

The original documents are located in Box 15, folder “Nondiscrimination in Elementary and Secondary School Staffing Practices, 1971-1973” of the Stanley Scott Papers at the Gerald R. Ford Presidential Library.

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Memorandum on Minority

Staff Displacement



This memorandum provides a general outline of the results of Office for Civil Rights surveys and of compliance activity with respect to the issue of minority staff dismissals and demotions.

Title VI of the Civil Rights Act of 1964 prohibits discrimination as to race, color, or national origin in hiring, dismissing, promoting, or demoting teachers or other staff who have direct contact with students in federally assisted education programs.

A Title VI memorandum on school staffing practices, and the elementary and secondary education Title VI guidelines, are attached at Tabs A and B.

In dealing with school districts in the south which were obligated to desegregate, the Office for Civil Rights (OCR) has had considerable experience in attempting to deter discriminatory demotions and dismissals and in attempting to investigate such allegations.

Press Articles

With respect to the Chicago Defender article enclosed with Mr. Scott's inquiry, the plaintiffs in McLaurin v. Columbia Municipal Separate School District are relying on analyses based on statistical data obtained by OCR school district surveys. Over the years OCR has worked closely with the National Education Association on the displacement problem. NEA is involved in this suit. The Department of Justice has filed an amicus brief in the case.

The other news article by Anthony Griggs reports generally that in the process of desegregation, black teachers were frequently discriminatorily demoted or dismissed on a significant scale. The consolidation of a formerly dual system often meant that fewer teachers and principals were required, and there is no disputing the conclusion that the burden fell disproportionately on black staff.



Overall Staff Displacement Data

Since 1968 when the annual OCR Civil Rights Surveys began, no direct data has been acquired on faculty dismissals and demotions. Displacement can at best be inferred by an analysis of data gathered on the number of staff employed by race. OCR data does show that in the 11 Southern States the proportion of minority teachers to total teachers has consistently dropped at least from 1968 through 1972, while the opposite trend is shown for the Border States and the Northern and Western States. The public school systems of the 11 Southern States have had a greater opportunity to fill teacher vacancies than other sections and yet this area is the only one where the number of nonminority teachers increases while the number of minority teachers decreases.

In comparing 1968 and 1970 teacher employment data, the following statistical information was revealed for all districts in the 11 Southern States:

1. Negro teachers dropped by 2,000 while nonminority teachers increased by 20,000. (2.2% decrease and 6.3% increase).
2. Texas and Florida showed an increase of Negro teachers. But in comparison with gains made by other teachers, Negroes showed a relative decline in every State. (See Tab C.)

A sampling of districts throughout the country were surveyed in fall 1971, and the data obtained can be compared with data submitted by those same districts in 1968. (1968 and 1970 surveys were comprehensive and reached a far larger selection of districts than the more limited 1971 survey.) Data obtained from the 1968 and 1971 surveys on a matched district basis (2,284 districts nationwide) showed the following minority teacher change over this 3-year period:

TEACHER INCREASE, 1968-1971

<u>STATES</u>	<u>NUMBER OF DISTRICTS</u>	<u>TOTAL INCREASE</u>	<u>MINORITY INCREASE</u>	<u>% OF MINORITY INCREASE</u>
Northern-Western	827	+21,914	+12,180	+56%
Border and D. C.	157	+ 6,019	+ 1,856	+31%
Southern	1,300	+23,377	+ 456	+ 2%

In the same 2,284 matched districts, minority principals made significant gains except in the South from 1968 to 1971:

<u>STATES</u>	<u>INCREASE OR DECREASE IN MINORITY PRINCIPALS</u>	<u>INCREASE OR DECREASE-- IN % OF MINORITY PRINCIPALS TO TOTAL PRINCIPALS</u>
Northern - Western	+78.9%	+ 4.8
Border	+21.2%	+ 3.7
Southern	- 8.5%	- 3.1

Yet during the period of 1968-1971 the South had the largest net increase in principals, resulting from a decrease of 264 minority principals and an increase of 998 nonminority principals.

In the same matched districts (11 Southern States), minority assistant principals increased by 63% and nonminorities by 8.5%. Although all regional areas increased their percentage of assistant principals during 1968-71 at an unusually high rate, the South accounts for 60% of the total increase. The contribution of minorities to each area's respective increase was: South, 47%, North and West, 82%. The disproportionate southern loss of minority principals and relatively high southern contribution of minority assistant principals could be due in part to demotions of minority principals.



Information available from the 1972-73 OCR Civil Rights Survey indicates the following change by region from 1971-1972 in the employment of nonminority and minority teachers.

<u>STATES</u>	<u>NUMBER OF DISTRICTS</u>	<u>NONMINORITY</u>	<u>MINORITY</u>
Northern - Western	709	-12,280	+2,237
Border	151	- 1,514	- 22
South	1,313	+ 635	-1,152

The following is the percentage of minority teachers relative to the total numbers of teachers in each region as a whole

	<u>1971</u>	<u>1972</u>
Northern - Western	20%	21.2%
Border	23%	23.5%
Southern	26.3%	26.0%

The proportion of minority teachers to nonminority teachers in the 1,313 Southern districts surveyed has decreased from 27.7% in 1968 to 26.0% in 1972.

In retrospect, it is clear that even prior to the 1968-69 school year, the dismantling of the dual school systems was resulting in disproportionate dismissals and demotions of minority staff.

Faculty Displacement and ESAA

A serious effort was made under the emergency school aid regulations and OCR enforcement in FY 73 to make funding contingent on conformity with Sections 185.43(b) (1 and 2) and 185.44(d) in toto. (See Tab D.) School districts that showed a 10% differential in reduction of minority staff after the initial phase of desegregation



had to indicate that this prior reduction of minority staff had since been corrected in order to establish eligibility for ESAA funding. Otherwise, additional information was requested to determine the extent to which a school district had actually demoted or dismissed minority staff. If minority staff had been unlawfully dismissed or demoted, the offending school district had to submit a plan of affirmative action for restoration of the minority ratio which existed prior to desegregation.

At this time it is not possible to provide any figures as to the number of actual negotiations entered into between OCR and districts making ESAA applications. One indication, however, of the affirmative action plans required from districts in States served by OCR southern and border regional offices:

<u>*REGIONS</u>	<u>TOTAL APPLICATIONS</u>	<u>FACULTY AFFIR- MATIVE ACTION PLAN</u>	<u>#TEACHERS AFFECTED</u>
III (Phila)	1,131	2	15
IV (Atlanta)	296	33	179
VI (Dallas)	254	68	369
	681	103	563

*Data compiled from a June 7, 1973 telephone survey of regional offices, and not necessarily complete.

Title VI and Faculty Displacement

Discrimination against minority teachers has been handled under Title VI on a complaint basis and in conjunction with Title VI compliance reviews.

OCR has initiated investigative and/or enforcement action in 47 school districts with respect to demotion and dismissal compliance issues. The status of our action in these districts is outlined in the enclosure at Tab E. OCR involvement in the area of faculty displacement and demotion was not as extensive as it might have been prior to 1970 because resources were concentrated principally on student reassignment plans. Moreover, until recent court developments, the legal burden in terms of developing the necessary evidence to support a case of teacher discrimination was substantial and made it impossible to achieve any widespread impact. Nevertheless, since 1970, OCR has made special efforts to protect the rights

Page 6

of existing black staff in negotiating for acceptable student desegregation plans, in addition to the investigation of complaints. These efforts served as a deterrent to discriminatory treatment.

Department of Justice

The Department of Justice has also been active in initiating judicial action to forestall unlawful faculty displacement and demotion as well as filing court actions to remedy such unlawful faculty displacement and demotion where it has already occurred. Information concerning Justice Department activity relative to faculty discrimination is presently only available in summary form for the Six States which comprise the Fifth Circuit Court of Appeals. I have enclosed a summary of such Justice Department involvement. This summary was extracted from an amicus brief recently prepared by the Civil Rights Division of the Justice Department for submission to the 5th U. S. Circuit Court of Appeals in the case of Willie McLaurin v. Columbia (Mississippi) Municipal Separate School District.





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

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January 14, 1971

MEMORANDUM

TO: Chief State School Officers and
School Superintendents

FROM: J. Stanley Pottinger, Director
Office for Civil Rights

SUBJECT: Nondiscrimination in Elementary and Secondary
School Staffing Practices



Title VI of the Civil Rights Act of 1964 requires that students in a school district receiving Federal financial assistance be afforded educational services free from discrimination on the ground of race, color or national origin. Since the Bradley and Rogers decisions of the Supreme Court in 1965 it has been clear that this provision precludes the assignment of teachers to public schools within the school system on a racially segregated basis. From more recent decisions of the courts of appeal, it has become equally clear that Title VI also precludes discrimination in the hiring, promotion, demotion, dismissal or other treatment of faculty or staff serving the students. This memorandum describes HEW policies reflecting more recent court decisions in each of these two areas.

The goal of HEW in rendering assistance to educational programs is to help school officials to achieve the highest possible quality of education for everyone. The elimination of discrimination in these programs is not only required by the law, but is consistent with this goal. Indeed, racial or ethnic discrimination in staffing actually deters the achievement of high quality educational opportunities.

School districts have for the past several years reported to HEW's Office for Civil Rights on the racial and ethnic composition of their staffs. It will now be HEW's policy to make further inquiry into staffing practices whenever it appears from this or other information either that a school district may be making its assignment of teachers or staff to particular schools on a basis that tends to segregate, or that the racial or ethnic composition of its staff throughout the system may be affected by discriminatory hiring, firing, promotion, dismissal or other employee practices.



Assignment of Staff to Schools

School districts that have in the past had a dual school system are required by current law to assign staff so that the ratio of minority group to majority group teachers in each school is substantially the same as the ratio throughout the school district. This is the so-called Singleton rule, enunciated by the Court of Appeals for the Fifth Circuit in January, 1970. The same rule applies to non-teaching staff who work with children.

Even though a school district has not in the past operated an official dual system of schools, its statistical reports may nonetheless indicate a pattern of assigning staff of a particular race or ethnic group to particular schools. Where this appears to be true, the Office for Civil Rights will seek more detailed information regarding assignment policies and practices. If it is determined that assignments have been discriminatory, the school district will be requested to assign teachers so as to correct the discriminatory pattern.

Hiring, Promotion, Demotion, Dismissal and Other Treatment of Staff

The reports presently being submitted to the Office for Civil Rights by local educational agencies reflect not only the assignment by race of teachers and other staff to particular schools but also reflect the total composition by race of the staff throughout the reporting school system and the hiring of teachers by race each year. With respect to the employment practices of each district it will be HEW's policy to make further inquiry into such matters when it appears (1) that there has been an abrupt and significant change in the racial or ethnic composition of the teaching or any other category of staff serving a particular school district, or (2) that the presence of members of racial or ethnic groups among newly employed staff members in any category differs significantly from their presence among qualified persons reasonably available for employment by the school district. HEW's Office for Civil Rights will ask school districts so identified to furnish more specific information concerning these practices in the following categories of staff:

1. Principals
2. Assistant Superintendents and other central office professional staff
3. Deputy, associate and assistant principals
4. Classroom teachers
5. Other professional staff for whom certification is generally expected, such as counsellors, librarians, and special education teachers
6. Other staff who work with children, such as teacher-aides and bus drivers



In each of these categories we will request information as to the identity of staff members who have been released or demoted, the reasons for release or demotion, the criteria used in selecting teachers for employment, promotion, release or demotion, and the comparative professional, educational and personal qualifications of the applicants and staff members involved.

This information will be analyzed, and, where necessary, additional investigation conducted to determine whether discrimination has been practiced. It is, of course, not possible to catalog all forms which such discrimination might take. Several of the more obvious methods of discrimination are:

1. Hiring--A school district which focuses its recruitment efforts on teacher training institutions attended predominantly by members of one race while ignoring institutions attended predominantly by members of another race is discriminating in its hiring practices. Similarly, the imposition of different hiring procedures, such as the requirement of additional personal interviews for members of one race as contrasted with others, is discriminatory. Discrimination in other features of the employment process may also be found in salaries offered, working conditions promised, training provided and tests or other qualifications imposed.



2. Promotions--The selection of teachers or other staff for promotion may be subject to racial discrimination just as the selection of teachers for employment. Any form of such discrimination would be a violation of law.

3. Demotions--The demotion of a staff member, whether involving a cut in pay or simply a change in duty, is discriminatory if it reflects a racial decision by the school administrators. Thus, if the consolidation of two schools necessarily results in the demotion of some staff members, such as department heads, counsellors and coaches, the selection of the staff members to be demoted may not be based upon race. The courts have also held that persons demoted as an incident to the desegregation process are to be given preference in future promotions.

4. Dismissals--Dismissal of a teacher for failure to meet certain standards or qualifications would, of course, be racially discriminatory if the same standards or qualifications were not applied to teachers of another race. A teacher who has been assigned to a particular school for racial reasons may not thereafter be dismissed if a reduction of force results in the closing of that school unless his qualifications for teaching are compared with all other teachers throughout the system and he has been found, under reasonable and objective criteria, to be less qualified than all teachers retained in the system.

If it is determined from the information furnished by the school district and from any other investigation that discrimination has been practiced, the school district will be requested to develop a plan for prompt corrective action. The types of corrective action required will depend upon the nature and results of the discrimination that has been practiced.

A discriminatory dismissal and its effect may be adequately corrected by reinstatement of the dismissed staff member together with the payment of any lost pay. Discriminatory hiring practices may be sufficiently corrected by adopting objective criteria and standards for future recruitment and hiring and by promptly offering positions to qualified persons who have been rejected or overlooked. In each case, however, the school district will be asked to develop and submit a specific plan for correcting the effects of the discriminatory practice and assuring against the repetition of such discrimination.

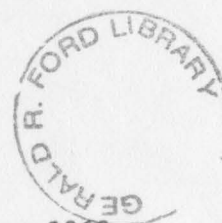
When it is clear that the effect of the discrimination cannot otherwise be corrected and the discrimination has in fact resulted in a significant distortion in the racial or ethnic composition of the staff, the school district may be asked to develop a plan designed to achieve a racial and ethnic composition of its total staff which will correct the distortion. In determining what that composition should be, consideration will be given to the past composition of the staff in each category and to information bearing on the reasonable availability of qualified teachers and other categories of staff from racial and ethnic minorities.

I have been assured by the Office of Education that it will give priority attention to requests for consultation and assistance in the development of realistic and educationally sound plans.

We in the Office for Civil Rights will be pleased to do everything possible to assist school officials to meet their Title VI responsibilities.



TABLE I

11 - SOUTHERN STATES

	Change in No. of Black Teachers Since 1968		Change in Number of White-Anglo Teachers Since 1968		Relative Decline in Black Teachers
	Number Change (1)	Percent Change (2)	Number Change (3)	Percent Change (4)	
N. Car.	-948	-7.9	1,689	5.0	-12.9
Ala.	-533	-5.5	127	0.6	- 6.1
Miss.	-469	-6.2	35	0.4	- 6.6
La.	-419	-3.5	252	1.2	- 4.7
Ark.	-300	-9.2	709	7.3	-16.5
Ga.	-282	-2.5	2,074	7.6	-10.1
S. Car.	-193	-2.5	1,019	6.7	- 9.2
Va.	-177	-2.1	2,633	7.8	- 9.9
Tenn.	- 40	-0.7	2,038	8.1	- 8.8
Tex.	282	2.3	5,080	6.7	- 4.4
Fla.	850	8.2	4,173	9.8	- 1.6
Total South	-2,229	-2.2	19,829	6.3	- 8.5

NOTE: This chart compares 1968 and 1970 Teacher Statistics

TEACHER DISPLACEMENT UNDER TITLE VI
39 DISTRICTS CITED IN
ADAMS v. RICHARDSON DECISION

TABLE II

AFFIRMATIVE ACTION
PLAN ACCEPTED

Pewitt, Tex.
 Ross-Van Ness, Ark.
 Crockett Co. (Ozona), Tex.
 Lonoke, Ark.
 Dumas, Ark.
 Waldo, Ark.
 Cameron Parish, La.
 Dayton, Tex.
 Hamburg, Ark.
 Emmet, Ark.
 Magnolia, Ark.
 Turrell, Ark.
 Malvern, Ark.
 Union Co., Ark.
 Clarendon, Ark.
 Okmulgee, Okla.
 Lakeside, Ark.
 Gilmer, Tex.
 Dermott, Ark.
 LaMarque, Tex.
 Texarkana, Tex.
 Stuttgart, Ark.
 Frederick, Okla.
 Hope, Ark.

FOUND IN
COMPLIANCE

Ashdown, Ark.
 Cotton Plant, Ark.
 Hot Springs, Ark.
 Centerville, Tex.
 Hemphill, Tex.

COURT ORDER OR
COURT INVOLVED

McNeal, Ark.
 Idabel, Okla.
 Parkin, Ark.

UNDER REVIEW FOR
POSSIBLE ADMINISTRATIVE
ENFORCEMENT ACTION

Brenham, Tex.
 Arkadelphia, Ark.
 Huttig, Ark.
 Stephens, Ark.
 Mt. Holly, Ark.
 Texarkana, Ark.

DISMISSED FOR
LACK OF EVIDENCE

Chickasha, Okla.



TEACHER DISPLACEMENT CASES UNDER TITLE VI
OTHER CASES

AFFIRMATIVE ACTION
PLAN ACCEPTED

Gainesville, Ga.

ADMINISTRATIVE
HEARING SET

Crockett, Tex.
Sparkman, Ark.

ADMINISTRATIVE
HEARING HELD

*Atlanta, Tex.
**Marion, Ark.

RESOLVED

Lenoir, N. Car.
Howard Co., Md.
Karnack, Tex.



*Under Appeal
**No Decision Yet

Federal register

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PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EMERGENCY SCHOOL
AID



Title 45—Public Welfare

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

PART 185—EMERGENCY SCHOOL AID

Notice of propose rule making was published in the *FEDERAL REGISTER* on December 2, 1972, at 37 FR 25746, setting forth specific requirements for the award of assistance to local educational agencies and other public or nonprofit private agencies, institutions, or organizations under sections 706 and 708(b) of the Emergency School Aid Act (Subparts B, C, and G of the proposed regulation) and general provisions for the administration and operation of programs under the Act (Subparts A, E, and K of the proposed regulation). Comments were received with respect to the faculty ratio requirement for integrated schools projects (§ 185.11(d)(2)(ii)), the definition of "additional cost" (§ 185.13(a)), the amount of data required from applicant local educational agencies (§§ 185.13, 185.23, 185.43), the role of State educational agencies (§§ 185.13(j); 185.63(b)(3)), the inclusion of Public Law 81-874 assistance in computing applicant's maintenance of effort (§ 185.13(i)(2)), possible disclosure of students' individual test scores (§ 185.13(k), 185.44(g)), the weight assigned to objective factors in evaluating local educational agencies' applications for basic grants and pilot projects (§§ 185.14, 185.24), the measurement of applicants' financial and educational needs (§ 185.14), the basis for rating applications for assistance to prevent minority group isolation (§ 185.14), the requirements for public hearings and the establishment of districtwide and student advisory committees (§§ 185.41, 185.65), the districtwide advisory committee's right to a hearing with the Assistant Secretary (§ 185.41(d)), the definition of an "equitable basis" for participation of nonpublic school students and faculty members (§ 185.42(b)(2)), the prohibition against any payment of salaries of nonpublic school teachers or employees (§ 185.42(h)), the waiver of the nonpublic school participation requirement (§ 185.42(i)), and the relation between applicant nonprofit groups and the local educational agencies they propose to serve (§§ 185.61(d), 185.63(b)(3)). Following review of the comments, the following changes were made:

A—SUMMARY OF CHANGES BASED ON COMMENTS RECEIVED

1. Section 185.13(i)(2) has been amended so that a local educational agency need not include funds received pursuant to Public Law 81-874 in computing its "current expenditure per pupil" for purposes of determining compliance with the requirement as to maintenance of local fiscal effort.

2. Section 185.13(k) has been amended to make it clear that the reporting requirement of § 185.13(k)(1)(iii) refers to averages of test scores, not to individual test data. In addition, the

requirement of § 185.13(k)(2) that reports and records covered by § 185.13(k) be made available to the public has been modified so as not to apply to the reports and records concerning eligibility and compliance as specified in § 185.13(k)(3). Nonetheless, applicants may be required, pursuant to § 185.44(g) (which has been reworded), to disclose certain data concerning individual students or employees to the Secretary or the Assistant Secretary, and are urged to make available to members of the general public such eligibility and compliance information as will not violate individuals' rights of privacy or confidentiality.

3. A number of comments were received as to the amount of information required to be submitted by applicants pursuant to § 185.13. This information is necessary for a determination as to whether applicants are in compliance with various statutory requirements. However, § 185.13(g) has been amended by deleting subparagraph (2), on the ground that the information required therein does not materially assist in making the required determination as to compliance with section 710(a)(10)(A) of the Act.

4. Section 185.24(a) has been amended to reduce the weight given to "effective net reduction of minority group isolation" in rating applications by local educational agencies for pilot projects. Since such projects are designed for students in minority group isolated schools where reduction or elimination of such isolation is difficult or impossible, a maximum of 30 points, rather than 60, will be awarded to applicants for such assistance on the basis of their district-wide efforts to reduce or eliminate such isolation. A number of commenters urged that a similar change be made with respect to basic grants, but the emphasis in section 706(a) of the Act on reduction of isolation, and the importance of such reduction in determining the need for basic grant assistance, made such a revision inadvisable.

5. Section 185.41(b) has been amended to clarify the requirement that the "minutes" of the required public hearing be submitted with a local educational agency's application for assistance. Such minutes need not be a verbatim transcript of the hearing, but must include, at a minimum, the time, date, and location of the hearing, the number of persons in attendance, and a brief summary of the views expressed.

6. Section 185.41(c)(2) has been amended to require applicant local educational agencies to consult with the appropriate teachers' organization before selecting teachers to serve on the required district-wide advisory committee, and to authorize such agencies to delegate such selections to the appropriate organization.

7. Section 185.41(c)(4) has been amended to permit adult members of district-wide advisory committees to select more than the minimum number of

secondary school students to serve on the committee, and § 185.41(h) has been amended to allow members of student advisory committee formed after the award of assistance to select additional student members for the district-wide committee. In all cases, the racial, ethnic and parental ratios set forth in § 185.41(c)(3) are required to be maintained.

8. Section 185.41(d) has been amended to afford local educational agencies an opportunity to reply to comments or criticisms made by a district-wide advisory committee at a hearing with the Assistant Secretary or his designee.

9. Sections 185.41(g) and 185.65(c) have been amended to require participation by the district-wide advisory committee in the development of any amendments of, or addition to, the proposed program, project, or activity.

10. The definition in § 185.42(b)(2) of an "equitable basis" for participation of nonpublic school students and faculty members in a local educational agency's program, project, or activity has been amended to make it clear that the special needs served in nonpublic nonprofit elementary and secondary schools need not be identical to those served in the public schools.

11. The restriction in § 185.42(h) on payment, with funds awarded under the Act, of salaries for teachers and other employees of nonpublic schools has been reworded to indicate that compensation of such persons for services performed after school hours while not under the direction and control of such schools may be permissible in appropriate cases.

12. In § 185.42(i), the provision that the Assistant Secretary "may" waive the nonpublic school participation requirement in certain cases and arrange for such participation as set forth in the Act has been amended to provide that the Assistant Secretary "shall" do so, in order to conform to the statutory language.

13. Section 185.43(a)(1) has been amended so that educational agencies, in transferring property or services, need not obtain articles of incorporation or similar documents from transferees if such agencies can be satisfied from the legal name and address of the transferee (or its principal) that they are not dealing with a nonpublic school or school system or a person or organization controlling, operating, or intending to establish such a school or school system.

B—OTHER CHANGES

1. Section 185.41(h) has been amended to require that student advisory committees be established by local educational agencies not more than 15 days after the award of assistance or 15 days after the commencement of the academic year for which assistance is awarded, whichever is later.

2. The exception to § 185.43(c)(1) for testing for assignments to remedial language classes has been eliminated because the inclusion of English-dominant children in such classes is encouraged and because such classes, in any event, would not normally account for more

than 25 per centum of the school day classroom periods.

3. Section 185.45 has been amended to make it clear that the provisions as to termination of assistance apply to all recipients of assistance under the Act, except those awarded evaluation contracts under section 713.

4. Appendix A, Grant Terms and Conditions, has been amended to apply to assistance contracts as well as grants, and to conform to the uniform policies regarding Federal financial assistance as set forth in Office of Management and Budget Circular A-102.

5. Other minor changes have been made, either to correct clerical errors or to affect solely technical matters.

C—SUMMARY OF COMMENTS

1. A number of commenters questioned the requirement of § 185.11(d)(2)(ii) that "integrated schools" established or maintained with assistance under the Act have faculties in which the proportion of minority group members is within 10 per centum of the percentage of minority group members residing in the school district served by the applicant or, in certain cases, within 10 per centum of the ratio on the applicant's faculty as a whole. The subdivision in question attempts to make more specific the faculty assignment requirements embodied in the definition of an "integrated school" set forth in section 720(7) of the Act. It should be understood, however, that the requirement in question does not apply to all local educational agencies applying for assistance, but only to those seeking to establish or maintain one or more integrated schools pursuant to § 185.11(d). The faculty assignment requirement for other local educational agencies, set forth in § 185.43(b)(2), is that full-time classroom teachers be assigned to individual schools so as not to identify any school as intended for students of a particular race, color, or national origin.

2. A number of commenters felt that the assurances required pursuant to § 185.13(1), and particularly pursuant to § 185.13(1)(i), improperly refer to transfers, practices, procedures, or other conduct which occurred prior to June 23, 1972, the effective date of the Act. It should be understood that in this regard, § 185.13(1) requires assurances that the applicant has not engaged prior to the date of its application in transfers, practices, procedures, or other conduct proscribed by § 185.43, and that the reference to § 185.43 incorporates the June 23 effective date which is an element of each paragraph of that section. Therefore, only violations occurring or continuing after June 23 are covered by the required assurances.

3. A number of commenters expressed concern that the criteria for assistance in § 185.14, particularly § 185.14(a)(2), do not fairly reward plans for the prevention of minority group isolation. A plan for prevention of such isolation qualifies a local educational agency for assistance under § 185.11(b)(3), and the effectiveness of a program, project, or ac-

tivity related to such a plan, which cannot readily be quantified, will be rated on the basis of the programmatic criteria set forth in § 185.14 (§ 185.14(b)(1) has been amended to correct a clerical error and to reward needs assessment related to prevention of minority group isolation). Local educational agencies which have implemented an effective plan for desegregation or for elimination or reduction of minority group isolation, and which now are in need of assistance to combat resegregation, can apply for a prevention project and earn full credit for the effective net reduction of minority group isolation which they have already accomplished. Such agencies which have not previously desegregated or reduced minority group isolation, or which have done so on a relatively small scale, may also apply for prevention projects, but their need for such assistance, as measured pursuant to § 185.14(a)(2), will be of a lesser degree.

4. A number of commenters felt that the criteria set forth in § 185.14 fail to take account of local educational agencies' financial and educational need as described in section 710(c)(1) of the Act. It should be understood that an applicant's financial need, with respect to the program, project, or activity to be assisted, is considered in determining the additional cost to be funded pursuant to § 185.13(a) and § 185.14(c)(1). Educational needs are a major factor in awarding points to an applicant on the basis of the needs assessment criterion (§ 185.14(b)(1)).

5. A number of commenters objected to the requirement of §§ 185.41(c)(1) and 185.65(b)(1) that applicants designate at least five civic or community organizations to select members of the applicant's district-wide advisory committees. A similar requirement was included in the regulation for the Emergency School Assistance Program (35 FR 13442, 36 FR 16546), and proved effective in insuring that the required advisory committees were representative of the community to be served. The required reliance upon civic and community organizations is the most effective method of achieving the statutory objective of involvement of "representatives of the area to be served" (section 710(a)(3) of the Act).

6. A number of comments were received objecting to the requirement of § 185.41(h) that local educational agencies establish student advisory committees in secondary schools affected by their program, project, or activity. The Assistant Secretary feels that student participation is essential to the success of programs, projects, or activities funded under the Act, and that the student advisory committee requirement is the most effective means of insuring such participation, in furtherance of the objectives of section 710(a)(3) of the Act. Such committees have been effective vehicles for student involvement under the emergency school assistance program.

7. A number of comments were received to the effect that State educational agencies have not been given a

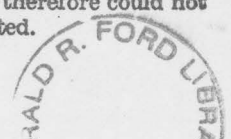
meaningful role in the application and funding process. Pursuant to the Act, State educational agencies are provided an opportunity to comment to the applicant and the Assistant Secretary in the case of applications under Subparts B and C (§ 185.13(j)), and to the Assistant Secretary in the case of applications under Subpart G (§ 185.63(b)(3)). The Assistant Secretary intends to accord such comments great weight in making decisions as to the award of assistance, and has also invited State educational agencies to participate in providing leadership and technical assistance to applicants and grantees and in monitoring programs, projects, and activities assisted under the Act. In addition, State educational agencies may be eligible to apply for assistance under subpart G, for programs, projects, or activities related to local educational agencies implementing eligible plans.

8. A number of commenters questioned the stipulation in § 185.61(d)(2) that a request by a local educational agency is required before a public or nonprofit private applicant can be assisted to support the development of a plan or project described in § 185.11. The stipulation reflects the determination that it would not further the purposes of the Act to assist the development of a plan for a local educational agency which had shown no interest in its development or implementation.

9. A number of commenters also questioned the absence of a stipulation such as that described in paragraph 8 above with respect to public or nonprofit private applicants seeking assistance to support the implementation of a plan or project described in § 185.11. While the regulation, in §§ 185.63(b)(3), 185.64(b)(1)(i), and 185.64(b)(3)(i)(a), rewards such applicants for efforts to cooperate and coordinate with the appropriate local educational agency, there was no basis for a determination that no program, project, or activity assisted under Subpart G could succeed without being initially requested by the local educational agency.

10. One comment was received to the effect that the regulatory provisions cited in paragraph 9 above with respect to cooperation and coordination between local educational agencies and public or nonprofit private applicants unfairly gave local educational agencies a "veto" power over Subpart G applications. While the Assistant Secretary strongly encourages such cooperation and coordination, the regulation does not penalize a Subpart G applicant which has sought in good faith, but failed, to establish a working relationship with the appropriate local educational agency.

11. A number of other comments were received regarding such matters as public hearings (§ 185.41(b)), advisory committee participation (§§ 185.41(a), (d), (e), and (g)), and limitations on eligibility (§§ 185.43, 185.44), which are governed or required by specific provisions of the Act and which therefore could not be changed as suggested.



RULES AND REGULATIONS

12. A number of inquiries were received as to whether the definition of "additional cost" in § 185.13(a) excludes assistance for any indirect costs associated with a proposed program, project, or activity. The regulatory definition does not necessarily exclude such costs, but requires them to be actual, incremental costs attributable to the program, project, or activity to be assisted. The allowability of claimed indirect costs will be determined on a case-by-case basis in the light of § 185.13(a).

After consideration of the above comments and consultation with the National Advisory Council on Equality of Educational Opportunity as set forth in section 716 of the Act, Part 185 of Title 45 of the Code of Federal Regulations as proposed is hereby adopted.

Federal financial assistance provided pursuant to the Emergency School Aid Act is subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Such assistance is also subject to Title IX of the Education Amendments of 1972 (20 U.S.C. 1681).

Effective date. As appears from the above summary, the modifications herein do not involve any changes of a substantial nature from the provisions which were published in the FEDERAL REGISTER on December 2, 1972, as proposed rule making. Accordingly, this regulation shall be effective on February 6, 1973.

Date: January 29, 1973.

S. P. MARLAND, Jr.,
Assistant Secretary
for Education.

Approved: January 30, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health,
Education, and Welfare.

Subpart A—Purpose

Sec.	Purpose.
185.01	Definitions.
185.02	General terms and conditions.
185.03	[Reserved]
185.04-185.10	[Reserved]

Subpart B—Basic Grants

185.11	Eligibility for assistance.
185.12	Authorized activities.
185.13	Applications.
185.14	Criteria for assistance.
185.15-185.20	[Reserved]

Subpart C—Pilot Projects

185.21	Eligibility for assistance.
185.22	Authorized activities.
185.23	Applications.
185.24	Criteria for assistance.
185.25-185.30	[Reserved]

Subpart D—Metropolitan Area Projects

185.31-185.40	[Reserved]
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Subpart E—General Requirements for Educational Agencies

185.41	Advisory committees.
185.42	Participation of children enrolled in nonpublic schools.
185.43	Limitations on eligibility.
185.44	Waiver of ineligibility.

Sec.	Termination of assistance.
185.45	[Reserved]
185.46-185.50	[Reserved]

Subpart F—Bilingual Projects

185.51-185.60	[Reserved]
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Subpart G—Public or Nonprofit Private Organizations

185.61	Eligibility for assistance.
185.62	Authorized activities.
185.63	Applications.
185.64	Criteria for assistance.
185.65	Advisory committees.
185.66-185.70	[Reserved]

Subpart H—Educational Television

185.71-185.80	[Reserved]
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Subpart I—Evaluation

185.81-185.90	[Reserved]
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Subpart J—Special Projects

185.91-185.94	[Reserved]
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Subpart K—Reservations

185.95	Reservations of funds.
185.96-185.100	[Reserved]

APPENDIX A—GRANT TERMS AND CONDITIONS

AUTHORITY: Except as specifically noted below, the provisions of this Part 185 are issued under Title VII of Public Law 92-318, 86 Stat. 354-371 (20 U.S.C. 1601-1619).

Subpart A—Purpose

§ 185.01 Purpose.

Programs, projects, or activities assisted under the Act shall be for the purpose of achieving one or more of the following objectives:

(a) Meeting the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;

(b) Eliminating, reducing, or preventing minority group isolation in elementary and secondary schools with substantial proportions of minority group students;

(c) Aiding school children in overcoming the educational disadvantages of minority group isolation.

(Public Law 92-318, section 702(b))

§ 185.02 Definitions.

Except as otherwise specified, the following definitions shall apply to the terms used in this part:

(a) The term "Assistant Secretary" means the Assistant Secretary of Health, Education, and Welfare for Education.

(Public Law 92-318, section 720(1))

(b) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(Public Law 92-318, section 720(3))

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

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

(d) The term "institution of higher education" means an educational institution in any State which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's degree; or provides not less than a 2-year program which is acceptable for full credit toward such a degree, or offers a 2-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semi-professional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association listed by the Commissioner of Education for the purposes of this paragraph.

(Public Law 92-318, section 720(5))

(e) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation, 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, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school and where responsibility for the control and direction of the activities in such schools which are to be assisted under the Act is vested in an agency subordinate to such a board or other authority, the Assistant Secretary may consider such subordinate agency as a local educational agency for purposes of the Act.

(Public Law 92-318, section 720(8))

(f) (1) The term "minority group" refers to (i) persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, Oriental, Alaskan natives, and Hawaiian natives, and (ii) (except for purposes of section 705 of the Act), as determined by the Assistant Secretary, persons who are from environments in which a dominant language is other than English and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity.

(2) The term "Spanish-surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

(Public Law 92-318, section 720(9))

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(g) The terms "minority group isolated school" and "minority group isolation" in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 percent of the enrollment of a school.

(Public Law 92-318, section 720(10))

(h) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(Public Law 92-318, section 720(12))

(i) The term "State" means one of the 50 States or the District of Columbia. For purposes of section 708(a) of the Act, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall be deemed to be States.

(Public Law 92-318, section 720(14))

(j) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for such purpose.

(Public Law 92-318, section 720(15))

(k) The term "desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" does not mean the assignment of students to public schools in order to overcome racial imbalance.

(42 U.S.C. 2000c(b))

(l) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(m) The term "nonprofit" as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(Public Law 92-318, section 720(11))

(n) The term "the Act" means the Emergency School Aid Act (title VII of Public Law 92-318).

§ 185.03 General terms and conditions.

Grants and assistance contracts awarded pursuant to this part shall be subject to the general terms and conditions attached as Appendix A to this part.

(Public Law 92-318, title VII)

§§ 185.04-185.10 [Reserved]

Subpart B—Basic Grants

§ 185.11 Eligibility for assistance.

(a) *Plans pursuant to court or agency order.* (1) A local educational agency

may apply for assistance under this subpart if it is implementing a plan which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools. For purposes of this subparagraph, a State agency or official of competent jurisdiction means any State agency or official authorized pursuant to State law to issue such an order.

(2) A local educational agency may apply for assistance under this subpart if it is implementing a plan which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in the schools of such agency.

(Public Law 92-318, section 708(a)(1)(A))

(b) *Nonrequired plans.* (1) A local educational agency may apply for assistance under this subpart if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan for the complete elimination of minority group isolation in all the minority group isolated schools of such agency. The term "complete elimination of minority group isolation," for purposes of this subparagraph, refers to a condition in which no school operated by a local educational agency has or will have (upon implementation of such plan) a minority group enrollment of more than 50 percent, where (prior to the implementation of such plan) minority group children attended one or more schools operated by such agency in which they constituted more than 50 percent of the enrollment.

(2) A local educational agency may apply for assistance under this subpart if it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to eliminate or reduce minority group isolation in one or more of the minority group isolated schools of such agency, or to reduce the total number of minority group children who are enrolled in minority group isolated schools of such agency.

(i) Elimination of minority group isolation, for purposes of this subparagraph, refers to a change in the enrollment of one or more schools operated by a local educational agency (pursuant to such plan) whereby the proportion of minority group children attending such school or schools is reduced from a proportion greater than 50 percent to a proportion of 50 percent or less.

(ii) Reduction of minority group isolation, for purposes of this subparagraph, refers to the reduction, but not below 50 percent (pursuant to such plan), of the proportion of minority

group children attending one or more schools operated by a local educational agency at which school or schools such children constitute more than 50 percent of the enrollment.

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

(4) A local educational agency may apply for assistance under this subpart if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under this subpart, adopt and implement, a plan to enroll and educate in the schools of such agency children who would not otherwise be eligible for enrollment because of nonresidence in the school district of such agency, where such enrollment would make a significant contribution toward reducing minority group isolation in one or more of the school districts to which such plan relates. Such a plan shall not be deemed to make a significant contribution toward reducing minority group isolation unless such plan involves the enrollment by a local educational agency of at least 25 children who would not otherwise be eligible for enrollment because of nonresidence in the school district of such agency. Reducing minority group isolation in one or more school districts, for purposes of this subparagraph, refers to actions undertaken by a local educational agency (pursuant to such plan) which has any of the effects described in subparagraphs (1), (2)(i), or (2)(ii) of this paragraph.

(5) A local educational agency shall be deemed to have adopted and implemented a plan described in this paragraph without having been required to do so, if such plan has not been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, or has not been required and approved by the Secretary under title VI of the Civil Rights Act of 1964, notwithstanding the fact that such plan may be required by, or such local educational agency may be acting pursuant to, the Constitution and laws of the United States or of any State.

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

(c) *Implementation of a plan.* (1) For purposes of determining eligibility for assistance under this subpart, a local educational agency shall be deemed to be implementing a plan if it is operating its school system in accordance with the requirements of such plan. The eligibility of a local educational agency for consideration under the Act shall not be affected



RULES AND REGULATIONS

by the date on which its plan was adopted, or ordered to be adopted, or by the fact that the steps to be taken under the plan have been completed.

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

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

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

(3) An application of a local educational agency for assistance under this subpart shall be accompanied by (i) a complete copy of the plan, including all relevant legal documents, which such agency has adopted and is implementing (or will adopt and implement if such assistance is made available) and upon which such agency bases its application for such assistance; (ii) a summary of the present requirements for such plan; and (iii) a concise statement showing the relationship between such plan and the program, project, or activity for which such assistance is sought.

(Public Law, 92-318, sections 706(a)(1)(B), (C), and (D), 707)

(d) *Integrated schools projects.* (1) A local educational agency in the schools of which more than 50 percent of the number of children enrolled are minority group children, which agency has applied for and will receive assistance under subpart C of this part, may apply for assistance under this subpart, in an amount not to exceed the sum to be awarded under subpart C of this part, for the establishment or maintenance of one or more integrated schools.

(2) (i) For purposes of this paragraph, an integrated school must have an enrollment in which (a) at least 40 percent of the children are from families whose income is higher than the median family income for the school district served by the local educational agency (or the appropriate governmental unit for which such information is available), or (b) at least 50 percent of the children currently score at or above the 60th percentile on a recognized standard reading achievement test when compared with students of comparable age or grade level in the schools of such agency as a whole, and in which the number of nonminority group children constitutes that propor-

tion of the enrollment which will achieve stability (in no event more than 65 percent of such enrollment, nor less than the proportion of nonminority children in attendance at all the schools operated by such agency).

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

(Public Law 92-318, sections 706(a)(3), 720(7))

§ 185.12 Authorized activities.

(a) The following activities are authorized to be carried out with financial assistance made available under this subpart when such activities would not otherwise be funded and are designed to carry out the purposes described in § 185.01. Such activities shall be directly related to, and necessary to, the implementation of a plan or project described in § 185.11:

(1) Remedial services, beyond those provided under the regular school program conducted by the local educational agency, including student to student tutoring, to meet the special needs of children (including gifted and talented children) in schools which are affected by a plan or project described in § 185.11, when such services are deemed necessary to the success of such plan or project;

(2) The provision of additional professional or other staff members (including staff members specially trained in problems incident to desegregation or the elimination, reduction, or prevention of minority group isolation) and the training and retraining of staff for such schools;

(3) Recruiting, hiring, and training of teacher aides;

(4) Inservice teacher training designed to enhance the success of schools assisted under the Act through contracts with institutions of higher education, or other institutions, agencies, and organizations individually determined by the Assistant Secretary to have special competence for such purpose;

(5) Comprehensive guidance, counseling, and other personal services for children in schools affected by a plan or project described in § 185.11;

(6) The development and use of new curricula and instructional methods, practices, and techniques (and the acquisition of instructional materials relating thereto) to support a program of instruction for children from all racial,

ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups;

(7) Educational programs using shared facilities for career education and other specialized activities;

(8) Innovative interracial educational programs or projects involving the joint participation of minority group children and other children attending different schools, including extracurricular activities and cooperative exchanges or other arrangements between schools within the same or different school districts;

(9) Community activities, including public information efforts in support of a plan, program, project, or activity described in the Act;

(10) Administrative and auxiliary services to facilitate the success of the program, project, or activity assisted under this subpart;

(11) Planning programs, projects, or activities assisted under this subpart, the evaluation of such programs, projects, or activities, and dissemination of information with respect to such programs, projects, or activities;

(12) Repair or minor remodeling, or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of instructional equipment) and the lease or purchase of mobile classroom units or other mobile education facilities.

(Public Law 92-318, sections 702(b), 707(a))

(b) The activities authorized under paragraphs (a) (10) and (11) of this section shall be assisted only as part of, and in conjunction with, a comprehensive educational program, project, or activity designed to carry out the purposes described in § 185.01.

(Public Law 92-318, sections 702(b), 707(a))

(c) Applications by local educational agencies for assistance under this subpart shall include an assurance that in the case of a proposed program or project which includes activities authorized under paragraph (a) (3) of this section, preference in recruiting and hiring teacher aides shall be given to parents of children attending schools assisted under the Act.

(Public Law 92-318, section 707(a)(3))

(d) The term "repair or minor remodeling or alteration," for purposes of paragraph (a) (12) of this section, means the making over or remaking, in a previously complete building or facility, of space used or to be used for activities otherwise authorized by this section, where such making over or remaking is necessary for effective use of such space for such purpose and where no other space is available for such use. The term does not include building construction, structural alterations to buildings, building maintenance, or general or large-scale renovation of existing buildings or facilities. In no case may more than 10 percent of the amount made available to the applicant under this subpart be used for activities authorized under paragraph (a) (12) of this section.

(Public Law 92-318, section 707(a)(12))



§ 185.13 Applications.

An applicant desiring to receive assistance under this subpart for any fiscal year shall submit to the Assistant Secretary an application therefor for that fiscal year, which application shall set forth a program, project, or activity under which, and such policies and procedures as will assure that, the applicant will use the funds received under this subpart only for the activities set forth in § 185.12. Such application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary. Such application shall contain the following:

(a) *Additional cost.* An assurance that funds paid to the applicant under such application will be used solely to pay the additional cost to the applicant in carrying out the program, project, or activity described in the application, and that the funds requested in the application represent the additional cost to the applicant arising out of activities authorized under the Act, above that of the activities normally carried out by such applicant.

(1) In determining whether a cost of an activity for which assistance is sought under the Act is an additional cost, for purposes of this paragraph, the Assistant Secretary shall take into account only the actual, incremental cost of such activity. Incremental costs, for purposes of this paragraph, are those costs which can be identified specifically with a particular cost objective related solely to the activity to be assisted, and are not those costs incurred for a common or joint purpose benefiting any cost objective or objectives not so related to such activity.

(2) The cost of an activity which was supported by an applicant with funds from other sources during the fiscal year preceding the fiscal year or years for which assistance is sought under the Act, and for which funds available from such other sources for the fiscal year or years for which such assistance is sought have not been reduced except by the action of such applicant, shall not be considered as an additional cost to such applicant.

(Public Law 92-318, sections 706(c), 710(a) (4))

(b) *Administration by applicant.* An assurance that the program for which assistance is sought will be administered by the applicant, and that any funds received by the applicant under the Act, and any property derived therefrom, will remain under the administration and control of the applicant;

(Public Law 92-318, section 710(a) (5))

(c) *Unavailability of non-Federal funds.* An assurance that the applicant is not reasonably able to provide, out of non-Federal sources, the assistance for which application is made;

(Public Law 92-318, section 710(a) (6))

(d) *Evaluation.* An assurance that the applicant will cooperate with the Assistant Secretary or any State educational

agency, institution of higher education, or private organization, institution, or agency, including a committee established pursuant to § 185.41(a), in the evaluation by the Assistant Secretary or such agencies, institutions, or organizations of specific plans, programs, projects, or activities assisted under the Act. Such evaluations may require the establishment or maintenance of control groups or schools, and may include a reasonable number of interviews with, or questionnaires, achievement tests, and other evaluation instruments administered to, administrators, principals, teachers, students, program or project staff, and community members at reasonable times and places. Such evaluations may also require the applicant to provide reasonable assistance in the organization and administration of the evaluation, including recordkeeping. Where determined to be appropriate by the Assistant Secretary, participation by the applicant in an evaluation conducted pursuant to this paragraph shall be considered fulfillment of the requirements for local evaluation under paragraph (k) (1) of this section.

(Public Law 92-318, sections 710(a) (15), 713)

(e) *Compliance with plan.* An assurance that the applicant will carry out, and comply with, all provisions, terms, and conditions of any plan, program, project, or activity upon which a determination of its eligibility for assistance under the Act is based;

(Public Law 92-318, section 710(a) (9))

(f) *Religious activity.* An assurance that Federal funds made available under the Act will not be used in connection with any sectarian activity or religious worship, or in connection with any part of a school or department of Divinity. The term "school or department of Divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(g) *Supplementing of non-Federal funds.* An assurance that funds made available to the applicant under the Act will be so used (1) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of funds under the Act, be available from non-Federal sources for the purposes of the program for which assistance is sought, and for promoting the integration of the schools of the applicant, and for the education of children participating in the proposed program, project, or activity, and (2) in no case, as to supplant such funds from non-Federal sources.

(Public Law 92-318, sec. 710(a) (10) (A))

(h) *Coordination.* An assurance that funds made available under any other law of the United States will be used in coordination with funds made available under the Act, to the extent consistent with such other law; and a statement of

procedures employed by the applicant to coordinate its proposed program, project, or activity under the Act with projects conducted pursuant to Titles I, III, and VII of the Elementary and Secondary Education Act of 1965 and Title IV of the Civil Rights Act of 1964. Coordination, with respect to the assurance required by this paragraph, includes the following policies or procedures:

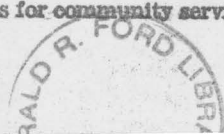
(1) Taking all practicable steps to obtain Federal assistance under any other law of the United States for which the applicant is eligible;

(2) Applying funds made available under the Act in such manner as not to duplicate or counteract the effects of funds made available under such other laws; and

(3) When practicable, applying funds made available under the Act so as to increase the impact or effectiveness of funds made available under such other laws, or to provide the same or similar benefits to children in need of, but not able to participate in, programs conducted under such other laws.

(Public Law 92-318, secs. 710(a) (8), 710(a) (10) (B); Senate Rept. No. 92-798, p. 217)

(i) *Maintenance of effort.* (1) An assurance (i) that the applicant has not reduced its fiscal effort for the provision of free public education for children in attendance at its schools for the fiscal year or years for which assistance is sought under the Act to less than that of the second preceding fiscal year, and (ii) that the current expenditure per pupil which such agency makes from revenues derived from its local sources for the fiscal year or years for which assistance under the Act will be made available to the applicant is not less than such expenditure per pupil which such agency made from such revenues for (a) the fiscal year preceding the fiscal year during which the agency began implementation of the plan with respect to which assistance is sought under the Act, or (b) the third fiscal year preceding the first fiscal year for which assistance will be made available under the Act, whichever is later; and (2) a statement of total local revenues available for expenditure and the tax rate applied by the responsible governmental unit for the fiscal year for which assistance is sought and for the second preceding fiscal year, and of the current expenditure per pupil from revenues derived from local sources for (i) the first fiscal year for which assistance is sought, (ii) the fiscal year preceding the fiscal year during which the agency began implementation of its plan, and (iii) the third fiscal year preceding the first fiscal year for which assistance is sought. The term "current expenditure per pupil," for purposes of this paragraph, means the expenditure for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities (but not including expenditures for community services, capi-



RULES AND REGULATIONS

tal outlay and debt service, or any expenditure made from funds granted under any Federal program of assistance), divided by the number of children in average daily attendance to whom the agency provided free public education during the year for which the computation is made. This paragraph shall not be construed to disqualify an agency whose fiscal effort or current expenditure per pupil has been reduced solely as part of a comprehensive State plan to reorganize public educational financing (without regard to funds made available or to be made available under the Act), where the effect of such plan is to maintain or increase the combined State and local fiscal effort or expenditure per pupil.

(Public Law 92-318, sections 710(a) (13), 710(a), 720(2))

(j) *State agency review.* An assurance that the appropriate State educational agency has been given at least 15 days to offer recommendations to the applicant; and a statement indicating the State official or agency to whom the proposed program, project, or activity has been submitted for such recommendations, and the date of such submission. No application for assistance shall be approved less than 10 days after a copy of said application has been submitted by the Assistant Secretary to the appropriate State educational agency for comment, unless the Assistant Secretary has received comments from such agency upon such application prior to expiration of the 10-day period.

(Public Law 92-318, section 710(a) (14))

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

(1) In the case of reports relating to performance and evaluation of the approved program, project, or activity, such reports shall provide objective measurement of the change in educational achievement and other changes effected with assistance provided under the Act, including:

(i) Specific evidence of progress toward achievement of the goals stated in the applicant's project application;

(ii) Specific evidence as to the impact of assistance provided under the Act upon related programs and upon the community served by the applicant; and

(iii) Specific information, such as averages of standardized achievement test scores, relating to educational achievement of children in the schools of the applicant, and to the effect of assistance provided under the Act upon the educational performance of such children.

(2) Copies of the reports and records referred to in subparagraph (1) of this paragraph shall be made available by the

applicant to interested members of the public at no charge or at a charge not to exceed the cost to the applicant of making such copies available, and such reports and records shall be available for inspection by interested members of the public at reasonable times and places.

(3) Reports and records required to be kept and to be made available to the Assistant Secretary under this paragraph shall include information as to the matters set out in §§ 185.43 and 185.44, including but not limited to:

(i) Records relating to transfers of property or services as required under §§ 185.43(a) and 185.44(c);

(ii) Records relating to recruitment, hiring, promotion, payment, demotion, dismissal, and assignment of instructional, administrative, or other personnel for the periods covered by §§ 185.43(b) and 185.44(d);

(iii) Records relating to assignment of children to or within classes and to any ability grouping practiced by the applicant, as such grouping is defined in § 185.43(c); and

(iv) Records relating to the practices or procedures referred to in § 185.43(d), including specific information as to disciplinary sanctions (corporal punishment, suspension, expulsion, and the like) imposed upon minority and non-minority group children in every school operated by the applicant.

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

(l) *Compliance with eligibility requirements.* (1) (i) An assurance that the applicant has not engaged prior to the date of its application for assistance under the Act, and will not engage subsequent to such date, in any transfer of property or services to a discriminatory nonpublic school (including such schools or school systems to whose students, faculty, or other educational staff services will be provided under § 185.42) in violation of § 185.43(a) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a list of names and addresses of all nonpublic schools or school systems (or any person or organization controlling, operating, or intending to establish such a school or school system) to which the applicant has transferred (directly or indirectly, by gift, lease, loan, sale, or any other means) any real or personal property or made available any services since June 23, 1972.

(2) (i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any practice, policy, or procedure with respect to minority group personnel in violation of § 185.43(b) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a statement of the number of principals, full-time classroom teachers, and athletics head coaches, by race, for the academic year immediately preceding (a) the year in which the applicant first implemented

any portion of a plan for desegregation or for elimination or reduction of minority group isolation in its schools pursuant to an order of a Federal or State court or administrative agency, or (b) the year in which the applicant first implemented any portion of a plan described in subpart B of this part, whichever is earlier, and of the number of athletics head coaches, by race, as of the date of its application;

(3) (i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any procedure for assignment of children to classes in violation of § 185.43(c) (or that if such a violation has occurred, application for a waiver of ineligibility has been made to the Secretary); and (ii) a statement of the total number of children assigned by the applicant as of the date of the application to all-minority or all-nonminority classes for more than 25 percent of the school day classroom periods, with an educational justification or explanation for any such assignments;

(4) (i) An assurance that the applicant has not had or maintained in effect prior to the date of its application for assistance under the Act, and will not have or maintain in effect subsequent to such date, any practice, policy, or procedure which results in discrimination against children in violation of § 185.43(d) (or that if such violation has occurred, application for a waiver of ineligibility has been made to the Secretary); (ii) a statement of the enrollment, by race, in classes maintained by the applicant as of the date of its application for the mentally retarded or for children with other learning disabilities; (iii) a statement of the number and percentage of students enrolled in the first grade of the applicant's schools as of the date of its application whose primary home language is other than English; (iv) if the number of children listed pursuant to subdivision (iii) of this subparagraph is greater than 100, or the percentage listed pursuant thereto is greater than 5 percent, a statement of the averages of the most recent standardized reading achievement scores, by race or ethnic group, for students enrolled in the third and sixth grades of the applicant's schools (or the nearest grades for which such scores are available) as of the date of its application; and

(5) An assurance that the applicant will carry out and comply with the terms of the agreement upon which its waiver of ineligibility (if any) by the Secretary is based.

(Public Law 92-318, section 706(d))

(m) *Compliance with applicable laws.* An assurance that the applicant is familiar with, and will comply with the provisions of, all applicable regulations, grant or contract terms, conditions and requirements; and

(n) *Transportation.* An assurance that no funds made available under the Act will be used for the transportation of students or teachers (or for the purchase



of equipment for such transportation) in order to overcome racial imbalance or to carry out a plan for racial desegregation, when the time or distance of travel is so great as to risk the health of the children involved or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(Public Law 92-318, section 802(a))

§ 185.14 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance by local educational agencies under this subpart, the Assistant Secretary shall apply the following objective criteria (90 points):

(1) The need for such assistance, as indicated by the number and percentage of minority group children enrolled in the schools of such agency for the fiscal year or years for which assistance is sought, as compared to other school districts in the State (30 points); and

(2) The effective net reduction in minority group isolation (in terms of the number and percentage of children affected), in all the schools operated by such agency accomplished or to be accomplished by the implementation of a plan or project described in § 185.11 and the program, project, or activity to be assisted (60 points). The term "effective net reduction in minority group isolation," for purposes of this subparagraph, means (i) the weighted net change effected or to be effected by such plan or project in the number of minority group children enrolled in minority group isolated schools operated by such agency, and (ii) the weighted net total of minority group children placed or to be placed as a result of such plan or project in a school in which the proportion of minority group children has been reduced (but remains greater than 50 percent). Minority group children placed as a result of such plan or project in schools in which the proportion of minority group children has been increased (and is greater than 50 percent) shall be counted against the reduction credited to such agency under this subparagraph. Such effective net reduction shall be computed between the fiscal year (or relevant portion thereof) immediately preceding implementation of such plan or project and the first fiscal year (or relevant portion thereof) for which assistance is sought under the Act.

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

(b) *Educational and programmatic criteria.* The Assistant Secretary shall determine the educational and programmatic merits of applications for assistance by local educational agencies under this subpart on the basis of the following criteria (45 points):

(1) *Needs assessment (6 points).* (i) The magnitude of needs assessed by the applicant in relation to desegregation, elimination, reduction, or prevention of minority group isolation, or the educational disadvantages of such isolation, and (ii) the degree to which the applicant has demonstrated, by standardized achievement test data or other objective evidence, the existence of such needs.

(2) *Statement of objectives (6 points).* (i) The degree to which the applicant sets out specific measurable objectives for its program, project, or activity, in relation to the needs identified; and

(ii) The degree to which (a) the program, project, or activity to be assisted promises realistically to address the needs identified in the application, and (b) such program, project, or activity involves to the fullest extent practicable the total educational resources, both public and private, of the community to be served.

(3) *Activities (21 points)*—(i) *Project design (11 points).* The extent to which (a) the proposed services are concentrated upon a group of participants which is sufficiently limited and specific to give promise of measurable growth for each participant; (b) such services are sufficiently intensive to give promise of such growth; (c) the proposed program, project, or activity emphasizes individualized instruction and services; (d) students to be served are afforded an opportunity to contribute to, and suggest changes in, the proposed program, project, or activity; and (e) the proposed program, project, or activity promotes interracial and intercultural understanding.

(ii) *Staffing (3 points).* The extent to which the application (a) sets out an adequate staffing plan which includes provisions for making maximum use of present staff capabilities, and (b) provides for continuing training of staff in order to increase the effectiveness of the proposed program, project, or activity.

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

(iv) *Parent and community involvement (4 points).* The extent to which the application (a) delineates specific opportunities for community and advisory committee participation in the development and implementation of the proposed program, project, or activity in addition to those required by § 185.41, and (b) includes evidence that such participation has been encouraged and has in fact occurred.

(4) *Resource management (6 points).* The extent to which the application contains evidence that (i) the amount of funds requested is of sufficient magnitude in relation to the number of participants to be served to give substantial promise of achieving the stated objectives; (ii) the costs of project components are reasonable in relation to the expected benefits; (iii) the proposed project will be coordinated with existing

efforts; and (iv) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed program, project, or activity.

(5) *Evaluation (6 points).* The extent to which the application sets out a format for objective, quantifiable measurement of the success of the proposed program, project, or activity in achieving the stated objectives, including (i) a timetable for compilation of data for evaluation and a method of reviewing the program, project, or activity in the light of such data; (ii) a description of instruments to be used for evaluation of the proposed program, project, or activity (and of the method for validating such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; and (iii) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards.

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

(Public Law 92-318, sections 702(b), 710(a) (1), 710(c) (1), (2), (4), and (6))

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall apply the following criteria:

(1) The additional cost to such applicant (as such cost is defined in § 185.13 (a)) of effectively carrying out its proposed program, project, or activity, as compared to other applicants in the State; and

(2) The amount of funds available for assistance in the State under the Act in relation to the other applications from the State pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the Act or this part, or which sets forth a program, project, or activity of such insufficient promise for achieving the purposes of the Act that its approval is not warranted. In applying the criterion set out in this subparagraph, the Assistant Secretary shall award funds to applicants from a State (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums allotted to such State for the purposes of this subpart have been exhausted.

(Public Law 92-318, sections 705(a) (1), 705 (b) (3), 706(b), 710(c) (5))

§§ 185.15-185.20 [Reserved]

Subpart C—Pilot Projects

§ 185.21 Eligibility for assistance.

(a) A local educational agency which is eligible for assistance under § 185.11 (a) or (b) may apply for assistance by



RULES AND REGULATIONS

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

(Public Law 92-318, sections 705(a)(2), 706(b))

(b) A local educational agency shall be considered eligible for assistance under this subpart if it is implementing or operating under a plan described in § 185.11(a) or (b), regardless of whether it applies for or receives assistance under § 185.11(a) or (b).

(Public Law 92-318, section 706(b))

§ 185.22 Authorized activities.

(a) Assistance under this subpart shall be made available to carry out the authorized activities described in § 185.12 with respect to the children or schools to be served by the proposed program, project, or activity.

(Public Law 92-318, sections 706(b), 707(b))

(b) Activities to be assisted under this subpart shall be directed toward improving the academic achievement of children in minority group isolated schools, particularly in the basic areas of reading and mathematics. In general, such activities should bear directly upon classroom performance, through remedial services; the provision of additional, specially trained professional or other staff members; recruiting, hiring, and training of teacher aides; and development and use of new curricula and instructional methods, practices, and techniques (and acquisition of related instructional materials); however, the Assistant Secretary shall consider other, indirect approaches which offer unusual promise in overcoming the adverse effects of minority group isolation.

(Public Law 92-318, sections 706(b), 707(b))

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

(Public Law 92-318, sections 706(b), 707)

§ 185.23 Applications.

Applications for assistance under this subpart shall comply with the provisions of § 185.13.

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

§ 185.24 Criteria for assistance.

(a) In approving applications for assistance under this subpart, the Assistant Secretary shall apply the objective criteria set out in § 185.14(a), except that a maximum of 30 points shall be awarded to any applicant under § 185.14(a)(2).

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

(b) The Assistant Secretary shall determine the educational and programmatic merits of applications for assistance under this subpart on the basis of the criteria set out in § 185.14(b), except that the Assistant Secretary shall also determine the replicability of the proposed program, project, or activity on the basis of the following considerations (8 points):

(1) The extent to which the application demonstrates special thoroughness and specificity in the areas of needs assessment and evaluation design;

(2) The extent to which the applicant proposes (i) to extend some or all of the activities to be carried out under the program, project, or activity to be assisted to schools operated by the local educational agency which are not included in such program, project, or activity; and (ii) to provide opportunities for interested parties to observe the program, project, or activity, inspect project materials, equipment, and facilities, and interview staff members of such agency responsible for design and implementation of the program, project, or activity;

(3) The extent to which the application provides for effective collection and organization of information on the educational results of the proposed program, project, or activity; and

(4) The extent (i) to which the proposed program, project, or activity includes activities of modest to average cost, and (ii) to which secondary operating costs and one-time developmental costs are clearly and separately identified in the application, regardless of whether assistance is requested to cover such costs.

(Public Law 92-318, sections 706(b), 710(c)(1), 710(c)(4).)

(c) In determining the amounts to be awarded to local educational agencies for assistance under this subpart, the Assistant Secretary shall apply the criteria set out in § 185.14(c).

(Public Law 92-318, sections 705(a)(2), 705(b)(3), 706(b), 710(c)(5))

§§ 185.25-185.30 [Reserved]

Subpart D—Metropolitan Area Projects

§§ 185.31-185.40 [Reserved]

Subpart E—General Requirements for Educational Agencies

§ 185.41 Advisory committees.

(a) *Consultation with advisory committee.* A local educational agency shall, prior to submission of an application for assistance under subpart B, C, D, F, H, or J of this part, consult with a districtwide advisory committee formed in accordance with paragraph (c) of this section in identifying problems and assessing the needs to be addressed by such application. Such agency shall afford such committee a reasonable opportunity (not less than 10 days) in which to review and comment upon such application, and

shall establish such committee at least 5 days prior to the commencement of such review period. In connection with the establishment of such committee, the applicant shall furnish to each member of such committee a copy of the Act and this regulation.

(Public Law 92-318, section 710(a)(2)(B))

(b) *Public hearing.* Prior to submission of an application under subpart B, C, D, F, H, or J of this part, such agency shall hold at least one open, public hearing with parents, teachers, and (in any school district where a proposed program, project, or activity will affect the secondary school(s)) secondary school students, including but not limited to the members of a committee formed in accordance with paragraph (c) of this section, at which hearing such persons are afforded a full opportunity to understand the program, project, or activity for which assistance is being sought and to offer recommendations thereon. Such hearing shall be held no less than 7 days prior to submission of an application under the Act, and shall be advertised in a newspaper of general circulation or otherwise made public not less than 5 days prior to the date of such hearing. Evidence of such publication and a copy of the minutes of the hearing required by this subparagraph shall be submitted with such agency's application for assistance. At a minimum, such minutes shall include a statement of the date, time, and location of such hearings, the number of persons in attendance, and a brief summary (not a verbatim transcript) of the views expressed at such hearing.

(Public Law 92-318, section 710(a)(2)(A))

(c) *Composition of committee.* (1) In order to establish a districtwide advisory committee as required by this section, a local educational agency shall designate at least five civic or community organizations, each of which shall select a member of the committee. The civic or community organizations which participate in the selection process shall, when taken together rather than considered individually, be broadly representative of the minority and nonminority communities to be served by the proposed program, project, or activity.

(2) Such agency shall, after consultation with the appropriate teachers' organization(s), either (i) designate one nonminority group classroom teacher and one such teacher from each minority group substantially represented on the faculty or in the student body, of such agency to serve as members of the districtwide advisory committee, or (ii) delegate the designation of such teachers to such organization.

(3) A committee formed under this paragraph must be composed of equal numbers of nonminority group members and members from each minority group substantially represented in the community. (For example, in a school district containing both Negro and Spanish-surnamed communities, the



committee shall be composed of equal numbers of Negro, Spanish-surnamed American, and nonminority group members.) At least 50 per centum of the members of the committee shall be parents of children directly affected by a plan described in § 185.11 or a program, project, or activity described in subpart C, D, or H of this part. In addition to members appointed pursuant to subparagraphs (1) and (2) of this paragraph, and taking into account the students to be appointed pursuant to subparagraph (4) of this paragraph, such agency shall select the minimum number of additional persons as may be necessary to meet the requirements of this subparagraph. (For example, if in a biracial community the civic or community organizations designate three minority group members and two nonminority group members, three of whom are parents; and two teachers who are not parents are also selected, and two students are to be selected pursuant to subparagraph (4) of this paragraph, the agency must select two nonminority parents and one minority parent to complete the committee.)

(4) Committee members appointed pursuant to subparagraphs (1), (2), and (3) of this paragraph shall select at least one nonminority group secondary school student and an equal number of such students from each minority group substantially represented in the community to serve as members of the districtwide advisory committee. Such students shall be regularly enrolled in a secondary school or schools operated by the local educational agency.

(5) A committee which has been formed pursuant to an order of a Federal or State court for the desegregation of the school system of such agency may be designated as the districtwide advisory committee required by this section, provided that the requirements of subparagraphs (2), (3), and (4) of this paragraph are observed.

(Public Law 92-318, section 710(a)(2)(B))

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

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

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

(e) *Post-award consultation.* Each application by a local educational agency for assistance under the Act shall contain an assurance that such agency will consult at least once a month with its districtwide advisory committee established under this section (in formal meetings of such committee) with respect to policy matters arising in the administration and operation of any program, project, or activity for which funds are made available under the Act, and that it will provide such committee with a reasonable opportunity to periodically observe (upon prior and adequate notice to such agency at such time or times as such committee and agency may agree) and comment upon all project-related activities. (Such consultation shall not be required in the event that the local educational agency is not awarded assistance under the Act.) Each such formal meeting shall be open to the public, and shall be advertised in a newspaper of general circulation or otherwise made public not less than 5 days prior to the date of such meeting.

(Public Law 92-318, section 710(a)(3))

(f) *Publication.* The names of the members of the districtwide advisory committee established in accordance with paragraph (c) of this section, and a statement of the purpose of such committee, shall be published in a newspaper of general circulation or otherwise made public not less than 5 days prior to the public hearing required by paragraph (b) of this section. Evidence of such publication shall be submitted with the local educational agency's application for assistance.

(Public Law 92-318, sections 710(a)(2) and (3))

(g) *Comments and suggestions by committee.* No amendment to the program, project, or activity of a local educational agency shall be approved, and no additional funds made available under the Act, unless the districtwide advisory committee has been consulted and involved in the development of, and has been given an opportunity to comment upon, such amendment or addition to the program, project, or activity. Such comments shall be included with any application submitted by such agency for such amendment or additions. Amendments or additions suggested by the districtwide advisory committee shall be forwarded by the local educational agency, with or without comment by such agency, to the Assistant Secretary for his consideration.

(Public Law 92-318, section 710(a)(3))

(h) *Student advisory committees.* (1) The local educational agency shall, not more than 15 days after approval of an

application for assistance under the Act, or not more than 15 days after commencement of the first academic year for which such assistance is awarded, whichever is later, establish in accordance with subparagraph (2) of this paragraph a student advisory committee of secondary school students at each school which will be affected by any program, project, or activity assisted under the Act and which offers secondary instruction.

(2) Each such committee shall be composed of equal numbers of nonminority group secondary students and of such students from each minority group substantially represented in each such school. The members of each such committee shall be selected by the student body or the student government of such school. Each such committee shall have at least six members.

(3) The application of such agency shall contain an assurance that representatives of the agency will periodically consult with student advisory committees established pursuant to this paragraph concerning matters relevant to the program, project, or activity, and that copies of the Act and this regulation and the agency's approved project proposal will be supplied to all members of such committees.

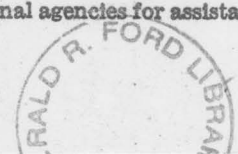
(4) Not more than 30 days after the award of assistance under the Act (or after commencement of the first academic year for which such assistance is awarded, whichever is later), such agency shall afford the members of its student advisory committees (or at least one representative from each of such committees) an opportunity to select at least one nonminority group secondary student and an equal number of such students from each minority group substantially represented in the community, to serve as members of the districtwide advisory committee, in addition to those students selected pursuant to paragraph (c)(4) of this section. (Such agency shall select the minimum additional number of parents as may be necessary to meet the requirement of paragraph (c)(3) of this section.)

(5) The names of the members of such committees, a statement of the purpose of such committees, and the names of additional members of the districtwide advisory committee selected pursuant to subparagraph (4) of this paragraph shall be published in a newspaper of general circulation or otherwise made public not more than 10 days after their selection. The names of the members of committees formed pursuant to this paragraph and evidence of such publication shall be submitted to the Assistant Secretary not more than 20 days after the date required pursuant to subparagraph (4) of this paragraph for selection of such additional members.

(Public Law 92-318, sections 710(a)(2)(B), 710(a)(3))

§ 185.42 Participation by children enrolled in nonpublic schools.

(a) *Assurances.* Applications by local educational agencies for assistance under



Subpart B, C, F, or J of this part shall contain:

(1) In the case of project activities primarily directed to minority group children, an assurance that to the extent consistent with the number of minority group children who are enrolled in nonpublic nonprofit elementary and secondary schools in the area to be served (which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools), the participation of which children would assist in achieving the purposes of the Act, the applicant (after consultation with the appropriate nonpublic school officials) has made provision for the participation of such children on an equitable basis; and

(2) In the case of project activities directed to minority and nonminority group children, teachers, and other educational staff, an assurance that to the extent consistent with the number of children, teachers, and other educational staff enrolled or employed in nonpublic nonprofit elementary and secondary schools within the school district of the applicant (which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools), the participation of which children, teachers, and other educational staff would assist in achieving the purposes of the Act or, in the case of an application under subpart F of this part, would assist in meeting the needs described in that subpart, the applicant (after consultation with the appropriate nonpublic school officials) has made provision for the participation of such children, teachers, and other educational staff on an equitable basis.

(Public Law 92-318, section 710(a) (12))

(b) *Definitions.* (1) "Area to be served," for purposes of paragraph (a) (1) of this section, means the general geographical area in which the program, project, or activity assisted under subpart B, C, F, or J of this part is to be conducted, and may include the entire school district of the local educational agency. The area to be served shall be determined on the basis of the activities proposed to be undertaken by the local educational agency, the need for such activities in nonpublic schools serving the school district of such agency, and the appropriateness of participation by children, teachers, and other educational staff enrolled in or employed by such nonpublic schools.

(2) "An equitable basis" for participation of nonpublic schoolchildren, teachers, and other educational staff, for purposes of paragraph (a) of this section, means that the special needs of such children, teachers, and other educational staff shall be served to the same extent that special needs are served with respect to children, teachers, and other educa-

tional staff enrolled in or employed by the local educational agency.

(Public Law 92-318, section 710(a) (12))

(c) *Exclusion of discriminatory nonpublic schools.* No child, teacher, or other educational staff member shall participate in any activity assisted under the Act if such child, teacher, or other educational staff member is enrolled in or employed by a nonpublic school which is operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools, or otherwise practices, or permits to be practiced, discrimination on the basis of race, color, or national origin in admissions or the operation of any school activity. Determinations required under this paragraph shall be made in accordance with § 185.43(a).

(Public Law 92-318, section 702(b), 706(d) (1), 710(a) (12))

(d) *Applicability.* (1) The participation of children, teachers, or other educational staff enrolled in or employed by a nonpublic school shall be considered to assist in achieving the purposes of the Act if such nonpublic school is attended by a significant number or percentage of minority and nonminority group children, or is implementing a plan to desegregate or reduce minority group isolation in its student body and faculty to a significant extent, or is part of a nonpublic school system implementing a plan to desegregate or to eliminate or reduce minority group isolation in one or more schools and is significantly affected by such plan.

(2) The participation of children, teachers, or other educational staff enrolled in or employed by a nonpublic school shall be considered to assist in meeting the needs described in subpart F of this part if such school is attended by a significant number or percentage of minority group children who are from an environment in which a dominant language is other than English and who, because of language barriers and cultural differences, do not have equality of educational opportunity.

(Public Law 92-318, sections 702(b), 706(d) (1), 708(c) (1), 710(a) (12))

(e) *Assessment of needs.* The special needs of children, teachers, and other educational staff enrolled in or employed by nonpublic schools, the number of such children, teachers, and staff who will participate in activities assisted under the Act, and the types of special services to be provided for them, shall be determined, after consultation with officials of such schools and other persons knowledgeable of the needs of such children, teachers, and other educational staff, on a basis comparable to that used in providing for the participation in activities assisted under the Act by children, teachers, and other educational staff enrolled in or employed by schools operated by the local educational agency.

(Public Law 92-318, section 710(a) (12))

(f) *Information required.* An applica-

tion by a local educational agency for assistance under the Act shall show the number of children, teachers, and other educational staff enrolled in or employed by nonpublic schools who are expected to participate in the program, project, or activity described therein, and the degree and manner of their expected participation. For each nonpublic school which enrolls such children or employs such teachers and other educational staff, the application shall show the total enrollment of such school, by race, and the racial composition of the faculty and staff. Such application shall also describe the manner in which and extent to which representatives of such nonpublic schools, and persons knowledgeable of the needs of the children, teachers, and other educational staff enrolled in or employed by such schools have participated in the development of the application, and the provisions which have been made for effective liaison with such representatives or persons with regard to operation and review of the proposed program, project, or activity.

(Public Law 92-318, sections 706(d) (1) (A), 710(a) (12))

(g) *Joint participation.* Programs, projects, or activities assisted under the Act may be carried out at such locations as will efficiently and conveniently serve the children, teachers, and other educational staff of the affected public and nonpublic schools. Any project involving a joint participation of children, teachers, and other educational staff enrolled in or employed by public and nonpublic schools shall include such provisions as are necessary to prevent separation of such children, teachers, and other educational staff by school or religious affiliation in any class or other project unit.

(Public Law 92-318, section 710(a) (12))

(h) *Activities on nonpublic school premises.* Public school personnel may be made available in other than public school facilities to the extent necessary to provide special services for those children, teachers, or other educational staff for whose needs such special services were designed, when such services are not normally provided by the nonpublic school. The applicant shall maintain administrative direction and control over such services. Mobile or portable equipment may be used on nonpublic school premises only for such time within the project period as is necessary for the successful participation in such program, project, or activity by children, teachers, and other educational staff enrolled in or employed by such nonpublic schools. Provisions for special services for children, teachers, and other educational staff enrolled in or employed by nonpublic schools shall not include the payment of salaries for teachers or other employees of nonpublic schools (except for services performed after school hours when such teachers or other employees are not under the direction and control of such schools), nor shall they include the use of equipment other than mobile or port-

able equipment on nonpublic school premises or any construction, remodeling, or repair of nonpublic school facilities. "Mobile or portable equipment," for purposes of this paragraph, means manufactured items which have an extended useful life and are not consumed in use, and are not permanently fastened to the building or the grounds.

(Public Law 92-318, section 710(a) (12))

(l) *Waiver.* In any case where a local educational agency considers itself to be prohibited by law from providing for the participation of children, teachers, and other educational staff enrolled in or employed by nonpublic schools as required by this section, such agency shall furnish to the Assistant Secretary copies of such laws, rules, court decisions, or opinions of State legal officers as are necessary to set out the basis for such prohibition. Where such prohibition exists, the Assistant Secretary shall waive such requirement with respect to such agency and arrange for the participation of such children, teachers, and other educational staff as provided in sections 712(c) (1) and (2) of the Act.

(Public Law 92-318, sections 712(c) (1) and (2))

(j) *Failure to provide for nonpublic school participation.* If a local educational agency fails to provide for the participation, on an equitable basis, of children, teachers, and other educational staff enrolled in or employed by nonpublic schools in the school district served by such agency on any grounds other than those authorized by paragraph (i) of this section, it shall set out such grounds in its application or upon inquiry by the Assistant Secretary. If the Assistant Secretary determines such grounds to be insubstantial, and if the Assistant Secretary further determines that a local educational agency has substantially failed to provide for the participation, on an equitable basis, of such children, teachers, and other educational staff, he shall arrange for such participation as provided in section 712(c) (3) of the Act.

(Public Law 92-318, section 712(c) (3))

(k) *Informal conference.* Representatives of States, local educational agencies, nonpublic schools, or children, teachers, and other educational staff enrolled in or employed by nonpublic schools whose interests are directly affected by a determination made under this section may request an informal conference with the Assistant Secretary to show cause why such determination should be reviewed or revised. The Assistant Secretary or his designee shall hold such a conference within 15 days of receipt of such a request.

(Public Law 92-318, sections 710(a) (12) and 712(c))

§ 185.43 Limitations on eligibility.

(a) *Transfers to discriminatory nonpublic schools.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has trans-

ferred (directly or indirectly by gift, lease, loan, sale, or any other means) any real or personal property, or made available any services, to a nonpublic school or school system (or any person or organization controlling, operating, or intending to establish such a school or school system) without a prior determination that such nonpublic school or school system is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools, and that such nonpublic school or school system does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in admissions or in the operation of any school activity.

(1) Subsequent to the effective date of this section, in order to determine whether a transferee under this paragraph is a nonpublic school or school system, or a person or organization controlling, operating or intending to establish such a school or school system, an educational agency shall, at a minimum, obtain from such transferee, in writing, the following information:

(i) The legal name and address of the transferee and, if the immediate transferee is acting in a representative capacity, the legal name and address of his or its principal; and if such information does not clearly indicate the nature of the transferee or his or its principal, a copy of the articles of incorporation, charter, bylaws, or other documents indicating the legal status and stated purposes of the transferee or his or its principal; and

(ii) A statement of the use to be made of the property or services to be transferred.

(iii) In the case of a transfer occurring subsequent to June 23, 1972, but prior to the effective date of this section, a determination required by this subparagraph shall be substantiated by credible evidence satisfactory to the Assistant Secretary.

(2) Subsequent to the effective date of this section, in making the prior determination required under this paragraph as to the nature and practices of a nonpublic school or school system, an educational agency shall, at a minimum, obtain from such school or school system, in writing, the following information:

(i) Whether the school has publicized a policy of nondiscrimination in admissions, educational policies, scholarship programs, athletics, and extracurricular activities;

(ii) Whether the school has publicized this policy in a manner intended and reasonably likely to bring into the attention of school-age minority group persons, and their families, without making other statements or taking actions that negate the effect of such publicity;

(iii) Whether applicants for admission have been treated on a nondiscriminatory basis, and whether the racial composition of faculty, staff and student body is consistent with a policy of nondiscrimination;

(iv) Whether scholarship assistance is made available without regard to race,

and whether students and scholarship recipients are recruited among all segments of the community; and

(v) Whether the school's incorporators, founders, board members, or donors of its land or buildings are announced or generally known as having as a primary objective the maintenance of segregated education, or are announced or identified as officers or active members of an organization with such an objective.

(vi) In the case of a transfer occurring subsequent to June 23, 1972, but prior to the effective date of this section, a determination required to be made by this subparagraph shall be substantiated by credible evidence satisfactory to the Assistant Secretary.

(3) For purposes of subparagraph (2) (iii) of this paragraph, a nonpublic school which has no minority students, or a nonpublic school system which has no minority students in one or more of its schools, shall be presumed to discriminate. If such a nonpublic school or school system has also failed to adopt and publish a policy of nondiscrimination in accordance with subparagraphs (2) (i) and (2) (ii) of this paragraph, the presumption of discrimination shall be conclusive.

(4) The fact that a local educational agency may have obtained an assurance or statement of nondiscrimination from a transferee, or included such assurance or statement in the transfer documents, shall not excuse such agency from making the determination required by this paragraph.

(Public Law 92-318, section 706(d) (1) (A); *Green v. Connally*, 330 F. Supp. 1150 (D.C. D.C. 1971), aff'd sub nom. *Coit v. Green*, 404 U.S. 997 (1971); *Wright v. City of Brighton, Alabama*, 441 F. 2d 447 (5th Cir. 1971), cert. den. 404 U.S. 915 (1971))

(b) *Demotion or dismissal of minority group personnel.* (1) No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure which results in the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in section 706 of the Act, or which has resulted in the disproportionate demotion or dismissal of such personnel during the period in which such educational agency has been desegregating (or eliminating or reducing isolation of minority group children) pursuant to an order of a Federal or State court, a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964, or an order of a State agency or official of competent jurisdiction.

(i) For purposes of this subparagraph, a disproportionate demotion or dismissal of minority group personnel has occurred if the ratio of minority group elementary school teachers, secondary school teachers, principals, or other staff demoted or dismissed to the number of such minority group personnel employed by such agency before such demotions or dis-

RULES AND REGULATIONS

missals exceeds by more than 10 percentage points the ratio of such non-minority group personnel so demoted or dismissed over the same period of time to the number of such nonminority group personnel employed by such agency prior to such demotions or dismissals. (For example, such an agency would be in violation of this subparagraph if it has demoted or dismissed 21 percent of its minority group principals and 10 percent of its nonminority group principals over the same period of time.)

(ii) For purposes of this paragraph, a demotion includes any reassignment (a) under which a faculty or staff member receives less pay or has less responsibility than under the assignment he held prior to such reassignment, (b) which requires a lesser degree of skill than did the assignment he held previously, or (c) under which he is required to teach in a subject or grade other than one for which he is certified or in which he has substantial experience or qualifications.

(iii) For purposes of this paragraph, a dismissal includes any termination of or failure to renew a contract, for cause or otherwise, including resignations impelled by threatened administrative or other sanctions.

(2) No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure which results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, demotion, dismissal, or assignment of any of its employees (or other personnel for which such agency has any administrative responsibility), including the assignment of full-time classroom teachers to the schools of such agency in such a manner as to identify any of such schools as intended for students of a particular race, color, or national origin.

(3) (i) A practice, policy, or procedure resulting in the disproportionate demotion or dismissal of minority group personnel shall be considered to be or remain in effect after June 23, 1972, if at the time such agency applies for assistance under the Act, the proportion of minority group elementary schoolteachers, secondary schoolteachers, principals, or other staff affected by such demotions or dismissals has not been restored at least to the proportion which existed prior to such demotions or dismissals, unless such an agency which has had or maintained in effect such a practice, policy, or procedure submits with its application for assistance information establishing that such a practice, policy, or procedure has not been in effect since June 23, 1972, as demonstrated by corrective measures taken and progress achieved in eliminating the results of such a practice, policy, or procedure.

(ii) A demotion or dismissal shall be considered to be discriminatory if the staff member demoted or dismissed has not been selected on the basis of objective, nonracial, reasonable, and non-discriminatory criteria applied to staff

members of all racial or ethnic groups. A discriminatory practice, policy, or procedure shall be considered to be or remain in effect after June 23, 1972, if, at the time such agency applies for assistance under the Act, any staff member so demoted or dismissed has not been offered reinstatement to his former position and offered pecuniary compensation for any loss incurred as a result of such demotion or dismissal, or if any staff vacancy occurring subsequent to any demotion or dismissal in the process of desegregation is or has been filled through hiring of a person of a different race, color, or national origin before a qualified staff member so demoted or dismissed has been offered employment in such vacancy and has failed to accept such an offer.

(Public Law 92-318, section 706(d)(1)(B); Senate Report No. 92-61, p. 19; *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir. 1969))

(c) *Classroom segregation.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any procedure for the assignment of children to or within classes which results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods, in conjunction with desegregation or the conduct of any activity described in section 706 of the Act. This paragraph shall not be construed to prohibit bona fide ability grouping as a standard pedagogical practice. Such grouping is that which is:

(1) Based upon nondiscriminatory, objective standards of measurement which are educationally relevant to the purposes of such grouping and which, in the case of national origin minority group children, do not essentially measure English language skills;

(2) Determined by the nondiscriminatory application of the standards described in subparagraph (1) of this paragraph, and maintained for only such portion of the school day classroom periods as is necessary to achieve the purposes of such grouping;

(3) Designed to meet the special needs of the students in each group determined by the application of the standards described in subparagraph (1) of this paragraph and to improve the academic performance and achievement of students determined to be in the less academically advanced groups, by means of specially developed curricula, specially trained or certified instructional personnel, and periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable objective evidence indicating the educational benefits of such grouping.

(Public Law 92-318, section 706(d)(1)(C); Senate Report No. 92-61, p. 19)

(d) *Discrimination against children.* No educational agency shall be eligible for assistance under the Act if, after June 23, 1972, it has had or maintained

in effect any practice, policy, or procedure which results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to:

(1) Limiting curricular or extracurricular activities (or participation by children therein) in order to avoid the participation of minority group children in such activities;

(2) Denying equality of educational opportunity or otherwise discriminating against national origin minority children on the basis of language or cultural background;

(3) Permitting the rental, use, or enjoyment of any of such agency's facilities or services by any group or organization which discriminates against minority group children aged 5 to 17, inclusive, in its admissions or membership policies, or otherwise practices, or permits to be practiced, discrimination against such children on the basis of race, color, or national origin;

(4) Imposing disciplinary sanctions, including expulsion, suspension, or corporal or other punishment, in a manner which discriminates against minority group children on the basis of race, color, or national origin;

(5) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes which cannot be justified educationally under the criteria set out in paragraph (c) of this section shall be presumed to be assigned on the basis of race, color, or national origin.

(6) Denying comparable facilities or instructional or other services to minority group children enrolled in the schools of such agency on the basis of race, color, or national origin.

(Public Law 92-318, section 706(d)(1)(D))

(e) *Continuing conditions of eligibility.* The limitations on eligibility set forth in this section shall be continuing conditions of eligibility during the entire period for which assistance is made available to an educational agency under the Act, and such agency's failure to comply with such conditions after the award of such assistance shall be grounds for termination of assistance and for such other sanctions as the Assistant Secretary may determine.

(Public Law 92-318, section 706(d)(1); Senate Report No. 92-61, p. 18, 41-42)

§ 185.44 Waiver of ineligibility.

(a) In the event that a local educational agency prior to the award of assistance under the Act is determined to be ineligible for such assistance under § 185.43, such agency may apply to the Secretary for a waiver of such ineligibility.

(Public Law 92-318, sections 706(d)(1)-(3))

(b) An application for waiver under paragraph (a) of this section shall contain such information and assurances

as will insure that any practice, policy, procedure, or other activity resulting in ineligibility has ceased to exist to occur, and shall include such provisions as are necessary to insure that such practice, policy, procedure, or activity will not reoccur after the submission of such application.

(Public Law 92-318, sections 706(d) (1)-(3))

(c) Transfers to discriminatory nonpublic schools: In the case of ineligibility under § 185.43(a), an application for waiver shall contain:

(1) A list of all property transferred or services made available to nonpublic schools or school systems operated on a racially segregated basis or which practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in admissions or the operation of any school activity, the names and addresses of such schools or school systems, and the consideration received for such transfers;

(2) Evidence that all transfers described in subparagraph (1) of this paragraph have been rescinded and all unearned consideration received therefor has been repaid or returned, to the extent possible under the applicable State law; and

(3) A statement of steps taken by such agency to avoid or prevent such transfers in the future.

(Public Law 92-318, sections 706(d) (1)-(3))

(d) Demotion or dismissal of minority group personnel:

(1) In the case of ineligibility under § 185.43(b)(1) of this part resulting from the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups, an application for waiver shall contain:

(i) A plan of affirmative action to insure that within a reasonable time from the date of such application, the proportion of minority group elementary school teachers, secondary school teachers, principals, or other staff affected by such demotions or dismissals will be restored at least to the proportion which existed prior to such demotions or dismissals; and

(ii) A statement of steps taken by such agency to prevent any future disproportionate demotion or dismissal of minority group personnel.

(2) In the case of ineligibility under § 185.43(b)(2) resulting from discriminatory demotion or dismissal of instructional or other personnel from minority groups in the process of desegregation, an application for waiver shall contain:

(i) Evidence that all minority group personnel so demoted or dismissed have been offered reinstatement to their former positions and afforded pecuniary compensation for any loss incurred as a result of such demotions or dismissals, such as diminution in salaries, additional commuting expenses, and the like;

(ii) A plan of affirmative action as required by subdivision (1) of subparagraph (1) of this paragraph; and

(iii) A statement of steps taken by such agency to prevent any future discriminatory demotion or dismissal of minority group personnel, including but not limited to a statement of objective, nonracial, and reasonable criteria to be applied in the event that reinstatement of minority group personnel as required by subdivision (1) of this subparagraph necessitates a reduction in the number of elementary school teachers, secondary school teachers, principals, or other staff, or in the event of future demotions or dismissals for any reason.

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

(4) In the case of ineligibility resulting from other discriminatory practices, policies, or procedures prohibited by § 185.43(b)(2), an application for waiver shall contain:

(i) Evidence that minority group personnel subjected to such discrimination have been reinstated or restored to the position or status they held prior to, or would have held in the absence of, such discrimination, and have been afforded pecuniary compensation for any loss incurred as a result of such discrimination, such as diminution in salaries, additional commutation expenses, and the like; and

(ii) A statement of steps taken by such agency to prevent such discrimination in the future.

(5) In the event that the corrective action required under this paragraph includes the employment or promotion of minority group teachers, principals, or other staff, such agency shall give preference in such employment or promotion first to qualified minority group members of its own faculty or staff previously demoted or dismissed for any reason, and secondly to qualified minority group faculty and staff members identified by the Department as previously demoted or dismissed by other local educational agencies in conjunction with desegregation or the conduct of any activity described in section 706 of the Act.

(Public Law 92-318, sections 706(d) (1)-(3); U.S. v. Texas Education Agency (LaVega), No. 71-3135 (5th Cir., Mar. 10, 1972))

(e) Classroom segregation: In the case of ineligibility under § 185.43(c), an application for waiver shall contain:

(1) Evidence that minority group children are not separated from non-minority group children by or within classes for more than 25 percent of the school day classroom periods, except in instances of bona fide ability grouping which meet the requirements of § 185.43(c), where such agency has demonstrated by clear and convincing evidence that such separation is educationally necessary and is the only available method of achieving a specific educational objective; and

(2) A statement of steps taken by such agency to insure that separation of minority and nonminority group children as prohibited by § 185.43(c) will not reoccur in the future.

(Public Law 92-318, sections 706(d) (1)-(3))

(f) Discrimination against children: In the case of ineligibility under § 185.43(d), an application for waiver shall contain evidence that the practice, policy, or procedure prohibited by § 185.43(d) has ceased to exist or occur and that the effects of such practice, policy, or procedure have been remedied or eliminated. In particular:

(1) In the case of a denial of equal educational opportunity to national origin minority children as described in § 185.43(d)(2), such agency shall submit an educational plan of sufficient comprehensiveness to remedy or eliminate the effects of such denial and to meet the special educational needs of all national origin minority group children for whose education such agency is responsible. Such a plan, if required and approved under this subparagraph, shall be implemented regardless of whether funds for such purpose are made available under the Act.

(2) In the case of a violation under § 185.43(d)(3), such agency shall submit evidence that such rental, use, or enjoyment of its facilities is no longer permitted, and that any agreement with respect to such rental, use, or enjoyment has been rescinded and the unearned consideration therefore has been returned or repaid, to the extent possible under the applicable State law.

(3) In the case of assignment of students to classes on the basis of race, color, or national origin as prohibited by § 185.43(d)(5), such agency shall submit evidence that the groups, tracks, or classes resulting from such assignment have been completely eliminated and the students so assigned have been reassigned to classes on a nondiscriminatory basis; or that the students so assigned have been retested, re-evaluated, and, if necessary, reassigned to groups, tracks, or classes which satisfy the requirements of § 185.43(c).

(Public Law 92-318, sections 706(d) (1)-(3))

(g) Access to information and records: Agencies applying for assistance

under the Act or for a waiver under this section shall furnish to the Secretary or the Assistant Secretary such information and such access to their facilities or records as such official may deem necessary for the administration of the Act, or for a determination as to eligibility or as to whether or not a waiver should be granted. Consideration of applications for assistance under this part may be delayed pending submission or collection of such information. Such information may include confidential or other records maintained by such agency on personnel and students, with racial or other identification of such personnel or students, and financial and other records maintained by such agency. Limitations on access to information or records based on considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with any provision of the Act, this regulation, grant terms or conditions, or other applicable laws. Information of a confidential nature obtained by the Department in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or as otherwise required by law. The Assistant Secretary shall not approve an application under this part which requires a waiver by the Secretary unless the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives have been given notice of the intention to grant such a waiver at least 15 days prior to such approval.

(Public Law 92-318, sections 706(d) (2), (3), (5), and (6))

§ 185.45 Termination of assistance.

(a) *Termination and suspension.* (1) Assistance under the Act may be terminated in whole or in part if the Assistant Secretary determines, after affording the recipient reasonable notice and an opportunity for a full and fair hearing, that the recipient has failed to carry out its approved program, project, or activity in accordance with the applicable law and the terms of such assistance, or has otherwise failed to comply with any applicable law, regulation, assurance, term, or condition. Assistance under the Act may be suspended during the pendency of a termination proceeding initiated pursuant to this paragraph: *Provided however,* That the recipient is afforded reasonable notice and opportunity to show cause why such action should not be taken.

(2) Proceedings with respect to the termination of assistance shall be initiated by mailing to the recipient a notice, by certified mail, return receipt requested, informing the recipient of the Government's intent to terminate assistance and of the specific grounds for such termination, together with information regarding the time, place, and nature of the hearing to be afforded the recipient, the legal authority and jurisdiction under which the hearing is to be held, and

such other information with respect to the conduct of such proceedings as the Assistant Secretary may determine.

(3) If the Assistant Secretary determines for good cause that suspension of assistance during the pendency of such proceedings is necessary, such notice shall, in addition to the matters described in subparagraph (2) of this paragraph, inform the recipient of such determination and shall offer the recipient an opportunity to show cause why such action should not be taken. Such notice of suspension of assistance shall advise the recipient that any new expenditures or obligations made or incurred in connection with the program, project, or activity assisted during the period of the suspension will not be recognized by the Government in the event such assistance is ultimately terminated. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved program, project, or activity, and not in anticipation of suspension or termination, shall not be considered new expenditures.

(4) Termination of assistance shall be effected by the delivery to the recipient of a final order of termination, signed by the Assistant Secretary or his designee, or upon an initial decision of an Administrative Law Judge becoming final without appeal to or review by the Assistant Secretary.

(5) In the event assistance is terminated under this section, financial obligations incurred by the recipient prior to the effective date of such termination will be allowable to the extent they would have been allowable had such assistance not been terminated, except that no obligations incurred during the period in which such assistance was suspended pursuant to subparagraph (1) of this paragraph and no obligations incurred in anticipation of such suspension or termination will be allowed. Within 60 days of the effective date of termination of assistance under this section, the recipient shall furnish to the Assistant Secretary an itemized accounting of funds expended, obligated, and remaining. Within 30 days of a request therefor, the recipient shall remit to the Government any amounts found due.

(6) The procedures and requirements set out in this section shall apply to any assistance made available to any recipient under this part, except assistance awarded pursuant to Subpart I.

(Public Law 92-318, sections 706(d), 710 (a) and (b).)

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

incurred or expenditures made after such date, regardless of the date of obligation. Such sanctions shall be imposed in accordance with the provisions of this section.

(Public Law 92-318, sections 706(d), 710 (a) and (b); Senate Report No. 92-61, pp. 18, 41-42)

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

(2) Hearings respecting the termination of assistance pursuant to this section shall be conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 554-557). Proposed findings of fact, conclusions of law, and briefs will be submitted to the presiding officer within 20 days of the conclusion of the hearing.

(3) The initial decision of an Administrative Law Judge regarding the termination of assistance under the Act shall become the decision of the Assistant Secretary without further proceedings unless there is an appeal to, or review on motion of, the Assistant Secretary made in writing no later than 15 days after receipt (by the party requesting such appeal or review), of the decision of the Administrative Law Judge. A request for appeal or review under this section shall be accompanied by exceptions to the initial decision, proposed findings, supporting reasons, and briefs. The adverse party shall submit its reply no later than 15 days after its receipt of a copy of such request for appeal or review. The Assistant Secretary shall issue a final decision in the case of such appeal or review no later than 45 days after the final submission of the above materials by the parties. The Assistant Secretary may delegate his functions under this subparagraph to an appellate review council established and appointed by him.

(4) The procedures established by this section shall not preclude the Assistant Secretary from pursuing any other remedies authorized by law. Proceedings pursuant to Part 80 of this title with respect to the eligibility of an applicant for assistance under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) shall be governed by the regulations in that part and Part 81 of this title.

(Public Law 92-318, sections 706(d), 710 (a) and (b))

(d) *Effect of Federal action.* No official agent, or employee of the Department of Health, Education, and Welfare shall have the authority to waive or alter any provision of the Act or this regulation, or other relevant Act or regulation, and no action or failure to act on the part of such official, agent, or employee shall operate in derogation of the Assistant Secretary's enforcement of said provisions in accordance with their terms.

(43 Dec. Comp. Gen. 31 (1963))

§§ 185.46-185.50 [Reserved]

Subpart F—Bilingual Projects

§§ 185.51-185.60 [Reserved]

Subpart G—Public or Nonprofit Private Organizations

§ 185.61 Eligibility for assistance.

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

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

(Public Law 92-318, sections 705(a) (3) and 708(b))

(b) *Nonprofit status.* A nonprofit agency, institution, or organization, for purposes of this section, means any organization owned and operated by one or more corporations or associations no part of whose net earnings may lawfully inure to the benefit of any private shareholder or individual. Any of the following shall be acceptable evidence of nonprofit status:

(1) A reference to the organization's listing in the Internal Revenue Service's most recent cumulative list of organizations described in section 501(c) (3) of the Internal Revenue Code as tax exempt;

(2) A copy of a currently valid Internal Revenue Service tax exemption certificate;

(3) A statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully inure to the benefit of any private shareholder or individual;

(4) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization; or

(5) Any of the evidence described in subparagraphs (1) through (4) of this paragraph which applies to a State or national parent organization, and a statement by the parent organization that the applicant organization is a local nonprofit affiliate.

(Public Law 92-318, sections 708(b), 720 (11); HEW Grants Administration Manual, Chapter 1-00-30)

(c) *Form of organization.* Agencies, institutions, or organizations assisted under this subpart may be any form of legally cognizable entity. Nonprofit corporations are the preferred form of organization.

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

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

(2) A program, project, or activity designed to support the development of a plan or project described in § 185.11 may be assisted under this subpart without regard to whether the local educational agency with respect to which the applicant proposes to carry out its program, project, or activity applies for or receives assistance under the Act: *Provided, however,* That such local educational agency has requested such support in the development of such a plan or project.

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

§ 185.62 Authorized activities.

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

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

(b) Educational programs beyond those offered by the local educational agency for career orientation;

(c) Innovative interracial educational enrichment programs or projects beyond those offered by the local educational agency, involving the joint participation of minority group children and other children attending different schools and, where appropriate, the parents of such children;

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

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

(f) Programs to prepare preschool or school-age children and, where appropriate, the parents of such children, for the experience of desegregation or of elimination or reduction of minority

group isolation in the schools of the local educational agency;

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

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

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

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

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

(l) Special programs or projects of exceptional merit or promise which the Assistant Secretary determines will make substantial progress toward achieving the purposes set out in § 185.01.

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

§ 185.63 Applications.

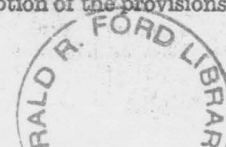
(a) *Basic assurances.* Applications for assistance under this subpart shall comply with the requirements of §§ 185.13(a), 185.13(b), 185.13(c), 185.13(d), 185.13(f), 185.13(h), 185.13(k) (1) (i) and (ii), 185.13(k) (2), and 185.13(m).

(b) *Additional assurances.* Applications for assistance under this subpart shall contain the following additional assurances and information:

(1) A description of the proposed program, project, or activity, and of such policies and procedures as will insure that the applicant will use funds received under the Act only for the activities set forth in § 185.62;

(2) An assurance that funds made available to the applicant under the Act, will be so used (i) as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of funds under the Act, be available from non-Federal sources for the purposes of the program for which assistance is sought; and (ii) in no case, as to supplant such funds from non-Federal sources;

(3) (i) An assurance that the appropriate local educational agency has been given at least 15 days to offer recommendations to the applicant with respect to such application and to submit comments to the Assistant Secretary; (ii) a statement indicating the local official or agency to whom the proposed program, project, or activity has been submitted for such recommendations or comment, and the date of such submission; and (iii) a description of the provisions which



have been made for effective liaison with such agency with regard to operation of the proposed program, project, or activity and coordination of such program, project, or activity with similar or related efforts of such agency. No application for assistance under this subpart shall be approved less than 10 days after a copy of such application has been submitted by the Assistant Secretary to the appropriate State educational agency for comment, unless the Assistant Secretary has received comments from such agency upon such application prior to expiration of the 10-day period.

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

(5) A copy of the charter, articles of incorporation, bylaws, or other legal documents indicating the nature and purpose of the applicant, including evidence of nonprofit status as described in § 185.61(b);

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

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

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

§ 185.64 Criteria for assistance.

(a) *Objective criteria.* In approving applications for assistance under this subpart, the Assistant Secretary shall apply the following objective criteria (45 points):

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

(2) The effective net reduction in minority group isolation (in terms of the number and percentage of children affected), as defined in § 185.14(a)(2), in all the schools operated by such agency accomplished or to be accomplished by the implementation of the plan or project described in § 185.11 with respect to which assistance is sought by the applicant (30 points).

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

(b) *Educational and programmatic criteria.* The Assistant Secretary shall

determine the educational and programmatic merits of applications for assistance under this subpart on the basis of the following criteria (45 points):

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

(ii) The magnitude of needs assessed by the applicant, and the degree to which the applicant has demonstrated, by objective evidence, the existence of such needs.

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

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

(ii) The degree to which (a) the program, project, or activity to be assisted affords promise of achieving the objectives specified in the application, and (b) such program, project, or activity involves to the fullest extent practicable the total educational and social resources already existing in the community, including those of other public or nonprofit private agencies, organizations, or institutions which are eligible for assistance under the Act.

(3) *Activities (21 points).* (1) *Project design (8 points).* The extent to which the proposed program or project sets out activities clearly related to the needs identified and the stated objectives, which activities (a) complement activities being carried out by the local educational agency, under the Act or otherwise; (b) represent a cooperative or integrated effort among all the public or nonprofit private agencies, organizations, or institutions in the community; (c) present an opportunity for interracial or intercultural involvement of students, parents, and personnel of the appropriate local educational agency; (d) promote interracial or intercultural understanding in the community; (e) present an opportunity for increased communication between parents and the school system; and (f) utilize students' homes as a focal point for program or project operations.

(ii) *Staffing (3 points).* The extent to which (a) the proposed program or project sets out a plan to attract and hire qualified staff members and personnel; (b) qualified applicants residing in the community to be served are given priority for employment over other applicants; and (c) provision is made for adequate training of staff members and other personnel, both salaried and volunteer.

(iii) *Delivery of services (4 points).* The extent to which the proposed program or project (a) describes available facilities which are adequate for the performance of the proposed activities and are convenient and accessible to the persons involved in such activities; and (b) provides for effective notification of and communication with the intended beneficiaries of proposed activities, events, and services.

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

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

(5) *Evaluation (6 points).* The extent to which the application sets out a format for objective measurement of the results of the proposed program, project, or activity, including (i) a timetable for compilation of data for evaluation and a method of reviewing the program, project, or activity in the light of such data; (ii) a description of the instruments to be used for evaluation of the proposed program, project, or activity (and of the method for validating such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; and (iii) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards.

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

(c) *Funding criteria.* In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall apply the following criteria:

(1) The additional cost to such applicant (as such cost is defined in § 185.13(a)) of effectively carrying out its proposed program, project, or activity, as compared to other applicants in the State; and

(2) The amount of funds available for assistance in the State under the act, in relation to the other applications from the State pending before him. The Assistant Secretary shall not be required to approve any application which does not meet the requirements of the act

or this part, or which sets forth a program, project, or activity of such insufficient promise for achieving the purposes of the act that its approval is not warranted. In applying the criterion set out in this subparagraph, the Assistant Secretary shall award funds to applicants from a State (whose applications meet such requirements and are of sufficient promise to warrant approval) in the order of their ranking on the basis of the criteria set out in this section until the sums allotted to such State for the purposes of this subpart have been exhausted.

(Public Law 92-318, sections 705(a)(3), 705(b)(3))

(3) No more than 33 percent of the grants or contracts pursuant to this subsum of funds allotted to a State for part shall be awarded to applicants proposing to carry out programs, projects, or activities with respect to the same local educational agency, unless the Assistant Secretary determines that the applications pending before him for funds in excess of such amount for such programs, projects, or activities are of exceptional merit or promise.

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

§ 185.65 Advisory committees.

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

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

(b) *Composition of committee.* (1) In order to establish a districtwide advisory committee as required by this section, the applicant shall designate at least five civic or community organizations, each of which shall select a member of the committee. The civic or community organizations which participate in the selection process shall, when taken together rather than considered individually, be broadly representative of the minority and nonminority communities to be served.

(2) The applicant shall invite the appropriate local educational agency to designate as a member of the committee described in this paragraph at least one person who is an administrator, principal, or teacher employed by such agency or a member of the school board of such agency. In addition, if the local educational agency has applied for or received

assistance under this part, the applicant shall invite the advisory committee formed by such agency in accordance with § 185.41(c) to designate at least one of its members as a member of the committee described in this paragraph. (An advisory committee established in accordance with § 185.41(c), with the appropriate additions required to conform to the provisions of this paragraph, may be adopted by the applicant as the committee required by this section.)

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

(4) In addition to the persons selected by the applicant pursuant to subparagraph (3) of this paragraph, the applicant shall select from the schools of the appropriate local educational agency equal numbers of nonminority group secondary students and of such students from each minority group substantially represented in the community, so that the number of such students so selected will constitute 50 percent of the total membership of such committee.

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

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

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

(d) *Post-award consultation.* Each application for assistance under this subpart shall contain an assurance that the applicant will consult at least once a month with its districtwide advisory committee established under this section with respect to policy matters arising in the administration and operation of any program, project, or activity for which funds are made available under this subpart, and that it will provide such committee with a reasonable oppor-

tunity to periodically observe and comment upon all project-related activities. (Public Law 92-318, section 708(b))

(e) *Publication.* The names of the members of the districtwide advisory committee established in accordance with paragraph (b) of this section, and a statement of the purpose of such committee, shall be published in a newspaper of general circulation or otherwise made public prior to submission of an application for assistance under this subpart. Evidence of such publication shall be submitted with such application for assistance.

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

§§ 185.66-185.70 [Reserved]

Subpart H—Educational Television

§§ 185.71-185.80 [Reserved]

Subpart I—Evaluation

§§ 185.81-185.90 [Reserved]

Subpart J—Special Projects

§§ 185.91-185.94 [Reserved]

Subpart K—Reservations

§ 185.95 Reservations of funds.

(a) The Assistant Secretary hereby reserves an amount equal to 5 percent of the sums appropriated under the Act for any fiscal year for the purposes of metropolitan area projects under subpart D of this part.

(Public Law 92-318, sections 704(b)(1), 709)

(b) The Assistant Secretary hereby reserves:

(1) An amount equal to 4 percent of the sums appropriated under the Act for any fiscal year for the purposes of special projects under subpart J of this part;

(2) An amount equal to 4 percent of the sums so appropriated for the purposes of bilingual activities under subpart E of this part;

(3) An amount equal to 4 percent of the sums so appropriated for the purposes of educational television projects under subpart H of this part; and

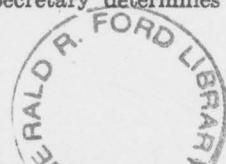
(4) An amount equal to 1 percent of the sums so appropriated for the purpose of evaluations under subpart I of this part.

(Public Law 92-318, sections 704(b)(2), 708(a), 708(c), 711, 713)

(c) The Assistant Secretary hereby reserves an amount equal to 15 percent of the sums appropriated under the Act for any fiscal year for grants to, and contracts with, local educational agencies for pilot programs or projects pursuant to subpart C of this part.

(1) The sums reserved under this paragraph shall be apportioned to each State in accordance with section 705(a)(1) of the Act, and shall be used in such States only for the purposes described in this paragraph.

(2) The amount by which the sum apportioned to a State for a fiscal year for the purposes described in this paragraph exceeds the amount which the Assistant Secretary determines will be



required for such fiscal year for such pilot programs or projects shall be available for reapportionment to other States in accordance with section 705(b) of the Act for the purposes described in this paragraph. Upon a determination by the Assistant Secretary that no need exists in any State for funds for such purposes, such excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the Act for grants or contracts pursuant to subpart B of this part. Upon a further determination by the Assistant Secretary that no need exists in any State for funds for the purposes described in subpart B of this part, such remaining excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the Act for grants or contracts pursuant to subpart G of this part.

(Public Law 92-318, sections 705(a)(2), 705(b), 706(b))

(d) (1) The Assistant Secretary hereby reserves (i) an amount equal to 4 percent of the sums appropriated under the Act for any fiscal year for grants to, or contracts with, public or nonprofit private agencies, institutions, or organizations (other than local educational agencies), pursuant to § 185.61(a)(1), and (ii) an amount equal to 4 percent of the sums appropriated under the Act for any fiscal year for grants to, or contracts with, public or nonprofit private agencies, institutions, or organizations (other than local educational agencies and non-public elementary or secondary schools) pursuant to § 185.61(a)(2).

(2) The sums reserved under this paragraph shall be apportioned to each State in accordance with section 705(a)(1) of the Act, and shall be used in such States only for the purposes described in this paragraph.

(3) The amount by which the sum apportioned to a State for a fiscal year for the purposes described in this paragraph exceeds the amount which the Assistant Secretary determines will be required for such fiscal year for such grants or contracts shall be available for reapportionment to other States in accordance with section 705(b) of the Act for the purposes described in this paragraph. Upon a determination by the Assistant Secretary that no need exists in any State for funds for such purposes, such excess amount shall be available for reapportionment to other States in accordance with section 705(b) of the Act for grants or contracts pursuant to subpart B or subpart C of this part.

(Public Law 92-318, sections 705(a)(3), 705(b), 706(b))

§§ 185.96-185.100 [Reserved]

APPENDIX A—GRANT TERMS AND CONDITIONS

1. Definitions.
2. Scope of the project.
3. Limitations on costs.
4. Allowable costs.
5. Accounts and records.
6. Payment procedures.

7. Reports.
8. Printing and duplicating.
9. Audits.
10. Applicability of State and local laws and institutional procedures.
11. Copyright and publication.
12. Acknowledgment and disclaimer in publication.
13. Final accounting.
14. Travel.
15. Property management.
16. Contracting under grants.
17. Health and safety standards.
18. Compensation.
19. Labor standards.
20. Equal employment opportunity.
21. Use of consultants.
22. Clearance of forms.
23. Grant related income and investment income.
24. Changes in key personnel.
25. Animal care.

1. *Definitions.* As used in the grant documents relating to this award, the following terms shall have the meaning set forth below:

(a) "Assistant Secretary" means the Assistant Secretary for Education or his duly authorized representative.

(b) "Grantee" means the agency, institution, or organization named in the grant as the recipient, and includes recipients of funds under assistance contracts, which are referred to as "grants" for purposes of these Terms and Conditions.

(c) "Grants Officer" means the designee of the Assistant Secretary who is authorized to execute, and is responsible for the administration of, the grant on behalf of the Government.

(d) "Project Officer" means the designee of the Assistant Secretary who is responsible for the technical monitoring of the project of the Grantee as representative of the Grants Officer.

(e) "Project Director" is the person responsible for directing the project of the Grantee.

(f) "Project" is the activity or program defined in the proposal approved by the Assistant Secretary for support.

(g) "Grant Period" means the period specified in the Notification of Grant Award during which costs may be charged against a Grant.

(h) "Budget" means the estimated cost of performance of the project as set forth in the Notification of Grant Award.

2. *Scope of the project.* The project to be carried out hereunder shall be consistent with the proposal as approved for support by the Assistant Secretary and referred to in the Notification of Grant Award and shall be performed in accordance with this approved project proposal. No substantive changes in the program of a project shall be made unless the Grantee submits (at least 30 days prior to the effective date of the proposed change) an appropriate amendment thereto, along with the justification for the change, and this amendment is approved in writing by the Grants Officer.

3. *Limitation on costs.* (a) The total costs to the Government for the performance of the grant shall not exceed the amount set forth in the Notification of Grant Award or any appropriate modification thereof. The Government shall not be obligated to reimburse the grantee for costs incurred in excess of such amounts unless or until the Grants Officer has notified the grantee in writing that such amount has been increased and has specified such increased amount in a revised Notification of Grant Award. Such revised amount shall thereupon constitute the revised total cost of the performance of the grant.

(b) The Grantee may transfer funds among the direct-cost object class budget categories to the extent necessary to assure the effectiveness of the project, except for the following restrictions: For each budget period, prior written approval must be obtained from the Grants Officer if (1) the grant budget is over \$100,000 and the cumulative amount among the direct-cost object class budget categories exceeds \$10,000, or 5 percent of the grant budget, whichever is greater; (2) the grant budget is \$100,000 or less and the cumulative amount of transfers among direct-cost object class budget categories exceeds 5 percent of the grant budget; or (3) the revisions involve in the transfer of amounts budgeted for indirect costs to absorb increases in direct costs. In multiple funded projects, no transfer of funds is authorized which will cause such funds to be used for purposes other than those originally intended.

(c) Funds for the production of audio visual materials (i.e., motion picture films, videotapes, film strips, slide sets, tape recordings, exhibits, or combinations thereof) for viewing, whether for limited or general public use, are not authorized until prior written approval is received from the Grants Officer.

(d) In the case of educational training programs, the limitation on costs stated in paragraph (a) above shall automatically be increased to cover the cost of allowance for additional dependents not specified in the Notification of Grant Award.

4. *Allowable costs.* (a) Expenditures of the Grantee may be charged to this grant only if they: (1) are incurred subsequent to the effective date of the project indicated in the Notification of Grant Award, which shall be no earlier than the date upon which the award document is signed by the Grants Officer, and (2) conform to the approved project proposal.

(b) Subject to paragraph (a) and to the requirements of § 185.13(a) of the regulation, allowability of costs incurred under this grant shall be determined in accordance with the principles and procedures set forth in the documents identified below, as amended prior to the date of the award.

(1) Exhibit X-2-65-1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is an institution of higher education; or

(2) Exhibit X-2-66-1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a hospital as defined therein; or

(3) Exhibit X-1-76-1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a non-profit institution; or

(4) Chapter 5-60 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a State or local government agency.

(c) In accordance with the policy of the Department of Health, Education, and Welfare, if the Grantee has an audited indirect cost rate that has been approved by the Department of Health, Education, and Welfare, Office of Grants Administration Policy, this approved rate may be applied to both the Federal and non-Federal share of allowable direct costs of the project. When an indirect cost rate is applied to either the Federal or non-Federal share of project costs, no item normally included in the Grantee's indirect cost pool (such as supervision, accounting, budgeting, or maintenance) shall be listed as a direct cost of the project. Procedures for establishing Indirect Cost Rates are covered in Department of Health, Education, and Welfare brochures: OASC-1, A Guide for Educational Institutions; OASC-3, A Guide for Hospitals; OASC-5, A Guide for Nonprofit In-



stitutions; OASC-6, A Guide for State Government Agencies; OASC-7, Department of Health, Education, and Welfare Provisions for Establishing Indirect Cost Rates under OMB Circular A-88; and OASC-8, A Guide for Local Government Agencies.

(d) Indirect costs for educational training programs will be allowed at the lesser of the organizational indirect costs or 8 percent of total direct costs, including stipends and dependency allowances, except for State and local governments.

5. *Accounts and records.*—(a) *Records.* The Grantee shall keep intact and accessible records relating to the receipt and expenditure of Federal funds (and to the expenditure of the recipient's contribution to the cost of the project, if any) in accordance with section 434(a) of the General Education Provisions Act, including all accounting records and related original and supporting documents that substantiate direct and indirect costs charged to the grant.

(b) *Period of retention.* (1) Except as provided in paragraphs (b) (2) and (d) below, the records specified in paragraph (a) above shall be retained for 3 years after the date of the submission of the final expenditure report, or, for grants which are renewed annually, for 3 years after the date of the submission of the annual expenditure report.

(2) Records for nonexpendable personal property which was acquired with Federal funds shall be retained for 3 years after the final disposition of such property.

(c) *Microfilm copies.* The Grantee may substitute microfilm copies in lieu of original records in meeting the requirements set forth herein.

(d) *Audit questions.* The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(e) *Audit and examination.* The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all such records and to any other pertinent books, documents, papers, and records of the recipient.

6. *Payment procedures.* To obtain Federal funds, the Grantee shall receive payments in accordance with the payment schedule which is set forth in the Special Terms and Conditions.

7. *Reports.* The Grantee shall submit such fiscal and technical reports as may be required in the grant or by the Grants Officer, and in the quantity and at the time stated in the report schedule which is set forth in the Special Terms and Conditions.

8. *Printing and duplicating.* All printing and duplicating authorized under this grant is subject to the limitations and restrictions contained in the current issue of the U.S. Government Printing and Binding Regulations if done for the use of the Department within the meaning of those Regulations.

9. *Audits.* (a) All expenditures by the Grantee shall be audited by the Grantee or at the Grantee's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws and regulations.

(b) The Grantee shall schedule such audits with reasonable frequency (usually annually, but not less frequently than once every 2 years), considering the nature, size, and complexity of the activity.

(c) Copies of audit reports shall be made available to the Assistant Secretary to assure that proper use has been made of the funds expended. The results of such audits will be used to review the Grantee's records and shall be made available to Federal auditors. Federal auditors shall be given access to such

records or other documents as may be necessary to review the results of such audits.

(d) Each Grantee shall use a single auditor for all its expenditures under Federal education assistance programs, regardless of the number of Federal agencies providing such assistance.

10. *Applicability of State and local laws and institutional procedures regarding expenditure of funds.* Except to the extent otherwise provided for in this document or any document incorporated herein by reference, nothing herein or therein shall be construed so as to alter the applicability to the Grantee of any State or local law, rule, regulation, or any institutional procedure which would otherwise pertain to the expenditure of funds.

11. *Copyright and publication.* (a) The term "materials" as used herein means writing, sound recordings, films, pictorial reproductions, drawings or other graphic representations, computer programs, and works of any similar nature produced under this grant. The term does not include financial reports, cost analyses, and similar information incidental to grant administration.

(b) It is the policy of the Department that the results of activities supported by it should be utilized in the manner which would best serve the public interest.

(c) Where the grant results in a book or other copyrightable materials, the author or Grantee is free to copyright such materials, but the Assistant Secretary reserves a royalty fee, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use such materials for Government purposes.

12. *Acknowledgement and disclaimer in publication.* (a) Any publication or presentation resulting from or primarily related to the project being performed hereunder shall contain the following acknowledgment: "The project presented or reported herein was performed pursuant to a Grant from the Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the Department and no official endorsement by the Department should be inferred."

(b) Materials produced as a result of the grant may be published without prior review by the Assistant Secretary, provided that 15 copies of such materials shall be furnished to the Grants Officer and no such materials may be published for sale without the prior approval of the Grants Officer. Such approval shall be subject to such requirements as the Assistant Secretary deems appropriate.

13. *Final accounting.* (a) In addition to such other accounting as the Assistant Secretary may require, the Grantee shall render, with respect to the program, project, or activity assisted under the grant, a full final accounting of funds expended, obligated, and remaining. A report of such accounting shall be submitted to the Assistant Secretary within 90 days of the expiration or termination of the grant, and the recipient shall remit within 30 days of the receipt of a written request therefor any amounts found by the Assistant Secretary to be due. Such period may be extended at the discretion of the Assistant Secretary upon the written request of the recipient.

14. *Travel.* Travel allowances shall be paid in accordance with applicable State and local laws and regulations and grantee policies. If none of these are applicable, travel shall be done in accordance with Federal Government regulations. No foreign travel is authorized under the grant unless prior approval is received from the Grants Officer. Travel between the United States and Guam, American Samoa, Puerto Rico, the U.S. Virgin Islands, the Canal Zone, and Canada is not considered foreign travel.

15. *Property management.*—(a) *Definitions.* The following definitions apply:

(1) *Real property.* Real property means land, land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

(2) *Personal property.* Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable property provided that such definition would at least include all tangible personal property as defined in this paragraph.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

(b) *Personal property acquisitions.* Personal property shall be acquired by the Grantee in whole or in part with Federal funds only to the extent required for the performance of the grant, and in quantities and dollar amounts not to exceed those specified elsewhere in the approved project proposal. Real property shall not be acquired in support of the grant.

(c) *Title.* Title to nonexpendable personal property acquired by the Grantee in whole or in part with Federal funds shall vest in the Grantee. Title to federally owned nonexpendable property which is provided to the Grantee shall remain vested in the Federal Government.

(d) *Use.* The Grantee shall use personal property acquired or provided under the grant solely in the performance of the grant.

(1) The Grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program, whether or not the program continues to be supported by Federal funds. When there is no longer a need for the property to accomplish the purposes of the grant program, the Grantee shall use the property in connection with other Federal grants it has received in the following order of priority:

(a) Grants from the Assistant Secretary or the Office of Education necessitating use of the property;

(b) Grants from other Federal agencies necessitating use of the property.

(2) When the Grantee no longer needs the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) *Nonexpendable property with an acquisition cost of less than \$500 and used 4 years or more.* The Grantee may use the property for its own official activities without reimbursement to the Federal Government, or may sell the property and retain the proceeds.

(b) *All other nonexpendable property.* The Grantee may retain the property for its own use, provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(c) *Disposition.* If the Grantee has no need for the property, disposition of the property shall be as follows:

(1) *Nonexpendable property with an acquisition cost of \$1,000 or less.* Except for property which meets the criteria of paragraph (d) (2) (a) above, the Grantee shall



RULES AND REGULATIONS

sell the property and reimburse the Federal agency in an amount which is computed in accordance with subdivision (b) of this subparagraph.

(2) *Nonexpendable property with an acquisition cost of over \$1,000.* The Grantee shall request disposition instructions from the grantor agency. If the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency in an amount which is computed by applying the percentage of the Grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred. If the Grantee is instructed to dispose of the property otherwise, he shall be reimbursed by the Federal grantor agency for the costs incurred in such disposition. If disposition instructions are not issued within 120 days after reporting, the Grantee shall sell the property and reimburse the Federal grantor agency in an amount which is computed by applying the percentage of the Federal participation in the grant program to the sales proceeds. Further, the Grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(3) *Federally owned nonexpendable personal property.* Upon the completion or termination of the grant (or the expiration of need for the property for any Federal grant purposes), the Grantee shall report to the Grants Officer in writing the federally-owned nonexpendable personal property acquired or provided under the grant.

(f) *Management standards.* The Grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of the property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the grantor agency for its share;

(2) A physical inventory of the property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property;

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented;

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition; and

(5) Proper sales procedures shall be established for unneeded property which provide for competition to the extent practicable and result in the highest possible return.

(g) *Expendable personal property.* When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for such property for any Federal grant purposes, the Grantee may retain or sell the property, provided the Federal Government is reimbursed for its share in the costs in accordance with paragraph (d) (2) (b) above.

(h) *Intangible property.* If any program produces patents, patent rights, processes, or inventions in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. The grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights

in the invention or discovery (including rights under any patent issued thereon) shall be disposed of and administered in order to protect the public interest consistent with the Statement of Government Patent Policy (36 FR 16889).

16. *Contracting and procurement.* Recipients may use their own procurement regulations which reflect applicable State and local law, rules, and regulations, provided that procurements made with Federal funds adhere to the standards set forth as follows:

(a) The recipient shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal funds. Recipient's officers, employees, or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law, rules, or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the recipient, officers, employees, or agents, or by contractors or their agents.

(b) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(c) The recipient shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(1) Proposed procurement actions shall be reviewed by recipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition.

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

(4) The type of procuring instruments used (i.e., fixed price contracts, cost-reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the Federal program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) below is necessary to accomplish sound procurement. However, procurements of \$2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the recipient, price and other factors considered. (Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest

bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the recipient. Any or all bids may be rejected when it is in the recipient's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(6) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the recipient if:

(a) The public exigency will not permit the delay incident to advertising;

(b) The material or service to be procured is available from only one person or firm. (All contemplated sole source procurements where the aggregated expenditure is expected to exceed \$5,000 shall be referred to the Assistant Secretary for prior approval.)

(c) The aggregate amount involved does not exceed \$2,500;

(d) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(e) The material or services are to be procured and used outside the limits of the United States and its possessions;

(f) No acceptable bids have been received after formal advertising;

(g) The purchases are for highly perishable materials or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; and

(h) Such procedure is otherwise authorized by law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(8) Procurement records or files for purchases in amounts in excess of \$2,500 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(9) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(d) The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contracts' terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are in excess of \$2,500, shall contain suitable provisions for termination by the recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe condi-

R. FORD

tions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All negotiated contracts (except those of \$2,500 or less) awarded by recipients shall include a provision to the effect that the recipient, the Assistant Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal program for the purpose of making audit, examination, excerpts, and transcriptions.

17. *Health and safety standards.* Whenever the Grantee, acting under the terms of the grant, shall rent, lease, purchase, or otherwise obtain classroom facilities (or any other facilities) which will be used by students and faculty, the Grantee shall comply with all health and safety regulations and laws applicable to similar facilities being used in that locality for such purpose.

18. *Compensation.* If a staff member is involved simultaneously in two or more projects supported by funds from the Federal Government, he may not be compensated for more than a total of 100 percent time from such Government funds for all projects during any given period of time. The grantee shall not use any grant funds or funds from other sources to pay a fee to, or travel expenses of, employees of the Department for lectures, attending program functions, or other activities in connection with the grant.

19. *Labor standards.* To the extent that grant funds will be used for alteration and repair (including painting and decorating) of facilities, the Grantee shall furnish the Grants Officer with the following:

(a) A description of the alteration or repair work and the estimated cost of the work to be performed at the site;

(b) The proposed advertising and bid opening dates for the work;

(c) The city, county, and State at which the work will be performed; and

(d) The name and address of the person to whom the necessary wage determination and labor standards provisions are to be sent for inclusion in contracts, not later than 6 weeks prior to the advertisement for bids for the alteration or repair work to be performed. The Grantee shall also include or have included in all such alterations or repairs the wage determination and labor standards provisions that are provided and required by the Secretary of Labor under 29 CFR Parts 3 and 5.

20. *Equal employment opportunity.* With respect to repair and minor remodeling, the Grantee shall comply with and provide for Contractor and Subcontractor compliance with the requirements of Executive Order 11246, as amended, as implemented by 41 CFR Part 60. The terms required by Executive Order 11246 will be included in any contract

for construction work, or modification thereof, as defined in said Executive order.

21. *Use of consultants.* (a) The hiring of and payments to consultants shall be in accordance with applicable State and local laws and regulations and grantee policies. However, for the use of and payment to consultants whose rate will exceed \$100 per day, prior written approval for the use of such consultants must be obtained from the Grants Officer.

(b) The Grantee must maintain a written report for the files on the results of all consultations charged to this grant. This report must include, as a minimum: (1) the consultant's name, dates, hours, and amount charged to the grant; (2) the names of the grantee staff to whom the services are provided; and (3) the results of the subject matter of the consultation.

22. *Clearance of forms.* To permit monitoring and clearance, the Grantee is to submit to the appropriate Project Officer, prior to use, five copies of all tests, questionnaires, interview schedules or guides, and rating scales which are to be employed in collecting data from 10 or more individuals or organizations. A brief report of related information (such as purposes of the study, relevance of the data-gathering instruments to these purposes, nature of the sample, number of respondents, burden on respondents, etc.) must accompany the copies of the instruments, in accordance with directions from the Department. Exceptions:

(a) Copies need not be submitted of conventional instruments which deal solely with (1) cognitive functions or technical proficiency (e.g., scholastic aptitude, school achievement, etc.), (2) routine demographic information, or (3) routine institutional information; but a report of the "related information" (as specified above) concerning the particular data-gathering instruments must be supplied to the Project Officer in order to permit appropriate monitoring and clearance.

(b) Ordinary classroom tests employed in the development of a new curriculum or as part of the regular instructional routine, constituting part of the project for which funds are granted, need be neither reported nor submitted; but final tests employed in such a project, serving purposes of evaluation, must be reported; and, if significantly unusual in such essential features as content, directions, form of response, etc., must be submitted in five copies.

23. *Grant related income and investment income.* (a) Interest or other income earned by investment of the grants funds is termed "Investment Income." Grantees other than a State or State agency shall return such funds to the Assistant Secretary. State or State agencies are not accountable for their use of Investment Income.

(b) Royalties received from copyrights and patents, funds received from sale of products or services, fees received for personal

services, where such funds are derived from activities supported or funded by the grant, are termed "Grant Related Income." Accountability for Grant Related Income shall be satisfied in accordance with the following requirements:

(1) Funds received from royalties on copyrights or patents during the grant period shall be retained by the Grantee and either (a) added to the funds already committed to the program, or (b) deducted from total project costs for the purpose of determining the net costs on which the Federal share of cost will be based.

(2) After termination or completion of the grant, the Federal share of royalties in excess of \$200 received annually shall be returned to the Assistant Secretary for deposit as Miscellaneous Receipts in the U.S. Treasury. The Federal share of royalties shall be computed on the same basis as the Federal share of the total project cost.

(3) All other income earned during the grant period shall be retained by the Grantee and shall be either (a) added to funds committed to the project by the Government and the Grantee and used to further eligible program objectives, (b) deducted from the total project costs of the grant for the purpose of determining the net costs on which the Federal share of costs will be based, or (c) used to reimburse the Grantee for allowable costs which, for budgetary or other reasons, have previously been treated as non-reimbursable. Such income may not be used to reimburse the Grantee for unallowable costs.

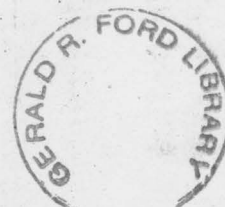
(4) The expenditure of the Federal share of Grant Related Income shall not be considered in meeting cost sharing or matching requirements, except under those programs where it is clear that legislative intent was to permit such income to be used for such purposes.

(5) If the Grantee receives any grant related income in connection with the grant, the maintenance of records of the receipt and disposition of the grant related income shall be in accordance with the requirements set forth in Term and Condition No. 5, "Accounts and Records."

24. *Changes in key personnel.* The Project Director and other grant personnel specified by name in the proposal are considered to be essential to the work being performed. If for any reason substitution of a specified individual becomes necessary, the Grantee shall provide timely written notification to the Grants Officer. Such written notification shall include the successor's name with a resumé of his qualifications.

25. *Animal care.* Where research animals are used in any project financed wholly or in part with Federal funds, every precaution shall be taken to assure proper care and humane treatment of such animals.

[FR Doc.73-2392 Filed 2-5-73;8:45 am]



ATTACHMENT A

Government Litigation In The Fifth Circuit
With Respect to Faculty Discrimination

Lee, et al. v. Roanoke City Board of Education, et al.
C.A. No. 855-E (M.D. Ala. Ct. order entered
Feb. 18, 1972)

Motion by NEA on November 23, 1971 with United
States as amicus alleging faculty dismissals.

Miller, et al. v. Board of Education of Gadsden, et al.
C.A. No. 63-574 (N.D. Ala. Ct. order entered
June 29, 1972)

Motion filed by United States May 18, 1972 re
faculty dismissal and requesting remedial relief
to correct the effects of prior discrimination,
hiring practices.

Lee, et al. & United States & NEA v. Macon County Board of
Education, et al. (Clay County). C.A. 70-251-S
(N.D. Ala., Consent order entered July 27, 1971)

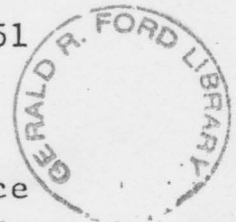
Motion filed by NEW in May, 1971, alleging demotion
and/or dismissal of black principals and teachers on
basis of race and not objective non-racial standards
and violation of Singleton ratio.

Lee, et al. & United States & NEA v. Macon County Board of
Education, et al. (Tuscaloosa City System, C.A. No.
70-251, (N.D. Ala.)

Motion filed by United States for further relief
on April 8, 1971, alleging non-compliance with
the Singleton ratio. Order of April 23, 1971
required faculty assignments to achieve Singleton
ratio and establish non-racial criteria.

Lee v. Macon (Decatur City School System), C.A. No. 70-251
(N.D. Ala., Court order filed July 13, 1971)

Motion filed by NEA on March 29, 1971, and by
United States on May 3, 1971 alleging non-adherence
to Singleton provisions, in that former black prin-
cipals were offered subsequently occurring principal
positions when they became available and failure to
adopt non-racial, objective criteria.



Lee v. Macon (Talladega County School System) C.A. No. 70-251 (N.D. Ala., Court order filed March 30, 1972)

Motion filed by United States on January 25, 1972, for order requiring defendants to adopt non-racial objective criteria as required by the February 3, 1970, and January 8, 1971 Court order and in conformity with Singleton.

Lee v. Macon (Muscle Shoals City School System), C.A. No. 70-251 N.D. Ala., Ct. order filed September 30, 1971)

Motion by United States filed September 27, 1971, objecting to certain aspects of the school district's proposed non-racial objective criteria plan and by NEA on July 30, 1971, alleging demotion.

Lee & United States v. Macon City Board of Education (Colbert County Board of Education) C.A. No. 72-3015 (C.A. 5th Cir. order August 10, 1973)

Motion for supplemental relief filed by the NEA (United States participating as plaintiff-intervenor-amicus curiae) alleging failure to offer a former black principal a principalship and failure to reemploy two white teachers.

United States v. State of Georgia (Six School Districts) (C.A. No. 71-2563) (5th Cir., Order 1971)

United States motion to direct defendant to require local school districts to implement Singleton provisions.

United States v. Board of Education of Bulloch County (C.A. No. 462) (S.D. Ga. orders of July 1, 1971 and January 20, 1972)

United States filed motion for supplemental relief on principal demotions.

United States & Thompson, et al. v. Wilcox County Board of Education, et al., C.A. No. 3934-65-H, S.D. Ala.

United States on September 27, 1972, sought order to show cause respecting dismissals of 30 black teachers. On October 5, 1972 the district court ordered reinstatement of 16 of the teachers; on April 24, 1973 the court directed reinstatement of the remaining 14.



United States & Dixon v. Board of Public Instruction of Hendry County (C.A. No. 70-1069-Civ. CF) (S.D. Fla. Order September 19, 1973)

United States filed memorandum as amicus on plaintiffs-intervenors motion.

United States v. Flagler County School District (C.A. No. 70-636-Civ. J) (M.D. Fla. Order August 7, 1970, and April 28, 1971)

United States filed an Application for Order to Show Cause to enjoin defendants from failing to assign teachers to each school according to the system-wide racial ratio.

Smith, et al. v. Concordia Parish School Board (C.A. No. 11,577) (W.D. Louisiana, order September 1, 1972) C.A. 5, order May 30, 1973

The United States as plaintiff-intervenor, moved for supplemental relief on behalf of two tenured teachers and the reinstatement of a black principal.

United States v. Richland Parish School Board, et al., (C.A. No. 12169) (W.D. La., order May 1, 1972)

The United States applied for a show cause order after black staff members had been terminated by the defendant.

Celestain, Vira, et al., & United States v. Vermillion Parish School Board (C.A. No. 11,908) (W.D. Louisiana, order 6/27/72)

The United States, designated amicus curiae applied for a show cause order to secure relief for a demoted black principal.

United States v. State of Mississippi (Simpson County) (C.A. No. 47-61) (S.D. Mississippi, Order March 1, 1971)

United States filed an application for a show cause order against Simpson County Board of Education to show why said county should not be required to assign teachers in accordance with Singleton.

Thurman & United States v. Humphrey's County School District, et al. (C.A. No. GC 6645) (N.D. Miss., Order August 4, 1971)

United States Application for show cause order filed against defendant seeking relief in the assignment of faculty.

United States & Brown v. Coffeeville Consolidated School District, (C.A. No. WC 6957-K) (N.D., Miss., Order January 29, 1971)

Private plaintiffs motion for supplemental relief (and U.S. application for show cause order) seeking to enjoin firing of all black coaches and one black principal.

United States v. Indianola Municipal Separate School District (C.A. No. GC 6637) (N.D. Miss., Order May 10, 1971)

United States filed an application for an Order to Show Cause why defendant should not conform to Singleton due to two all black teaching staffs.

Adams v. Rankin County Board of Education (C.A. No. 71-2309) (5th Cir., Order Sept., 1973)

The United States appeared as amicus curiae and filed a motion for enforcement of the court's orders concerning faculty discrimination, seeking reinstatement with back pay for dismissed and demoted black staff members and faculty.

United States & Baird v. Benton County Board of Education (C.A. No. WC 6513-S) (N.D. Miss., Order June 10, 1970)

United States sought a preliminary injunction to enjoin termination of black teachers.

United States v. Leflore County School District (C.A. No. GC 6640A) (N.D. Miss., Order January 12, 1971)

The United States moved for supplemental relief and an application for a show cause order requiring defendants to reassign teachers and other staff.



United States v. Greenwood Municipal Separate School District
& Leflore County School District, (C.A. No. GC 6640)

United States filed an application for a show cause order requiring defendants to show why faculty members should not be reassigned to conform to earlier Court order.

United States v. Sunflower County School District (C.A.
No. 6637A) (N.D. Miss., March 30, 1970)

United States filed a motion for supplemental relief to provide faculty and staff with Singleton protections.

Harris v. Yazoo County Board of Education, et al., (C.A. No.
1209) (S.D. Miss.)

The United States, as amicus curiae, applied for an order to show cause on account of deficiencies in faculty assignment.

United States v. Texas Education Agency (La Vega Independent
School District), (C.A. No. 70-CA-80) (W.D. Texas,
Order January 4, 1972, consent decree July 17, 1972)

The United States filed a motion for a temporary restraining order and for an order to show cause why the defendant school district should not be required to adopt and apply non-racial objective criteria in dismissing faculty where fifty-five black staff members and three white staff members were dismissed.





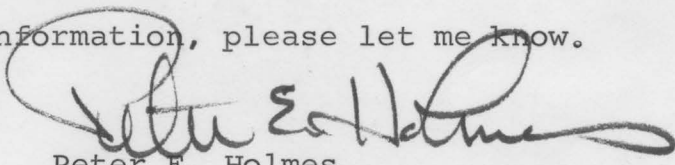
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OCT 19 1973

MEMORANDUM FOR HONORABLE STANLEY S. SCOTT

In response to your inquiry of September 24, enclosing two articles on black teacher displacement, I have enclosed a memorandum outlining our compliance activity and survey results in this area.

Should you need further information, please let me know.


Peter E. Holmes
Director
Office for Civil Rights

Enclosure



THE WHITE HOUSE

WASHINGTON

October 16, 1973

MEMORANDUM FOR:

STAN SCOTT

FROM:

DAVID N. PARKER

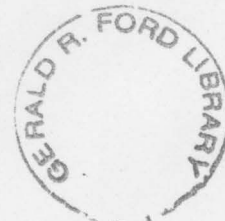
SUBJECT:

Presidential Schedule Suggestions

With the many new faces on the White House staff, this is a good time to remind you that we are constantly looking for creative suggestions for the President's schedule. Frequently, good ideas are wasted and opportunities lost because we simply fail to pass them on.

You can help by making certain that each and every good idea generated by you or your staff is written up along the lines of the attached format and forwarded to me or Terry O'Donnell, who is working with me on the President's schedule. It only takes a minute to pass on a good schedule idea or opportunity, but if you don't -- it could mean the difference between getting RN out front on a given issue or having it preempted.

Looking forward to seeing your suggestions.



SCHEDULE PROPOSAL

DATE:

FROM:

VIA: David N. Parker

MEETING: or greeting - drop-by - address - reception -
etc.

DATE: day and date proposed (leave blank if no
specific time requirement)

PURPOSE: explicitly stated as to why the event should
be done and exactly what our objective is in
doing it

FORMAT: -location (room, office or city and specific
place in the city)
-participants (attach list and narrative dis-
cussion of composition of the group or
audience)
-expected length of participation requested
-when speaking to an audience or convention,
preliminary program must be attached
-indicate other suggested movements

SPEECH
MATERIAL: remarks or talking points - required topic
state concisely what types of remarks are
appropriate

PRESS
COVERAGE: state what type of press and photo coverage
would be desirable to accomplish our press
objectives

STAFF: attending meeting

RECOMMEND: list of those who support the proposal and
include any pertinent comment they may make
concerning the proposal

OPPOSED: cite any opposition to the proposal and why

PREVIOUS
PARTICIPATION: state whether or not the President has seen
officials or participated in meetings of
organization named and when

BACKGROUND: this should indicate both the pros and cons
of the proposal in the briefest possible
manner

APPROVE _____

DISAPPROVE _____

