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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

LIBRARIES AND LEARNING RESOURCES

Education Innovation and Support

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

Office of Education

[45 CFR Parts 100c, 134, 134a, 134b]

LIBRARIES AND LEARNING RESOURCES

Education Innovation and Support

Pursuant to the authority contained in 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 (enacted August 21, 1974), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 134 to read as set forth below, and by revising § 100c.1.

Title IV of the Elementary and Secondary Education Act (hereinafter referred to as ESEA) provides for the consolidation of certain educational 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 the programs authorized by 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 projects), and section 808 of ESEA (demonstration projects to improve school nutrition and health services for children of low-income families). 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 non-profit private schools, and for children in the Outlying Areas, and in schools operated by the Departments of Defense and Interior.

Section 402 of ESEA does not make provision for allotments to the District of Columbia and Puerto Rico. A technical amendment has been submitted by the Department to Congress which would make the definition of "State" in section 801 of ESEA applicable to Title IV. That definition of "State" includes the District of Columbia and Puerto Rico. Section 134.2 of the regulations tentatively defines "State" to include the District of Columbia and Puerto Rico on the assumption that the technical amendment will be enacted.

In order to facilitate comments, explanations of many of the substantive sections of the proposed rules are set out below. "Comment" sections following substantive sections have been used as a format in lieu of a lengthy preamble for ease of reading and to highlight the substance of the proposed rules.

Reviewers should also note that where statutory language has been repeated in these proposed rules, it is so indicated by the use of quotation marks which will be deleted when the final regulations are published. With respect to this material, comments should be directed to the need (or lack of a need) for regulations, rather than to its substance. Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to Regulations Officer, U.S. Office of Education, Room 2085, 400 Maryland Avenue SW., Washington, D.C. 20202.

Comments received in response to this notice will be available for public inspection at the above office on week days from 8:30 a.m. to 4:00 p.m. All relevant materials received on or before April 11, 1975 will be considered.

Dated: February 27, 1975.

T. H. BELL,
Commissioner of Education.

Approved: March 4, 1975.

CASPAR W. WEINBERGER,
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:

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RESOURCES; EDUCATIONAL INNOVA-
TION AND SUPPORT**

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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:

"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.
(20 U.S.C. 1831(a)(4))

"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 those children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or otherwise health impaired, and 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 § 100.1 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 instruction in academic 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" means books, periodicals, documents, audiovisual materials, and related library materials which are suitable for use by elementary or secondary school children and teachers 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 guidance counselors, school librarians, and supervisory staff, as well as instructional staff.
(20 U.S.C. 1821(a))

"Testing" means the use of tests which measure abilities and aptitudes pertaining to an individual's educational or career development.
(20 U.S.C. 1821(a)(3)(A))

"Text book" 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))

Comment. The definition of "school library resources" is derived from section 203(a)(2)(A) of Title II of the Elementary and Secondary Education Act and existing administrative practice under that program. The definition currently appearing in the Title II regulations (45 CFR 117.1(f)) has been simplified, but it is not intended to make any substantive change in the types of library resources and instructional materials which may be purchased under Part B of Title IV of the Act (section 421(a)(1)) from the types of library resources and instructional materials which currently may be purchased under Title II.

§ 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)(i); 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) measurable objectives, (2) the specific activities planned to achieve each such objective, (3) the affected populations, and (4) the 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) measurable objectives, (2) the specific activities planned to achieve each such objective, (3) the amount of funds allocated to meet each such objective, and (4) 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 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 legally 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."

§ 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 making 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.

(a) The membership of the State advisory council shall include at least one person "representative of" each of the following:

- (1) public elementary and secondary schools;
- (2) private elementary and secondary schools;
- (3) institutions of higher education;
- (4) fields of professional competence in dealing with children needing special education because of physical or mental handicaps;
- (5) fields of professional competence in dealing with children needing special education because of specific learning disabilities;
- (6) fields of professional competence in dealing with children needing special education because of severe educational disadvantage;
- (7) fields of professional competence in dealing with children needing special education because of limited English-speaking ability;
- (8) fields of professional competence in dealing with children needing special education because they are gifted or talented; and
- (9) fields of professional competence in guidance and counseling.

(b) The membership of the State advisory council shall also include such other persons as may be necessary to make such council "broadly representative of the cultural and educational re-

presentative of the cultural and educational re-

sources of the State" "and of the public."

(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 and address 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 and evaluate the extent to which the objectives which were set forth pursuant to § 134.12(b) were met.

(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 additional 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(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 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)(1); 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 "children 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 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))

§ 134.91 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))

§ 134.92 Expenditures.

Subject to § 134.93, 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))

§ 134.93 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))

§ 134.94 Concentration of programs or projects.

In addition to the requirements set forth in §§ 134.92 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))

§ 134.95 Consultation with private school officials.

The local educational agency shall consult with "appropriate private 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))

§ 134.96 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 pro-

vided 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 §§ 134.92 and 134.93, 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 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 com-

plaintant, 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 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 children. 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

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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.
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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 § 134.90(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, shall 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.

The costs of administration of the annual program plan with respect to Part B of Title IV of the Act may include the distribution and control by a local educational agency 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

Sec.

Subpart A—General

134b.1 Scope.

134b.2 Authorized activities.

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, 86 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 the 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."

Subpart B—Supplementary Centers and Services

§ 134b.10 Activities.

Activities under § 134b.2(a) may only include:

(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 im-

proved 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 pre-school 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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