on the grounds that this was more orderly and more indicative of the chronological order of the local educational agency's responsibilities. Two comments suggested that consultation with private school officials on "all" matters before making "any" decisions in a requirement which exceeds the statutory authority. One comment suggested, on the other hand, that the word "all" be inserted before the word "requirements." Another comment suggested that the regulation exceeds the requirement of the statute and should be modified or deleted. A final comment stated that the term "consult" as used in this section should be defined in § 134.2.

Response. The suggestion to renumber § 134.90 as § 134.95 has been adopted, and the change has been made. The use of the words "all" and "any" in the proposed rule refers only to the requirements of Subpart F of Part 134 and is not excessive in that context. With these two words left in, it should not be necessary to add another word "all" before the word "requirements." Therefore, except for the numbering change, no changes are made in this section. The statutory authority for the regulation is section 406(a) of the Act. "Consult" is not defined in the regulations. This permits the term to be applied to the varied types of contacts to which the consultation requirement refers.

31. § 134.91 Benefits, (proposed § 134.-90). *Comment.* There were two comments which indicated that the services, materials, and equipment referred to in § 134.91 (proposed § 134.90) which are made available to nonpublic school children do not have to be the same as those made available to public school children, only equitable. One comment asked for language which would state that services, materials, and equipment for nonpublic school children be located in the nonpublic schools and that, only if such an arrangement is not feasible, should they be located elsewhere, and only then if the local educational agency would provide for equitable participation of nonpublic school children in the purposes and benefits of Title IV. One comment asked that specific reference be made to auxiliary services, including the services of speech therapists, psychological services, social services, and speech and hearing services as appropriate. The comment also asked that § 134.91(b) (proposed § 134.-90(b)) include the words "after consultation with the appropriate private school officials." One commenter suggested that § 134.97 should require that the State's annual program plan specify the criteria to be used which would provide for equitable participation of private school children and the criteria by which a method for providing services and benefits to private school children is selected. Another reviewer suggested that State planning for private school children is preferable to local educational agency planning. Another commenter stated that the requirements of § 134.97 presented problems in towns where the only public school is elementary and private

school is secondary with different needs and facilities.

Response. § 134.91 (proposed § 134.90) does not preclude the provision of different services, materials, and equipment for nonpublic school children from those provided to public school children to meet the needs of such private school children. It is anticipated that the consultation with appropriate private school officials by local educational agency officials can result in satisfactory arrangements over the location of the provision of such services, materials, and equipment, consistent with law. Section 406(a) of the Act provides that it is the responsibility of the local educational agency to provide for equitable participation of private school children in Title IV projects. In response to the last comment, a local educational agency under § 134.94 (proposed § 134.93) must adjust the average per pupil expenditure levels according to the needs of the private school children and the cost per child of meeting these needs.

32. § 134.92 Number of private school children to be served, (proposed § 134.-92). *Comment.* Two comments suggested that private school children should be counted on the basis of residence.

Response. Section 406 of the Act provides that local educational agencies are required to provide benefits under Title IV of the Act to private school children "in the school district" of the local educational agency. The statutory language may be interpreted as referring to private school children attending private schools in the school district. There was a general consensus among the several hundred persons representing State and local educational agencies and private schools who participated with Department of Health, Education, and Welfare employees in the developmental phase of the regulations that it would not be feasible to have several local educational agencies attempting to provide services, materials, and equipment to children enrolled in a single private school. For the purpose of establishing feasible and desirable administrative procedures the determination was made that such services, materials, and equipment should be provided by the local educational agency in which the private school is located. In order to receive sufficient funds from the State for such purposes, that local educational agency will need to report to the State all of the private school children who are enrolled in the private school regardless of the place of residence.

33. § 134.93 Expenditures, (proposed § 134.92). *Comment.* One comment was received which stated that the word "equal" was quoted out of context and that the rest of the appropriate statutory language should also be cited to preserve the context. Another comment asked whether private school children could receive greater than equal funding per child.

Response. The added language of the statute which is the context in which the word "equal" is used is: "Expenditures for programs (for private school children) shall be equal (consistent with the

number of children to be served) to expenditures for (public school children), taking into account the needs of the individual children and other factors (pursuant to criteria supplied by the Commissioner) which relate to such expenditures . . ." It is the intent of § 134.94 (proposed § 134.93) to draw attention to the fact that the needs of individual children are to be considered and to set forth the criteria which the Commissioner is supplying. This is the purpose of the opening clause of § 134.93 (proposed § 134.92), which reads: "subject to § 134.94 (proposed § 134.93), * * *" It is the purpose of § 134.94 (proposed § 134.93) to cover a situation where the needs of private school children differ from the needs of public school children. In such a situation, there may be different per pupil funding.

34. § 134.94 *Criteria for adjustment of expenditure*, (proposed § 134.93). *Comment.* Several comments were received concerning the criteria for adjustment of expenditures. One comment suggested that the procedure of requiring equal average expenditures per child subject to adjustments pursuant to § 134.94 (proposed § 134.93) would cause difficult problems in practice. Two comments suggested a change which would require that any adjustments pursuant to § 134.94(a) (proposed § 134.93(a)) not affect assistance to public school children. One of these comments argued that Congress intended expenditures on individual private school children to be adjusted but did not intend any adjustment to affect the average expenditure on private school children. A fourth comment suggested that the State educational agency rather than the local educational agency is in a better position to make determinations of expenditures on private school children. A fifth comment asked what agency is responsible for the needs assessment referred to in this section.

Response. Sections 134.93 and 134.94 (proposed §§ 134.92 and 134.93) of the regulations are based on section 406(b), of the Act. The statute envisions a division of services between public school children and private school children. The above cited sections of the regulation establish the factors to be considered in establishing expenditure levels for such services. The statute prescribes more differentiation in this division than a simple equal average per pupil breakdown. Thus, depending on the needs of private school children and the cost of meeting these needs, the average per pupil expenditure on public school children in any local educational agency could be greater or less than the average per pupil expenditure on private school children. Section 134.94 (b) (proposed § 134.93(b)) provides that any variation from equal average per pupil expenditure shall be designed to assure equitable participation of public and private school children. In response to the fourth comment, the statute imposes upon the local educational agency, after consultation with appropriate private school officials, the responsibility of providing services to

private school children. This obligation includes the determination of expenditure levels. In response to the fifth comment, the assessment of needs to determine expenditure levels is also the responsibility of the individual local educational agency.

35. § 134.94 *Criteria for adjustment of expenditures*, (proposed § 134.93); § 134.95 *Concentration of programs or projects* (proposed § 134.94). *Comment.* A reviewer asked if the requirements of § 134.94 (a) and (b) (proposed § 134.93 (a) and (b)) mean that after the State establishes its Part B formula and makes a district entitlement, a local educational agency can "adjust" or set its own formula as far as private school children are concerned.

Response. Section 406(b) of the Act requires the local educational agency to take into account the needs of the individual children and other factors (pursuant to criteria supplied by the Commissioner) in determining expenditures for private school children. Section 134.94 is intended to supply the criteria to be used by local educational agencies in making this determination.

35. § 134.95 *Concentration of programs or projects*, (proposed § 134.94). *Comment.* A comment suggested that this section could lead to problems in terms of equity and perhaps be used to exclude private school children.

Response. Sections 134.92, 134.93, 134.94, and 134.95 (proposed §§ 134.91, 134.92, 134.93, and 134.94) need to be considered as a whole, i.e., the number of private school children to be served; equal expenditures, adjustments of expenditures to assure equitable participation; and equitable participation in cases of concentration of programs or projects. In all instances there must be equitable participation of private school children in compliance with section 406 of the Act. It should be noted that this section repeats statutory language from section 406(b) of the Act. Changes in the section would therefore not be appropriate.

37. § 134.97 *Information in the project application*. *Comment.* Several reviewers objected to the requirements of § 134.97, stating that it exceeded statutory authority. One commenter suggested that States should be free to develop the content of the project application. Two reviewers felt that if the information was otherwise available, it should not be required in the application. Two comments stated that the application should indicate whether or not services, materials, and equipment for the use of private school children were to be provided in one or more private schools, and if not, the reasons why it was necessary to provide the "other arrangements" referred to in § 134.90 (b).

Response. Section 134.97 is intended to provide the State educational agency with sufficient information to determine if private school children are being provided "equitable participation" under Title IV of the Act. Even though some information required by § 134.97, e.g., enrollment data, may be available else-

where in the State educational agency, it is necessary to provide the information on the application so that reviewers will have all the information needed for the review. Most of the information required by this section to be in the local educational agency's application relates to the proposed provision of services to private school children and therefore would not be available to the State educational agency unless provided in the application. It is assumed that the State and local educational agencies will cooperate in compiling the necessary information.

38. § 134.99 *Limitations on personnel providing services*. *Comment.* One comment was received which asked if the term "independent" referred to any religious organization which has a formal relationship to the particular private school in question. A second comment asked if members of the clergy may be employed by public agencies to provide services to private school children.

Response. The statute provides that the employees of the public agency (or the contractor) who provide services must be independent of the private school and of any religious organization "in the provision of such services." Whether a particular situation would give rise to a problem under this requirement would be determined in light of all the facts of the case, and would be considered at that time.

39. § 134.101 *Avoidance of separate classes*. *Comment.* Two comments received suggested that if this section were not required for civil rights purposes it should be deleted. They went on to state that equitable services could be provided in separate classes and also might be administratively more feasible.

Response. There does not appear to be any reason why joint participation in a project should involve separation on the basis of religion or school enrollment. Further, the purpose of Title IV programs is not administrative feasibility but educational service. Therefore, there is no change in the language of the proposed rule. It should be noted that this provision appears in regulations for other Office of Education programs which have similar statutory requirements for the participation of private school children.

40. § 134.102 *Complaint procedure*. *Comment.* A comment questioned the authority in the law for any person to file a complaint. The reviewer suggested that complaint procedures should be limited to parents of affected private school children and that private school and public school officials confer before complaints are sent to the State.

Response. Opportunities to file a formal complaint should not be limited to parents of affected children. The State educational agency is responsible for monitoring operation of the program and should have the benefit of whatever sources of information might be of assistance. The objective is to set any formal complaint before the appropriate State officials so that an investigation can be made. The State is required to provide assurances that the requirements of section 406 of the Act will be

met. The complaint procedure is one of the means by which the State fulfills its responsibilities under the assurance.

41. § 134.107 *Cost of services under an arrangement by the State educational agency or the Commissioner.* *Comment.* A comment was received which suggested that a third paragraph be added which would provide that the "cost of such services" as used in the regulation would include the cost of administering the services if the State educational agency and/or the Commissioner so desires.

Response. The "cost of such services" includes the cost of administering the arrangement to provide services to private school children. There is, therefore, no need to change this regulation.

42. § 134.108 *Suspension and termination.* *Comment.* A reviewer suggested that § 134.108 should be modified to give meaning and effect to section 406(b) of the Act. The reviewer disagreed with the interpretation of the comment following this section of the regulations, that the Commissioner would be required to cut off all funds if there is a substantial failure to comply with section 406 of the Act, stating that Congress intended private school children to receive services in such a case through the Commissioner, without the denial of all services to all children by cutting off funds.

Response. The comment following § 134.108 was intended to make clear that in cases where there is substantial failure to serve private school children, no waiver can be granted and the local educational agency would lose its Title IV funds for the affected part of the Act. However, under the authority of section 406(e) of the Act and §§ 134.105-134.107 of the regulations, the State educational agency or the Commissioner would arrange for the provisions of services to the affected private school children.

43. § 134a.2 *Authorized activities (Part B).* *Comment.* A comment was received suggesting that provisions should be made in the regulations for inservice education for librarians, media specialists, and teachers under section 421(a) (1) of the Act, such as those made for persons engaged in guidance and counseling programs in § 134a.2(c) (3) of the proposed regulations. A second comment suggested that funds be specifically set aside under § 134a.2(a) for the use of school library resources and a third suggested that States should be allowed to restrict expenditures for textbooks as they did under ESEA Title II if there is less need for them than for other eligible items. Another comment stated that the enumeration of activities in § 134a.2 (c) (2) limits activities in that area and goes beyond legislative intent. Another commenter noted that § 134a.2(a) specifically refers to private elementary and secondary schools but §§ 134a.2 (b) and (c) refer only to elementary and secondary schools.

Response. Section 421(a) (3) (b) (iii) and (C) of the Act makes specific provision for inservice education for persons engaged in counseling and guidance programs; however, Section 421(a) (1) of the Act makes no such provisions for

training librarian, media specialists, and teachers. To allow amounts to be set aside for school library resources or to restrict the acquisition of textbooks, or to place any restrictions on local educational agencies in the use of funds allotted under Part B of Title IV of the Act would be in violation of section 403 (a) (5) of the Act which gives local educational agencies complete discretion over the division of funds among the various programs described in section 421 of the Act, except that in the first year, discretion is given with respect to only 50 percent of the funds allotted. With respect to the next comment, § 134a.2 is a direct quotation from section 421(a) of the Act; the regulation therefore is not changed. As for the last comment, it is the interpretation of the Office of Education that the use of the term "elementary and secondary schools" in section 421(a) (3) and (4) of the Act and § 134a.2(b) and (c) refers to private nonprofit elementary and secondary schools as well as public elementary and secondary schools.

44. § 134a.3 *Use of funds.* *Comment.* Thirteen comments were received on § 134a.3(a) of the proposed rules. Except for one, these comments objected to the section and felt it should be deleted because of lack of statutory authority. Several reviewers felt that monitoring funds for audit purposes would be expensive. One comment stated that this section restricts local educational agencies from channeling funds into one school. Another comment stated that the section limited the sole discretion provided in § 134.15 and that the requirement of § 134a.3(a) was authorized in § 134.94. Two comments stated that § 134a.3(a) was mislabeled, since it in fact provided a limit on the use of funds. Two comments stated that the criteria to establish "educational needs" provided in § 134a.3(b) should be established by the State educational agency with the advice of the State advisory council and local educational agencies. These reviewers felt that the criteria established should be included in the annual program plan and become part of the evaluation design required in § 134.16.

Response. With respect to the first comment, section 403(a) (4) (A) (ii) of the Act requires that a substantial amount of the funds appropriated under section 401(a) of the Act be distributed to local educational agencies with the greatest numbers or percentages of children whose education imposes a higher than average cost. It is within the discretion of the Office of Education to establish a policy that funds earned by a local educational agency because of the presence of children whose education imposes a higher than average cost be spent on those children. Costs for monitoring the expenditure of these funds can be paid from administration funds. With respect to the comment that § 134a.3(b) restricts local educational agencies from channeling funds into one school, it should be noted that § 134a.3 (b) specifically allows (but does not re-

quire) local educational agencies to concentrate in one or more schools according to educational need the funds earned through enrollment and relative tax effort. As for the third comment, no limit is placed by § 134a.3 on the services, materials, or equipment to be acquired by local educational agencies with Part B funds. The only limit placed by § 134.3 on the use of funds is the requirement that funds earned because of the presence of children whose education imposes a higher than average cost be spent on these children; the purpose of § 134a.3 is to set forth requirements relating to the provisions of section 403(a) (4) (A) of the Act and § 134.14(a) (1) and (b) of the regulations. Section 134.95 (proposed § 134.94) relates to the requirements of section 406 of the Act. With respect to the last group of comments, to allow State educational agencies to establish criteria for the use of local educational agencies in deciding on the use of Part B funds would violate the provisions of section 403(a) (5) of the Act.

45. § 134a.5 *Allowable costs.* *Comment.* Five comments were received suggesting that in § 134a.5(a), the word "shall" should be changed to "may." Another reviewer stated that the costs referred to in this section are part of indirect costs and questioned whether the funds referred to in § 134a.5 could be used for inventory, distribution, and audit costs.

Response. The Office of Education accepts the first suggestion and has made the change in § 134a.5(a). Indirect costs are a method of calculating those costs for administration which are not readily subject to treatment as direct costs. The costs referred to in § 134a.5 are for costs of acquisition, including costs of processing materials and equipment and the installation of equipment. These costs may be paid from funds allotted to local educational agencies for the acquisition of services, materials, and equipment under section 421 of the Act. If State educational agencies make State administrative funds available to local educational agencies under § 134a.11 for the distribution and control of school library resources, textbooks, and other instructional materials, such funds could be used for inventory and distribution. Audit costs of the State relating to the services, materials, and equipment acquired by local educational agencies under section 421 of the Act could be paid from funds made available for administration of the annual program plan.

46. § 134a.10 *Consideration of the areas of occupational education.* *Comment.* Seven comments were received saying that the requirement of § 134a.10 that the State educational agency develop specific criteria to be used by local educational agencies in acquiring school library resources, textbooks, and other instructional materials under section 421 (a) (1) of the Act so as to give consideration to the needs for instruction, orientation, and guidance and counseling in occupational education is not required by the Act. One of these reviewers said that the requirement would limit a local edu-

ational agency's ability to meet the varied needs of children. Another reviewer said that the requirement was provided for under the authority of §§ 134.15 and 134a.2(c).

Response. This requirement was added to Title II of the Act by Section 509(a) (1) of the Education Amendments of 1972 (Pub. L. 92-318). This purpose is incorporated in Title IV regulations under the authority of Section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act, and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part must be used only for the same purposes and for the same type of programs authorized under those provisions." This section is not intended to limit the complete discretion of local educational agencies (set forth in section 403(a) (5) of the Act) in determining how the funds it receives from appropriations made under Part B of Title IV of the Act will be divided among the various programs described in section 421(a) of the Act.

47. § 134a.11 *Administrative costs of local educational agencies.* *Comment.* A comment was received suggesting that §§ 134a.4 and 134a.11 appear to be inconsistent and that the regulations should state clearly that the costs of administration referred to in § 134a.11 must be paid out of State administration funds which are made available to local educational agencies.

Response. The Office of Education has expanded § 134a.11 to clarify the fact that State educational agencies may, but are not required to, make available to local educational agencies from funds for administration of the annual program plan, the costs of distribution and control by a local educational agency of school library resources, textbooks, and other instructional materials acquired under § 134a.2(a) for the use of children and teachers in public and private elementary and secondary schools. This purpose was authorized in the ESEA Title II program under section 203(a) (B) (II) of the Act and is incorporated in Title IV regulations under the authority of section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part must be used only for the same purposes and for the same types of programs authorized under those provisions."

48. § 134a.20 *Expansion or improvement of services.* *Comment.* A reviewer questioned the meaning of "other au-

thorized activities" in § 134a.12 which permits the State to use funds it receives for administration of Part B of Title IV of the Act for expansion or improvement of supervisory or related services in public and private elementary and secondary schools, as well as other authorized activities.

Response. This provision was authorized in the NDEA Title III program under Section 303(a) (5) (A) and is incorporated in Title IV regulations under the authority of section 421(b) of the Act for the reasons set forth in the responses to the comment on § 134a.10 above.

49. § 134b.2 *Authorized activities.* *Comment.* Two comments were received stating that the authorized activities in § 134b.2 expand upon the intent of Congress without legislative authority from the statute. A third reviewer suggested that the phrase "subject to the provisions of section 406 of the Act" be added to § 134b.2 to insure that private school children participate in the benefits of section 431(a) (1), (2), and (4) of the Act.

Response. The authorized activities in § 134b.2 (a), (b), and (c) are direct quotations from section 431(a) (1), (2), and (3) of the Act, and do not constitute an expansion of the intent of the Congress. The regulation therefore is not changed. In response to the final comment, the provisions of section 406 of the Act apply to programs supported under the authority of section 431(a) (1), (2), and (4). It is not considered necessary to include such a provision in § 134b.2.

50. § 134b.10 *Activities.* *Comment.* Twelve comments were received with respect to this section. Nine comments stated that the section should be deleted or revised because it exceeded the statutory language of section 431(a) (1) of the Act. One reviewer suggested that the first sentence of § 134b.10 be changed to read: "Activities under § 134b.2(a) may include . . ." thereby dropping the word "only." A comment suggested that the adult education services referred to in § 134b.10(c) (2) are no longer a proper purpose under Title IV.

Response. The statutory authority for the activities listed under § 134b.10 is section 431(b) of the Act, which provides: "It is the purpose of this part to combine within a single authorization subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title III (except for programs of testing, counseling, and guidance) and Title V and sections 807 and 808 of this Act, and funds appropriated to carry out this part must be used only for the same purposes and for the same types of programs authorized under those provisions." Therefore it is appropriate to set forth the purposes from section 303(b) (3) of the Act in these regulations, and to retain the reference to adult education services as a proper purpose. The first sentence of § 134b.10 has been modified by substituting the word "are" for "may only include." The latter change is not intended to change the meaning of the regulation which repeats statutory language.

51. § 134b.20 *Health and nutrition projects.* *Comment.* One comment was received which objected to the requirement that a private educational organization could be funded only through a contract with a local educational agency.

Response. This requirement was included in the regulations since the sections 403(a) (4) (B) and 403(a) (8) (A) of the Act provide for applications from local educational agencies only. The proposed rules provide a means whereby private organizations may receive Federal funds to conduct a demonstration project. Therefore, there is no need to make a change in this section.

52. § 134b.30 *State educational agency activities: § 134b.40 Local educational agency activities: § 134b.50 Comprehensive educational planning and evaluation activities.* *Comment.* Nine comments were received which suggested that these sections of the proposed rules should be deleted as exceeding the intent of the legislation. One comment suggested that, in § 134b.30(j), the first word "and" should be replaced by the word "or."

Response. The statutory authority for the activities listed in these three sections is contained in Section 431(b) of the Act. Since the language in these sections is copied directly from sections 503, 523, and 532 of Title V of the Act, the specific change of "or" for "and" is not proper. Therefore, no changes are made in the proposed rules.

B. *Other changes.* 1. Several typographical and technical corrections have been made. 2. The definition of "minor remodeling" in § 134.2 has been changed to clarify the fact that minor remodeling is permitted where necessary to make use of any instructional equipment eligible under section 421(a) (2) of the Act. 3. Section 134.12(c) has been amended to require that the description in the annual program plan of activities for strengthening the State educational agency under section 431(a) (3) of the Act include the results or benefits expected to be derived from each objective. 4. Section 134.102(a) has been amended to require that any written complaint filed with the State educational agency with respect to any Title IV project by an organization or individual be signed. 5. Section 134.102(b) has been amended to require that a copy of any report filed with the Commissioner with respect to a written complaint be sent to the affected local educational agency. 6. Section 134.102(c) has been amended to require the Commissioner to review matters related to a complaint, if after the sixty-day period has elapsed, the affected local educational agency feels that the problem has not been satisfactorily resolved. 7. Section 134a.11 has been amended to clarify the fact that a State educational agency may, but is not required to, make available to local educational agencies from funds available for the administration of the annual program plan, the costs of distribution and control by a local educational agency of school library resources, textbooks, and other instructional materials acquired under § 134a.2 (a).

C. Effective date. Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 13.570-13.571; Libraries and Learning Resources, Education Innovation and Support)

Dated: September 22, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: November 7, 1975.

DAVID MATHEWS,
Secretary of Health,
Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 100c—INDIRECT COSTS UNDER CERTAIN PROGRAMS

1. Section 100c.1 is revised by adding a new paragraph (c-1), to read as follows:

§ 100c.1 Scope.

(c-1) Part C of Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 1831);

2. New Parts 134, 134a, and 134b are added, to read as follows:

PART 134—LIBRARIES AND LEARNING RESOURCES; EDUCATIONAL INNOVATION AND SUPPORT

Subpart A—General

- Sec.
134.1 Scope of part.
134.2 Definitions.
134.3 General provisions regulations.

Subpart B—Annual Program Plans

GENERAL

- 134.10 Submission.
PROVISIONS TO BE INCLUDED IN ANNUAL PROGRAM PLAN
134.11 State educational agency.
134.12 Allowable expenditures.
134.13 Participation of children and teachers in private schools.
134.14 Distribution of funds to local educational agencies.
134.15 Part B funds; discretion of local educational agencies.
134.16 Evaluation, dissemination, and adoption of promising practices.
134.17 Single application from a local educational agency.
134.18 Use of funds.
134.19 Use and access by handicapped persons.
134.20 Commingling of funds.
134.21 Maintenance of expenditure from non-Federal sources.

REQUIREMENTS RELATING TO CERTAIN ANNUAL PROGRAM PLAN PROVISIONS

- 134.37 Application by a local educational agency.

- Sec.
134.38 State administrative funds in fiscal year 1976.
134.41 Data relating to maintenance of expenditures from non-Federal sources.

Subpart C—State Advisory Council

- 134.50 Establishment.
134.51 Membership.
134.52 Certification and qualification of members.
134.53 Advisory functions.
134.54 Notification of acceptance of certification.
134.55 Evaluation of programs and projects.
134.56 Report to the Commissioner.

Subpart D—Outlying Areas; Departments of Defense and Interior

- 134.70 Annual program plans.
134.71 Application procedures.
134.72 Single application.
134.73 Distribution of funds on the basis of educational needs.
134.74 Apportionment of funds.

Subpart E—Administration

- 134.80 Allowable costs.
134.81 Standards for selection of personal property.
134.82 Charges for use.

Subpart F—Participation by Children Enrolled in Private Schools

- 134.89 Scope of subpart.
134.90 Consultation with private school officials.
134.91 Benefits.
134.92 Number of private school children to be served.
134.93 Expenditures.
134.94 Criteria for adjustment of expenditures.
134.95 Concentration of programs or projects.
134.96 Separate compliance for Parts B and C.
134.97 Information in the project application.
134.98 Control by public agency.
134.99 Limitations on personnel providing services.
134.100 Private schools not to benefit.
134.101 Avoidance of separate classes.
134.102 Complaint procedure.
134.103 Award of subgrants to local educational agencies.
134.104 Waiver in the case of legal prohibition.
134.105 Provision of services by the State educational agency.
134.106 Provision of services by the Commissioner.
134.107 Cost of services under an arrangement by the State educational agency or the Commissioner.
134.108 Suspension and termination.
134.109 Notice; opportunity for hearing; judicial review.

AUTHORITY: Title IV, Pub. L. 89-10, as amended, 88 Stat. 535-544 (20 U.S.C. 1801-1832), unless otherwise noted.

Subpart A—General

§ 134.1 Scope of part.

(a) This part applies to the Federal programs authorized by Title IV of the Act.

(b) Regulations which apply specifically to Part B of Title IV of the Act are set forth in Part 134a of this chapter.

(c) Regulations which apply specifically to Part C of Title IV of the Act are set forth in Part 134b of this chapter.

(20 U.S.C. 1801)

§ 134.2 Definitions.

As used in this part and Parts 134a and 134b of this chapter:

“Academic subjects” includes, but is not limited to, the following elementary and secondary school subjects: The arts, civics, economics, English, geography, history, the humanities, industrial arts, mathematics, modern foreign languages, reading, and science.

(20 U.S.C. 1821(a)(2))

“Act” means the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1801)

“Children who do not complete their secondary school education” means children who were enrolled during a regular school term in an elementary or secondary school and withdrew before graduating from secondary school or before completing an equivalent program of studies. The term includes such an individual (a) whether he or she left school during or between regular school terms, (b) whether he or she left school before or after reaching the compulsory school attendance age, and (c) where applicable, whether or not he or she completed a minimum required amount of school work.

“Children with specific learning disabilities” means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such terms does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.

(20 U.S.C. 1803(a)(8)(B))

“Construction” means: (a) the erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; (b) the acquisition of existing structures not owned by the local educational agency making application for assistance under section 431(a)(1) of the Act; (c) the remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (d) a combination of any two or more of the foregoing.

(20 U.S.C. 1831(a)(1))

“Cultural and educational resources” includes: State educational agencies, local educational agencies, private nonprofit elementary and secondary schools, institutions of higher education, public and nonprofit agencies such as libraries, museums, musical and artistic organizations, educational radio and television, and other cultural and educational resources.

(20 U.S.C. 1832)

"Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or otherwise health impaired children, who by reason thereof require special education and related services. The term includes children with specific learning disabilities to the extent that such children are health impaired children who by reason thereof require special education and related services.

(20 U.S.C. 1803(a) (8) (B))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(20 U.S.C. 1803(a) (4))

"Minor remodeling" (notwithstanding the definition set forth in § 10^a.1 of this chapter) means minor alterations which are (a) made in a previously completed building used or to be used as a laboratory or classroom for instructional subjects, and (b) needed to make effective use of equipment in providing instruction in such subjects. The term does not include building construction, structural alterations to buildings, or building maintenance, repair, or renovation.

(20 U.S.C. 1821(a) (2))

"Outlying Areas" means each of the following: Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1802(a))

"School library resources" are books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs and tapes; processed slides, transparencies, films, filmstrips, kinescopes, and video tapes, or any other printed and audiovisual materials of a similar nature made by any method now developed or hereafter to be developed, and which are processed and organized for use by elementary or secondary school children and teachers. The term includes those printed and published materials which are suitable for use and are to be used by children and teachers in elementary or secondary schools, and which with reasonable care and use may be expected to last more than one year. The term does not include furniture or equipment.

(20 U.S.C. 1821(a) (1))

"State," except as used in § 134.14, means the several States in the Union,

the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1802(a))

"State advisory council" means the advisory council established under section 403(b) of the Act.

(20 U.S.C. 1803(b))

"State educational agency" means the State board of education or other agency or officer primarily responsible for State supervision of public elementary and secondary schools.

(20 U.S.C. 1803(a) (1))

"Teacher" includes any person who is engaged in carrying out the instructional program of an elementary or secondary school, including a principal, guidance counselor, school librarian/media specialist, or other member of the instructional staff.

(20 U.S.C. 1812(a))

"Testing" means the use of tests which measure abilities, educational achievement, interests, or aptitudes pertaining to an individual's educational or career development.

(20 U.S.C. 1821(a) (3) (A))

"Textbook" means a book, reusable workbook, or manual, whether bound or in looseleaf form, intended for use as a principal source of study materials for a given class or group of students, a copy of which is expected to be available for the individual use of each student in such class or group.

(20 U.S.C. 1821(a) (1))

§ 134.3 General provisions regulations.

Assistance under Title IV of the Act is subject to applicable provisions contained in subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 1801)

Subpart B—Annual Program Plans

GENERAL

§ 134.10 Submission.

(a) Any State which desires to receive grants under Title IV of the Act shall submit to the Commissioner an annual program plan in such detail as the Commissioner deems necessary.

(20 U.S.C. 1232c(b) (1) (A) (1); 1803(a))

(b) The annual program plan shall contain the provisions set forth in this subpart and section 434(b) (1) (B) (ii) of the General Education Provisions Act, as amended.

(20 U.S.C. 1232c(b) (1) (B) (ii); 1803(a))

Comment. Section 434(b) of the General Education Provisions Act (added by Section 511 of Pub. L. 93-380, enacted August 21, 1974) provides for the submission by each State of (1) a general application containing five assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies through, or under the supervision of, the State educational agency.

Regulations governing submission of these documents will be published in the FEDERAL REGISTER as amendments to the Office of Education General Provisions Regulations (45 CFR Part 100b, which applies to the State-administered programs). Under section 434 (b) and the implementing regulations, the submission of the general application and an annual program plan will be in lieu of submission of a State plan for Title IV. The provisions to be included in the annual program plan for Title IV are set forth in proposed §§ 134.11-134.21 of these regulations and Section 434(b) (1) (B) (ii) of the General Education Provisions Act, which states that each annual program plan shall "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted."

PROVISIONS TO BE INCLUDED IN ANNUAL PROGRAM PLAN

§ 134.11 State educational agency.

The annual program plan shall designate the State educational agency as the State agency which shall, either directly or through arrangements with other State or local public agencies, act as the sole agency for the administration of the annual program plan.

(20 U.S.C. 1803(a) (1))

§ 134.12 Allowable expenditures.

(a) The annual program plan shall set forth a program under which funds paid to the State from its allotments under section 402 of the Act will be expended solely for the programs and purposes authorized by Parts B and C of Title IV of the Act, and for administration of the annual program plan.

(20 U.S.C. 1803(a) (2))

(b) The annual program plan shall include a detailed description of activities planned for the purposes authorized under section 431(a) (1), (2), and (4) of the Act and for the purpose of strengthening local educational agencies under section 431(a) (3) of the Act. This description shall include: (1) specific objectives, (2) the specific activities planned to achieve each such objective, (3) the affected populations, and (4) the estimated amount of funds allocated to meet each such objective.

(20 U.S.C. 1803(a))

(c) The annual program plan shall include a detailed description of activities planned for the purpose of strengthening the State educational agency under section 431(a) (3) of the Act. This description shall include: (1) specific objectives, (2) the specific activities planned to achieve each such objective, (3) the results or benefits expected to be derived, (4) the estimated amount of funds allocated to meet each such objective, and (5) with respect to each such objective, an indication whether the State educational agency intends to contract for services or equipment.

(20 U.S.C. 1803(a))

(d) The annual program plan shall include (1) a detailed description of the activities to be carried out by the State advisory council and (2) the estimated

amount of funds which will be provided for each such activity from funds available for administration of the annual program plan.

(20 U.S.C. 1803 (a), (b) (4))

Comment. Section 403(b)(4) of the Act requires the Commissioner to assure that funds sufficient for the functions of the State advisory council "are made available to each council from funds available for administration of the [annual program] plan." The information asked for in § 134.12(d) is designed to serve this purpose, and is deemed to be the type of "detail" which the Commissioner is authorized to require in the annual program plan, which shall be "in such detail as the Commissioner deems necessary." (section 403(a) of the Act.)

§ 134.13 Participation of children and teachers in private schools.

(a) The annual program plan shall provide assurances that the requirements of section 406 of the Act (relating to the participation of pupils and teachers in private nonprofit elementary and secondary schools) will be met, or shall certify that such requirements cannot be met in such State.

(20 U.S.C. 1803(a)(3); 1806(a))

(b) A certification that a State cannot legally meet the requirements of section 406 of the Act shall be made by the State attorney general or other appropriate legal officer.

(20 U.S.C. 1803(a)(3))

§ 134.14 Distribution of funds to local educational agencies.

(a) The annual program plan shall provide assurance that:

(1) funds which the State educational agency receives from appropriations made under section 401(a) of the Act will be distributed among local educational agencies according to the enrollments in public and nonpublic schools within the school districts of such agencies, except that substantial funds will be provided to: (i) local educational agencies whose tax effort for education is substantially greater than the State average tax effort for education, but whose per pupil expenditure (excluding payments made under Title I of the Elementary and Secondary Education Act) is no greater than the average per pupil expenditure in the State, and (ii) local educational agencies which have the greatest number or percentages of children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language; and

(2) funds which the State educational agency receives from appropriations made under section 401(b) of the Act will be distributed among local educational agencies on an equitable basis recognizing the competitive nature of the grantmaking except that the State educational agency shall provide assistance in formulating proposals and in operating programs to local educational agencies which are less able to compete due to small size or lack of local financial resources.

(b) The annual program plan shall set forth the specific criteria the State educational agency has developed and will apply to meet the requirements of paragraph (a) of this section.

(20 U.S.C. 1803(a)(4))

§ 134.15 Part B funds; discretion of local educational agencies.

The annual program plan shall provide that each local educational agency will be given complete discretion (subject to the provisions of section 406 of the Act) in determining how the funds it receives from appropriations made under section 401(a) of the Act will be divided among the various programs described in section 421 of the Act except that, in the first year in which appropriations are made pursuant to Part B of Title IV of the Act each local educational agency will be given complete discretion with respect to 50 per centum of the funds appropriated for that part attributable to that local educational agency.

(20 U.S.C. 1803(a)(5))

§ 134.16 Evaluation, dissemination, and adoption of promising practices.

(a) The annual program plan shall provide for the adoption of effective procedures (1) for an evaluation by the State advisory council, at least annually, of the effectiveness of the programs and projects assisted under the annual program plan, (2) for the appropriate dissemination of the results of such evaluations and other information pertaining to such programs or projects, and (3) for the adoption, where appropriate, of promising educational practices developed through innovative, programs supported under part C of Title IV of the Act.

(20 U.S.C. 1803(a)(6))

(b) The annual program plan shall include a description of and calendar for each of the activities set forth in paragraph (a) of this section.

(20 U.S.C. 1803(a))

§ 134.17 Single application from a local educational agency.

The annual program plan shall provide that local educational agencies applying for funds under Title IV of the Act shall be required to submit only one application for such funds for any one fiscal year.

(20 U.S.C. 1803(a)(7))

§ 134.13 Use of funds.

The annual program plan shall provide that:

(a) (1) of the funds the State receives under Section 401 of the Act for the first fiscal year for which such funds are available, the State educational agency will use for administration of the annual program plan not to exceed whichever is greater: (i) 5 per centum of the amount so received (\$50,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), excluding any part of

such amount used for purposes of section 431(a)(3) of the Act or (ii) the amount it received for the fiscal year ending June 30, 1973, for administration of the programs referred to in section 421(b) and 431(b) of the Act and the remainder of such funds shall be made available to local educational agencies to be used for the purposes of parts B and C, respectively of Title IV of the Act, and

(2) of the funds the State receives under section 401 of the Act for fiscal years thereafter, it will use for administration of the annual program plan not to exceed whichever is greater: (1) 5 per centum of the amount so received (\$50,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), excluding any part of such amount used for purposes of section 431(a)(3) of the Act or (ii) \$225,000, and the remainder of such funds shall be made available to local educational agencies to be used for purposes of parts B and C, respectively of Title IV of the Act;

(b) not less than 15 per centum of the amount received pursuant to section 401(b) of the Act in any fiscal year (not including any amount used for purposes of section 431(a)(3) of the Act) shall be used for special programs or projects for the education of children with specific learning disabilities and handicapped children, and

(c) not more than the greater of (1) 15 per centum of the amount which such State receives pursuant to section 401(b) of the Act in any fiscal year, or (2) the amount available by appropriation to such State in the fiscal year ending June 30, 1973, for purposes covered by section 431(a)(3) of the Act shall be used for purposes of section 431(a)(3) of the Act (relating to strengthening State and local educational agencies).

(20 U.S.C. 1803(a)(8))

Comment. The following example shows how the set-asides referred to in the above section should be calculated:

Assume that a State has an allotment of \$1 million for Part B and an allotment of \$1 million for Part C.

The set-aside for section 431(a)(3) purposes should be calculated first since this amount is deducted from the base figure for calculating the set-asides for administration and for the education of children with specific learning disabilities and handicapped children. The State may use for the purpose of strengthening State and local educational agencies an amount not to exceed the greater of: (1) 15 percent of the State's Part C allotment or (2) the amount available to that State for section 431(a)(3) purposes in fiscal year 1973. Assuming that the 15 percent figure is the larger and assuming the full 15 percent is used for this purpose, the set-aside would be \$150,000 in this example.

The next set-aside to be calculated is the 5 percent maximum for administration. In the present example, this would be 5 percent of the \$1 million for Part B plus 5 percent of the remaining \$850,000 for Part C. (It should be noted that the statute provides that in the first year of consolidation a State can use up to the amount available to that State in fiscal year 1973 for administration of the categorical programs if this amount is greater than the 5 percent figure. In subsequent years the State can use for administration up to the 5 percent figure referred to above or

\$225,000, whichever is greater. For the purposes of this example, the 5 percent figure is used to calculate the amount available for State administration.) Thus, in the example, administrative expenses cannot exceed \$50,000 for administration of Part B and \$42,500 for administration of Part C.

The last set-aside to be calculated is 15 percent (as a minimum) of the Part C allotment (after the set-aside for strengthening State and local educational agencies is taken out) for special programs or projects for the education of children with specific learning disabilities and handicapped children. In this example, the 15 percent set-aside would be calculated against \$850,000 and would equal \$127,500.

In the example, therefore, of the \$1 million allotted for Part B, \$50,000 is available for administration and the remaining \$950,000 is available for program purposes.

Of the \$1 million allotted for Part C, assuming \$150,000 is set aside for strengthening State and local educational agencies and assuming \$42,500 is set aside for administration of the annual program plan for Title IV, \$807,500 (\$1 million—(\$150,000+\$42,500)) is available for program purposes, and of that amount at least \$127,500 is for programs for the handicapped.

§ 134.19 Use and access by handicapped persons.

The annual program plan shall provide assurances that in the case of any project for the repair, remodeling, or construction of facilities, that the facilities shall be accessible to and usable by handicapped persons.
(20 U.S.C. 1803(a) (9))

§ 134.20 Commingling of funds.

The annual program plan shall set forth policies and procedures which give satisfactory assurance that Federal funds made available under Title IV of the Act for any fiscal year will not be commingled with State funds.
(20 U.S.C. 1803(a) (10))

§ 134.21 Maintenance of expenditures from non-Federal sources.

The annual program plan shall give satisfactory assurance that the aggregate amount to be expended by the State and its local educational agencies from funds derived from non-Federal sources for programs described in section 421(a) of the Act for a fiscal year will not be less than the amount so expended for the preceding fiscal year.
(20 U.S.C. 1803(a) (11))

REQUIREMENTS RELATING TO CERTAIN ANNUAL PROGRAM PLAN PROVISIONS

§ 134.37 Application by a local educational agency.

(a) The application by a local educational agency under § 134.17 shall be submitted to the State educational agency in accordance with such instructions and forms as the State educational agency may prescribe, consistent with the requirements of Title IV of the Act, this part, and Parts 134a and 134b of this chapter.

(b) The submission of a single application under § 134.17 shall not preclude the State educational agency from mak-

ing separate subgrants under Parts B and C of Title IV of the Act to the local educational agency.

(20 U.S.C. 1803(a) (7); H. Rept. No. 93-805, p. 26 (1974))

§ 134.38 State administrative funds in fiscal year 1976.

(a) Funds provided under § 134.18(a) for administration of the annual program plan shall be used only for the administration of the State's annual program plan under Title IV of the Act.

(b) Funds for State administration in fiscal year 1976 of Titles II and III of the Elementary and Secondary Education Act of 1965 and Title III-A of the National Defense Education Act of 1958 may be drawn from the respective allotments for such programs under section 401(c) (1) and (2) of the Act, subject to any applicable limitations on State administrative funds set forth in such Acts.
(20 U.S.C. 1801; 1803(a) (8))

§ 134.41 Data relating to maintenance of expenditures from non-Federal sources.

The State educational agency shall collect and maintain data to verify compliance with the provision set forth in § 134.21, and make such data available to the Commissioner on request.
(20 U.S.C. 1803(a) (11))

Subpart C—State Advisory Council

§ 134.50 Establishment.

Any State which desires to receive grants under Title IV of the Act shall establish an advisory council as provided in section 403(b) of the Act.
(20 U.S.C. 1803(a))

§ 134.51 Membership.

The membership of the State advisory council shall be broadly representative of the cultural and educational resources of the State and of the public, and shall include at least one person representative of each of the following:

(a) public elementary and secondary schools;

(b) private elementary and secondary schools;

(c) institutions of higher education;

(d) fields of professional competence in dealing with children needing special education because of physical or mental handicaps;

(e) fields of professional competence in dealing with children needing special education because of specific learning disabilities;

(f) fields of professional competence in dealing with children needing special education because of severe educational disadvantage;

(g) fields of professional competence in dealing with children needing special education because of limited English-speaking ability;

(h) fields of professional competence in dealing with children needing special education because they are gifted or talented; and

(i) fields of professional competence in guidance and counseling.

(20 U.S.C. 1803(b) (1) (A); H. Rept. No. 93-805, p. 28 (1974))

§ 134.52 Certification and qualification of members.

(a) The certification required under section 403(b) (2) of the Act shall include the name of each person who is to serve on the State advisory council (including the name of the Chairman), the cultural or educational resources of the State which each person represents, and a statement that the persons appointed are qualified to represent those resources.
(20 U.S.C. 1803(b) (2))

(b) The State shall maintain on file, and furnish to the Commissioner at his request, the qualifications of the persons appointed to the State advisory council.
(20 U.S.C. 1803(b) (1) (A))

§ 134.53 Advisory functions.

The State advisory council shall advise the State educational agency on the preparation of, and policy matters arising in the administration of, the annual program plan, including the development of criteria for the distribution of funds and the approval of applications for assistance under Title IV of the Act.
(20 U.S.C. 1803(b) (1) (B))

Comment. This section repeats the statutory language of section 403(b) (1) (B) of the Act. The State advisory council is required to advise on each of the matters set forth in that section: preparation of the annual program plan and policy matters arising in the administration of the annual program plan. The council shall advise regarding the development of criteria for the distribution of funds and shall advise regarding the approval of applications under Title IV of the Act.

§ 134.54 Notification of acceptance of certification.

The Commissioner will provide written notification to the State educational agency and the Chairman of the State advisory council when the certification under Section 403(b) (2) of the Act has been accepted.
(20 U.S.C. 1803(b) (2), (3))

§ 134.55 Evaluation of programs and projects.

(a) The State advisory council shall evaluate all programs and projects assisted under Title IV of the Act at least annually.

(b) Evaluations by the State advisory council shall include the scope and quality of programs and projects for children enrolled in public elementary and secondary schools and private nonprofit elementary and secondary schools.
(20 U.S.C. 1803(b) (1) (C), (D); 1806(a))

§ 134.56 Report to the Commissioner.

The State advisory council shall prepare at least annually and submit through the State educational agency a report of its activities, recommendations, and evaluations, together with such ad-

ditional comments as the State educational agency deems appropriate, to the Commissioner.

(20 U.S.C. 1803(b)(1)(D))

Subpart D—Outlying Areas; Departments of Defense and Interior

§ 134.70 Annual program plans.

(a) Any Outlying Area which desires to receive funds under Title IV of the Act shall submit an annual program plan which meets the substance of the requirements of Subpart B of this part, except §§ 134.14, 134.15, and 134.17.

(b) The Department of the Interior may apply for funds under section 402(a)(1) of the Act by submitting an annual program plan (to provide programs authorized by Title IV of the Act to children and teachers in elementary and secondary schools operated by it for Indian children) which meets the substance of the requirements of §§ 134.12(a), 134.16(a)(2) and (3), (b), 134.18(b) and 134.19, and section 434(b)(1)(B)(ii) of the General Education Provisions Act, as amended.

(c) The Department of Defense may apply for funds under section 402(a)(1) of the Act by submitting an annual program plan (to provide programs authorized by Title IV of the Act to children and teachers in its overseas dependents schools) which meets the substance of the requirements of §§ 134.12(a), 134.16(a)(2) and (3), (b), 134.18(b), 134.19, and section 434(b)(1)(B)(ii) of the General Education Provisions Act, as amended.

(20 U.S.C. 1802(a)(1))

Comment. Neither the Department of the Interior nor the Department of Defense may use the funds received for Part C programs for activities authorized by section 431(a)(3) of the Act.

§ 134.71 Application procedures.

(a) The Departments of Defense and Interior and the Outlying Areas may designate administrative units to submit applications for funds under Title IV of the Act.

(b) Applications under paragraph (a) of this section shall be submitted to the appropriate Department or Outlying Area in accordance with such instructions and forms as it may prescribe.

(c) Each application under paragraph (a) of this section shall include a description of the purposes for which such funds will be used.

(20 U.S.C. 1802(a)(1))

§ 134.72 Single application.

Administrative units designated under § 134.71(a) shall be required to submit only one application for funds under Title IV of the Act for any one fiscal year.

(20 U.S.C. 1802(a)(1))

§ 134.73 Distribution of funds on the basis of educational needs.

The Departments of Defense and Interior and each Outlying Area, receiving funds under Title IV of the Act, shall use

a substantial amount of such funds to provide services, materials, and equipment to schools attended by children having the greatest educational needs for those services, materials, and equipment.

(20 U.S.C. 1802(a)(1))

§ 134.74 Apportionment of funds.

(a) Funds appropriated under section 402(a)(1) of the Act will be apportioned among the Outlying Areas and the Departments of Defense and Interior on the basis of the number of children enrolled in the schools of such Outlying Areas and Departments.

(b) The amount of funds of an Outlying Area or Department under paragraph (a) of this section which the Commissioner determines will not be required for any fiscal year will be reapportioned to the other Outlying Areas and Departments in proportion to their original apportionments for that year.

(20 U.S.C. 1802(a)(1))

Subpart E—Administration

§ 134.80 Allowable costs.

Allowability of costs under Title IV of the Act is governed by Subpart G of Part 100b of this chapter.

(20 U.S.C. 1803(a)(2))

§ 134.81 Standards for selection of personal property.

The State educational agency shall develop standards which may be used by local educational agencies in acquiring, under section 421(a) of the Act, expendable and non-expendable personal property (as defined in § 100.1 of this chapter) of appropriate quality and in appropriate quantities.

(20 U.S.C. 443(a)(4); 823(a)(2)(B)(i); 1803(a)(5); 1821(b); 1831(b))

Comment. This section is not intended to limit the complete discretion of local educational agencies (set forth in section 403(a)(5) of the Act) in determining how the funds it receives from appropriations made under Part B of Title IV of the Act will be divided among the various programs described in section 421 of the Act.

§ 134.82 Charges for use.

No charge shall be levied against children or school personnel for the ordinary use of expendable and nonexpendable personal property acquired under Title IV of the Act.

(20 U.S.C. 1801)

Subpart F—Participation by Children Enrolled in Private Schools

§ 134.89 Scope of subpart.

(a) For the purposes of this subpart, local educational agency means any local educational agency which is a recipient of funds under Title IV of the Act or which serves the area in which a program or project assisted under Title IV of the Act is located.

(b) For the purposes of this subpart, private school children means chil-

dren who are enrolled in private non-profit elementary and secondary schools in the school district of a local educational agency to which this subpart applies.

(20 U.S.C. 1806(a))

Comment. Section 406(a) of the Act requires that benefits be provided to private school children by any local educational agency "which is a recipient of funds under" Title IV of the Act "or which serves the area in which a program or project is located." No guidance is provided in the legislation itself or its legislative history as to how a local educational agency which does not receive funds under Title IV is to provide these benefits. Therefore, § 134.89(a) merely repeats the statutory language.

§ 134.90 Consultation with private school officials.

The local educational agency shall consult with appropriate school officials with respect to all matters including planning, relating to the requirements of this subpart prior to making any determinations or decisions affecting such matters.

(20 U.S.C. 1806(a), (b))

§ 134.91 Benefits.

(a) The local educational agency shall provide for the benefit of private school children secular, neutral, and nonideological services, materials, and equipment authorized under Title IV of the Act, including the repair, minor remodeling, or construction of public school facilities as may be necessary for their provision (consistent with §§ 134.98 and 134.99).

(b) If the local educational agency determines that it is not feasible or necessary to locate the services, materials, and equipment referenced in paragraph (a) of this section in one or more private schools, the local educational agency shall provide such other arrangements as will assure equitable participation of private school children in the purposes and benefits of Title IV of the Act.

(20 U.S.C. 1806(a))

§ 134.92 Number of private school children to be served.

The number of private school children to receive benefits under Title IV of the Act shall be determined by the local educational agency on a basis comparable to that used in determining the number of children enrolled in public schools to receive such benefits.

(20 U.S.C. 1806(a))

§ 134.93 Expenditures.

Subject to § 134.94, the average expenditure per child for private school children who receive benefits under Title IV of the Act shall be equal to the average expenditure per child for children enrolled in public schools who receive such benefits.

(20 U.S.C. 1806(b))

§ 134.94 Criteria for adjustment of expenditures.

(a) The local educational agency shall adjust its average expenditure per private school child if (1) the needs of private school children with respect to benefits under Title IV of the Act differ from such needs of children enrolled in public schools, and (2) the actual cost per child of such benefits to meet the needs of private school children is lesser or greater than the actual cost per child of such benefits to meet the needs of public school children.

(b) Any such adjustments shall be designed to assure the equitable participation of private school children in the purposes and benefits of Title IV of the Act.

(20 U.S.C. 1806(a), (b))

§ 134.95 Concentration of programs or projects.

In addition to the requirements set forth in §§ 134.94 and 134.93, when funds available to a local educational agency under Title IV of the Act are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, private school children who are included within the group, attendance area, or grade or age level selected for such concentration shall be assured equitable participation in the purposes and benefits of such programs or projects.

(20 U.S.C. 1806(b))

§ 134.96 Separate compliance for Parts B and C.

(a) Matters relating to assistance under Part C of Title IV of the Act shall have no bearing on a determination of whether a State or local educational agency is in compliance with section 406 of the Act or this subpart with respect to assistance under Part B of Title IV of the Act.

(b) Matters relating to assistance under Part B of Title IV of the Act shall have no bearing on a determination of whether a State or local educational agency is in compliance with section 406 of the Act or this subpart with respect to assistance under Part C of Title IV of the Act.

(20 U.S.C. 1801(a), (b))

§ 134.97 Information in the project application.

Each application submitted to the State educational agency shall (a) describe how the local educational agency will fulfill the requirements of §§ 134.90-134.95 (inclusive) and (b) contain information indicating: (1) the number of private school children in the school district of the local educational agency; (2) the number of private school children to be served by the project and the basis on which such children were selected; (3) the manner in which and the extent to which appropriate private school officials were consulted; (4) the places at which and the times during which private school children will be served; (5) the differences, if any, in

the kind and extent of services to be provided public and private school children and the reasons for such differences; and (6) the adjustments (if any) which the local educational agency has made under §§ 134.93 and 134.94, and the basis on which such adjustments were made.

(20 U.S.C. 1806(a), (b))

§ 134.98 Control by public agency.

The control of funds provided under Title IV of the Act and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in Title IV of the Act, and a public agency shall administer such funds and property.

(20 U.S.C. 1806(c)(1))

§ 134.99 Limitations on personnel providing services.

The provision of services pursuant to this subpart shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which in the provision of such services is independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under Title IV of the Act shall not be commingled with State or local funds.

(20 U.S.C. 1806(c)(2))

§ 134.100 Private schools not to benefit.

(a) Use of funds under Title IV of the Act shall not inure to the benefit of any private school.

(b) Personal property acquired under Title IV of the Act shall not become a part of the permanent structure of any private school and must be capable of being installed and removed without requiring remodeling of the premises.

(20 U.S.C. 1806(c); *Lemon v. Kurtzman*, 403 U.S. 602 (1971))

§ 134.101 Avoidance of separate classes.

Any project to be carried out in public facilities which involves joint participation by children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid the separation of participating children by school enrollment or religious affiliation.

(20 U.S.C. 1806(a))

§ 134.102 Complaint procedure.

(a) Any organization or individual may file a written signed complaint with the State educational agency setting forth: (1) an allegation that, with respect to a program or project under Title IV of the Act being conducted or approved by the State educational agency to be conducted, eligible private school children will not receive benefits on an equitable basis, and (2) the facts on which such allegation is based.

(b) The State educational agency shall, within sixty days from the receipt of the complaint, file a report with the

Commissioner, with a copy to the complainant and the affected local educational agency, setting forth the nature of the complaint and the actions taken to resolve the matter.

(c) If after such sixty-day period has elapsed, either the State educational agency, the affected local educational agency, the Commissioner, or the complainant feels that the problem has not been satisfactorily resolved, the Commissioner will review the matter and take appropriate action.

(20 U.S.C. 1806(e))

§ 134.103 Award of subgrants to local educational agencies.

The State educational agency shall not make any subgrant under Part B or Part C of Title IV of the Act which does not meet the requirements of section 406 of the Act and this subpart.

(20 U.S.C. 1806(a), (b))

§ 134.104 Waiver in the case of legal prohibition.

(a) If a State is prohibited by law from providing for the participation in programs of private school children as required under Section 406 of the Act and this subpart, the Commissioner may waive such requirements.

(20 U.S.C. 1806(d))

(b) The State educational agency shall not approve an application subject to paragraph (a) of this section until the Commissioner has waived such requirement.

(20 U.S.C. 1806(a), (b), (d))

(c) The State educational agency shall promptly notify the Commissioner when approval of any application is being delayed under paragraph (b) of this section, and shall, in addition to the certification provided under § 134.13(a), provide the Commissioner with a written interpretation of the applicable law, prepared by the State attorney general or other appropriate State legal officer.

(20 U.S.C. 1232c(b)(1)(A)(ii)(III); 1806(d))

§ 134.105 Provision of services by the State educational agency.

(a) If at any time after the approval of its application, the local educational agency substantially fails to provide for the participation on an equitable basis of private school children as required by section 406 of the Act and this subpart, the State educational agency may make arrangements either directly or through contract (subject to the provisions in Subpart I of Part 100b of this chapter), for such participation.

(20 U.S.C. 1806(e))

(b) In each such case, the State educational agency shall promptly notify the Commissioner whether it intends to take action under paragraph (a) of this section.

(20 U.S.C. 1806(e))

Comment. This section provides State educational agencies with an opportunity to remedy substantial failures by local educational agencies to serve private school chil-

dren. If the State and local educational agency are the same (for example, in an Outlying Area), this section would not apply.

§ 134.106 Provision of services by the Commissioner.

In the case of a prohibition of law described in § 134.104(a), or if a State educational agency does not make satisfactory arrangements under § 134.105(a) within a reasonable period of time, the Commissioner will arrange for the provision of services to the affected private school children.

(20 U.S.C. 1806(e))

§ 134.107 Cost of services under an arrangement by the State educational agency or the Commissioner.

(a) When the State educational agency makes arrangements for services under § 134.105, it shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate amount granted to the affected local educational agency.

(b) When the Commissioner makes arrangements for services under § 134.106, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allotment of the State under Title IV of the Act.

(20 U.S.C. 1806(f))

§ 134.108 Suspension and termination.

(a) Section 434(c) of the General Education Provisions Act (as amended) (1) requires that whenever the Commissioner finds, after reasonable notice and an opportunity for hearing, that there has been a failure by a recipient to comply substantially with the terms of a Federal program for which the Commissioner has administrative responsibility, he shall notify such recipient that payments will not be made to such recipient under that program until there is no longer any such failure to comply, and (2) provides for suspension of payments to the recipient pending such hearing.

(20 U.S.C. 1232c(c))

(b) Since the Commissioner will provide services under § 134.106 only where a State or local educational agency has failed to comply substantially with section 406 of the Act, section 434(c) of the General Education Provisions Act requires that payments shall be withheld from such State or local educational agency until there is no longer any such failure to comply.

(c) Where the Commissioner proposes to provide services under § 134.106, the notice and opportunity for hearing provided under section 406(g) (1) of the Act shall be combined with the notice and opportunity for hearing provided under section 434(c) of the General Education Provisions Act.

(20 U.S.C. 1232c(c); 1806(g) (1))

(d) This section shall not apply where the Commissioner has granted a waiver under § 134.104(a).

(20 U.S.C. 1232c(c); 1806(d), (e))

Comment. Under section 406(d) of the Act, the Commissioner may (but is not required to) waive the requirement of section 406 where a State is prohibited by law from providing for the participation of private school children under Title IV. Section 406 (e), which applies to situations where a State or local educational agency has "substantially failed" to provide for such participation, does not authorize the Commissioner to waive the requirement of section 406. Therefore, in those cases in which no waiver is granted and there is substantial failure, the local educational agency would lose its Title IV funds for the affected Part.

This statutory language is in contrast with the provisions applicable to Title I of the Elementary and Secondary Education Act (which were enacted in the same law as Title IV—Pub. L. 93-380). The Title I provisions specifically require the Commissioner to waive the requirement for participation of private school children when he arranges for services to them, both where there is a legal prohibition and where there has been a substantial failure by the local educational agency. (See sections 141A(b) (1) and 141A (b) (2) of Title I, added by section 101(a) (6) of Pub. L. 93-380.)

If the requirement for participation under section 406 is not waived (and in the case of substantial failure, it cannot be waived), a finding of failure to comply with section 406 (for the purposes of section 406(d) and (e)) would also constitute a "failure . . . to comply substantially" with the terms of Title IV under section 434(c) of the General Education Provisions Act (added by Section 511 of Pub. L. 93-380). This section of the regulations combines the necessary proceedings under section 406(g) (1) of Title IV and section 434(c) of the General Education Provisions Act.

§ 134.109 Notice; opportunity for hearing; judicial review.

Final actions by the Commissioner under this subpart are subject to the requirements relating to notice, opportunity for hearing, and judicial review set forth in section 406(g) of the Act.

(20 U.S.C. 1806(g))

PART 134a—LIBRARIES AND LEARNING RESOURCES

Subpart A—General

Sec.

- 134a.1 Scope.
- 134a.2 Authorized activities.
- 134a.3 Distribution of resources.
- 134a.4 Administrative costs of local educational agencies.
- 134a.5 Allowable costs.

Subpart B—School Library Resources, Textbooks, and Other Instructional Materials

- 134a.10 Consideration of the needs of occupational education.
- 134a.11 Distribution and control.

Subpart C—Instructional Equipment and Minor Remodeling

- 134a.20 Expansion or improvement of services.

AUTHORITY: Part B of Title IV, Pub. L. 89-10, as amended, 88 Stat. 542-543 (20 U.S.C. 1821), unless otherwise noted.

Subpart A—General

§ 134a.1 Scope.

(a) This part applies to Federal financial assistance under Part B of Title IV of the Act (as defined in § 134.2 of this chapter).

(b) Regulations applicable to both Part B and Part C of the Act are set forth in Part 134 of this chapter.

(20 U.S.C. 1801, 1821)

§ 134a.2 Authorized activities.

Each State may receive a grant under this part (pursuant to the annual program plan approved under section 403 of the Act):

(a) for the acquisition of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools;

(b) for the acquisition of instructional equipment (including laboratory and other special equipment, including audio-visual materials and equipment suitable for use in providing education in academic subjects) for use by children and teachers in elementary and secondary schools, and for minor remodeling of laboratory or other space used by such schools for such equipment; and

(c) for (1) a program of testing students in the elementary and secondary schools,

(2) programs of counseling and guidance services for students at the appropriate levels in elementary and secondary schools designed (i) to advise students of courses of study best suited to their ability, aptitude, and skills, (ii) to advise students with respect to their decisions as to the type of educational program they should pursue, the vocation they should train for and enter, and the job opportunities in the various fields, and (iii) to encourage students to complete their secondary school education, take the necessary courses for admission to postsecondary institutions suitable for their occupational or academic needs, and enter such institutions, and such programs may include short-term sessions for persons engaged in guidance and counseling in elementary and secondary schools, and

(3) programs, projects, and leadership activities designed to expand and strengthen counseling and guidance services in elementary and secondary schools.

(20 U.S.C. 1821(a))

§ 134a.3 Distribution of resources.

(a) Local educational agencies receiving funds under § 134.14(a) (1) (ii) (for children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language) shall use such funds (taking into account the requirements of section 406 of the Act) to provide services, materials, and equipment under Part B of Title IV of the Act (1) in schools attended by such children (subject to § 134.91(b)) and (2) for the benefit of such children.

(20 U.S.C. 1803(a) (4) (ii))

(b) Local educational agencies receiving funds under § 134.14(a) (1) of this

chapter (except subdivision (ii) thereof) may concentrate the services, materials, and equipment provided under Part B of Title IV of the Act in one or more schools according to the educational needs of the children attending such schools (taking into account the requirements of Section 406 of the Act).

(20 U.S.C. 1803(a) (4))

§ 134a.4 Administrative costs of local educational agencies.

No administrative costs, except those properly incurred by the State educational agency, shall be allowable under Part B of Title IV of the Act, either on a direct cost or on an indirect cost basis.

(20 U.S.C. 1821 (a), (b))

§ 134a.5 Allowable costs.

(a) For the purposes of this part, "acquisition," as defined in § 100.1 of this chapter, may include the costs of processing and installation.

(b) Expenditures for equipment under this part may include (1) the cost of raw or processed materials or component parts to be made into finished products, and (2) the cost of making and assembling the equipment.

(20 U.S.C. 1821(a) (1) and (2))

Subpart B—School Library Resources, Textbooks, and Other Instructional Materials

§ 134a.10 Consideration of the needs of occupational education.

The State educational agency shall develop specific criteria to be used by local educational agencies in acquiring school library resources, textbooks, and other instructional materials under section 421(a) (1) of the Act so as to give consideration to the needs for instruction, orientation, and guidance and counseling in occupational education. Such consideration shall be on a basis equal with the consideration given to meeting other educational needs.

(20 U.S.C. 1821(b); 823(a) (3) (D))

§ 134a.11 Distribution and control.

From funds made available for administration of the annual program plan, State educational agencies may make available to local educational agencies funds for the distribution and control of school library resources, textbooks, and other printed and published instructional materials acquired under § 134a.2 (a) for the use of children and teachers in public and private elementary and secondary schools.

(20 U.S.C. 1821(b); 823(a) (2) (B) (ii))

Subpart C—Instructional Equipment and Minor Remodeling

§ 134a.20 Expansion or improvement of services.

The State educational agency may use funds it receives for administration of Part B of Title IV of the Act for expansion or improvement of supervisory or related services in public elementary and secondary schools in the

fields of academic subjects, as well as other authorized activities.

(20 U.S.C. 1821(b); 443(a) (5) (A))

PART 134b—EDUCATIONAL INNOVATION AND SUPPORT

Subpart A—General

- Sec. 134b.1 Scope.
- 134b.2 Authorized activities.
- 134b.3 Participation in planning and carrying out of projects.

Subpart B—Supplementary Centers and Services

- 134b.10 Activities.

Subpart C—Health and Nutrition

- 134b.20 Health and nutrition projects.

Subpart D—Strengthening State and Local Educational Agencies

STATE EDUCATIONAL AGENCIES

- 134b.30 State educational agency activities.
- 134b.31 Interstate transfer funds.

LOCAL EDUCATIONAL AGENCIES

- 134b.40 Local educational agency activities.

COMPREHENSIVE PLANNING AND EVALUATION

- 134b.50 Comprehensive educational planning and evaluation activities.

AUTHORITY: Part C of Title IV, P.L. 89-10, as amended, 88 Stat. 543-544 (20 U.S.C. 1831), unless otherwise noted.

Subpart A—General

- § 134b.1 Scope.

(a) This part applies to Federal financial assistance under Part C of Title IV of the Act (as defined in § 134.2 of this chapter).

(b) Regulations applicable to both Part B and Part C of Title IV of the Act are set forth in part 134 of this chapter.

(20 U.S.C. 1801, 1831)

§ 134b.2 Authorized activities.

Each State may receive a grant under this part (pursuant to the annual program plan approved under section 403 of the Act):

(a) for supplementary educational centers and services to stimulate and assist in the provision of vitally needed educational services (including preschool education, special education, compensatory education, vocational education, education of gifted and talented children, and dual enrollment programs) not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school programs (including the remodeling, lease, or construction of necessary facilities) to serve as models for regular school programs;

(b) for the support of demonstration projects by local educational agencies or private educational organizations designed to improve nutrition and health services in public and private elementary and secondary schools serving areas with high concentrations of children from low-income families, and such projects may include payment of the cost of (1) coordinating nutrition and health service resources in the areas to be served by a project, (2) providing supplemental

health, mental health, nutritional, and food services to children from low-income families when the resources for such services available to the applicant from other sources are inadequate to meet the needs of such children, (3) nutrition and health programs designed to train professional and other school personnel to provide nutrition and health services in a manner which meets the needs of children from low-income families for such services, and (4) the evaluation of projects assisted with respect to their effectiveness in improving school nutrition and health services for such children;

(c) for strengthening the leadership resources of State and local educational agencies, and for assisting those agencies in the establishment and improvement of programs to identify and meet educational needs of States and of local school districts;

(d) for making arrangements with local educational agencies for carrying out by such agencies, in schools which (1) are located in urban or rural areas, (2) have a high percentage of children from low-income families, and (3) have a high percentage of such children who do not complete their secondary school education, of demonstration projects involving the use of innovative methods, systems, materials, or programs which show promise of reducing the number of such children who do not complete their secondary school education."

(20 U.S.C. 1831(a))

Comment. Section 134b.2 repeats the statutory language in section 431(a) of the Act. With respect to § 134b.2(d), which refers to "schools * * * located in urban or rural areas," neither the Act nor its legislative history suggests what type or types of area should be excluded from this phrase (if any). It is the interpretation of the Commissioner that there is no type of area that would be excluded as not falling within the meaning of the terms "urban" or "rural areas."

§ 134b.3 Participation in planning and carrying out of projects.

Each application from a local educational agency for a subgrant for the purposes of § 134b.2 (a), (b), or (d) shall describe how persons broadly representative of the cultural and educational resources of the area to be served are being involved in the planning and carrying out of the programs or projects to be supported.

(20 U.S.C. 1832)

Subpart B—Supplementary Centers and Services

§ 134b.10 Activities.

Activities authorized under § 134b.2(a) are:

(a) planning for and taking other steps leading to the development of programs or projects designed to provide supplementary educational activities and services described in paragraphs (b) and (c) of this section, including pilot projects designed to test the effectiveness of plans so developed;

(b) the establishment or expansion of exemplary and innovative educational programs for the purpose of stimulating

the adoption of new educational programs (including those described in § 134b.30(d) and special programs for handicapped children) in the schools of the State; and

(c) the establishment, maintenance, operation, and expansion of programs or projects, including the acquisition of necessary equipment, designed to enrich the programs of local elementary and secondary schools and to offer a diverse range of educational experience to persons of varying talents and needs by providing, especially through new and improved approaches, supplementary educational services and activities, such as:

(1) remedial instruction, and school health, physical education, recreation, psychological, social work, and other services designed to enable and encourage persons to enter, remain in, or reenter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session;

(2) comprehensive academic services and where appropriate, vocational guidance and counseling, for continuing adult education;

(3) programs designed to encourage the development in elementary and secondary schools of occupational information and counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education;

(4) specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age;

(5) making available modern educational equipment and specially qualified personnel, including artists and musicians, on a temporary basis for the benefit of children in public and other nonprofit schools, organizations, and institutions;

(6) developing, producing, and transmitting radio and television programs for classroom and other educational use;

(7) in the case of any local educational agency which is making a reasonable tax effort but which is nevertheless unable to meet critical educational needs (including preschool education), because some or all of its schools are seriously overcrowded, obsolete, or unsafe, initiating and carrying out programs or projects designed to meet those needs, particularly those which will result in more effective use of existing facilities;

(8) providing special educational and related services for persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including, where appropriate, the provision of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, bilingual education methods and visiting teachers' programs;

(9) encouraging community involvement in educational programs;

(10) providing programs for gifted and talented children; and

(11) other specially designed educational programs or projects which meet the purposes of this subpart.

(20 U.S.C. 1831(b); 843(b))

Subpart C—Health and Nutrition

§ 134b.20 Health and nutrition projects.

A demonstration project under section 431(a)(2) of the Act may be administered by a private educational organization only if: (a) such organization meets the requirements of § 134.99 of this chapter, and (b) such organization administers the project under a contract with a local educational agency.

(20 U.S.C. 1806(c); 1831(a)(2); 1803(a)(4)(B), (a)(8(A)))

Subpart D—Strengthening State and Local Educational Agencies

STATE EDUCATIONAL AGENCIES

§ 134b.30 State educational agency activities.

Funds available under § 134b.2(c) may be used by the State education agency for the planning of, and for programs for, the development, improvement, or expansion of activities promoting the purposes set forth in § 134b.2(c), such as:

(a) Educational planning on a statewide basis, including the identification of educational problems, issues, and needs in the State and the evaluation on a periodic or continuing basis of education programs in the State;

(b) Providing support or services for the comprehensive and compatible recording, collection, processing, analyzing, interpreting, storing, retrieving, and reporting of State and local educational data, including the use of automated data systems;

(c) Dissemination or support for the dissemination of information relating to the condition, progress, and needs of education in the State;

(d) Programs for conducting, sponsoring, or cooperating in educational research and demonstration programs and projects such as (1) the development in elementary and secondary schools of programs of occupational information, counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education, (2) establishing and maintaining curriculum research and innovation centers to assist in locating and evaluating curriculum research findings, (3) discovering and testing new educational ideas (including new uses of printed and audio-visual media) and more effective educational practices and putting into use those which show promise of success, and (4) studying ways to improve the legal and organizational structure for education and the management and administration of education in the State;

(e) Publication and distribution, or support for the publication and distribution, of curricular materials collected and developed at curriculum research centers and elsewhere;

(f) Programs to improve the quality of teacher preparation, including student-teaching arrangements, in cooperation with institutions of higher education and local educational agencies;

(g) Programs and other activities specifically designed to encourage the full and adequate utilization and acceptance of auxiliary personnel (such as teacher aides) in elementary and secondary schools on a permanent basis;

(h) Studies or support for studies concerning the financing of public education in the State;

(i) Support for statewide programs designed to measure the educational achievement of pupils;

(j) Training and otherwise developing the competency of individuals who serve State or local educational agencies and provide leadership, administrative, or specialist services throughout the State, or throughout the area served by a local educational agency, through the initiation, improvement, and expansion of activities such as (1) sabbatical leave programs, (2) fellowships and traineeships (including educational expenses and the cost of travel) for State educational agency personnel to pursue graduate studies, and (3) conducting institutes, workshops, and conferences (including related costs of operation and payment of the expenses of participants);

(k) Providing local educational agencies and the schools of those agencies with consultative and technical assistance and services relating to academic subjects and to particular aspects of education such as the education of the handicapped, and gifted and talented children, school building design and utilization, school social work, the utilization of modern instructional materials and equipment, transportation, educational administrative procedures, and school health, physical education, and recreation;

(l) Evaluation and demonstration projects to insure that benefits obtained by children in Head Start and other preschool programs are not lost during their early elementary school years, but are instead enhanced so as to provide continuity in and accelerated development of the child's learning, academic and other social achievements; and

(20 U.S.C. 1831(b); 863)

(m) Experimental projects for developing State leadership or for the establishment of special services which hold promise of making a substantial contribution to the solution of problems common to the State educational agencies of all or several States.

(20 U.S.C. 1831(b); 865)

§ 134b.31 Interstate transfer of funds.

One or more State educational agencies may, consistent with State law, transfer grant funds to another State agency or combine grant funds from several State educational agencies for the joint support of the cost of carrying out one or more programs or activities which may

be conducted pursuant to the provisions of section 431(a) (3) of the Act, including experimental projects for developing State leadership and the establishment of special services which hold promise of making a substantial contribution to the State educational agencies of all or several States. Such funds shall be administered by the receiving State on behalf of all of the participating States.

(20 U.S.C. 1831 (b); 862(b) (2))

LOCAL EDUCATIONAL AGENCIES

§ 134b.40 Local educational agency activities.

(a) Funds available under § 134b.2(c) may be used to stimulate and assist local educational agencies in strengthening the leadership resources of their districts, and to assist those agencies in the establishment and improvement of programs to identify and meet the educational needs of their districts.

(20 U.S.C. 1831 (b); 866(a))

(b) Activities authorized under paragraph (a) of this section may include:

(1) Educational planning on a district basis, including the identification of educational problems, issues, and needs in the district and the evaluation on a periodic or continuing basis of educational programs in the district;

(2) Providing support or services for the comprehensive and compatible recording, collecting, processing, analyzing, interpreting, storing, retrieving, and reporting of educational data including the use of automated data systems;

(3) Programs for conducting, sponsoring, or cooperating in educational research and demonstration programs and projects such as (i) establishing and maintaining curriculum research and innovation centers to assist in locating and evaluating curriculum research findings, (ii) discovering and testing new educational ideas (including new uses of printed and audiovisual media) and more effective educational practices, and putting into use those which show promise of success, and (iii) studying ways to improve the legal and organizational structure for education, and the management and administration of education in the district of such agency;

(4) Programs to improve the quality of teacher preparation, including student-teaching arrangements, in cooperation with institutions of higher education and State educational agencies;

(5) Programs and other activities specifically designed to encourage the full and adequate utilization and acceptance of auxiliary personnel (such as instructional assistants and teacher aides) in elementary and secondary schools on a permanent basis;

(6) Providing such agencies and the schools of such agencies with consultative and technical assistance and services relating to academic subjects and to particular aspects of education such as the education of the handicapped, the gifted and talented, and the disadvantaged, vocational education, school building design and utilization, school social work,

the utilization of modern instructional materials and equipment, transportation, educational administrative procedures, and school health, physical education, and recreation;

(7) Training programs for the officials of such agencies; and

(8) Carrying out any such activities or programs, where appropriate, in cooperation with other local educational agencies.

(20 U.S.C. 1831(b); 866(b))

COMPREHENSIVE PLANNING AND EVALUATION

§ 134b.50 Comprehensive educational planning and evaluation activities.

(a) Funds available under § 134b.2(c) may be used for activities by State and local educational agencies in order to assist and stimulate them to enhance their capability to make effective progress, through comprehensive and continuing planning and evaluation, toward the achievement of opportunities for high-quality education for all segments of the population.

(20 U.S.C. 1831(b); 867(a))

(b) Funds available to local educational agencies under paragraph (a) of this section may be used for demonstration projects to plan, develop, test, and improve planning and evaluation systems and techniques consistent with, and to further the purposes of, paragraph (a) of this section.

(20 U.S.C. 1831(b); 867a(b) (5))

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