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DEPARTMENT OF EDUCATION

34 CFR Parts 270, 271, and 272

RIN 1810-AB26

[Docket ID ED-2016-OESE-0006]

Equity Assistance Centers (Formerly Desegregation Assistance Centers (DAC))

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Equity Assistance Centers (EAC) program, authorized under Title IV of the Civil Rights Act of 1964 (Title IV), and removes the regulations that govern the State Educational Agency Desegregation (SEA Desegregation) program, authorized under Title IV. These regulations govern the application process for new EAC grant awards. These regulations update the definitions applicable to this program; remove the existing selection criteria; and provide the Secretary with flexibility to determine the number and composition of geographic regions for the EAC program.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

On March 24, 2016, the Secretary published a notice of proposed rulemaking (NPRM) for the EAC program (81 FR 15665). In the preamble of the NPRM, we discussed on pages 15666 through 15667 the major changes proposed in that document to improve the EAC program. These included the following:

- Amending the section that governs the existing geographic regions to allow the Secretary flexibility in choosing the number and composition of geographic regions to be funded with each competition.
- Adding religion to the areas of desegregation assistance, adding a definition for "special educational problems occasioned by desegregation," and amending the definition of "sex desegregation" to clarify the protected individuals identified by this term.

- Removing the existing selection criteria, to instead rely on the general selection criteria listed under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210.

- Removing the limitations and exceptions established in current 34 CFR 270.6 on providing desegregation assistance, to align these regulations with those of other technical assistance centers.

- Removing 34 CFR part 271, as the SEA Desegregation program has not been funded in twenty years, as well as merging part 272 into part 270, so that a single part covers the EAC program.

These final regulations contain changes from the NPRM, which are fully explained in the Analysis of Comments and Changes section of this document.

Public Comment: In response to our invitation in the NPRM, 108 parties submitted comments on the proposed regulations. We discuss substantive issues under the section number of the item to which they pertain. Several comments did not pertain to a specific section of the proposed regulations. We discuss these comments based on the general topic area. Generally, we do not address technical and other minor changes. In addition, we do not address comments that

raise concerns not directly related to the proposed regulations.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General Comments

Comment: Numerous commenters wrote to express their support and appreciation of the previous work of the EACs.

Discussion: The Department appreciates the support for this program and for the past work of the EACs.

Changes: None.

Comment: Several commenters wrote to express their support for updating the program name and related definitions to refer to "Equity Assistance Centers" rather than Desegregation Assistance Centers. However, a few commenters objected to the Department amending the definition of a "Desegregation Assistance Center" to refer to it as an Equity Assistance Center. These commenters proposed alternate names, such as Integration and Equity Assistance Centers (IEACS), Desegregation and Equity Assistance Centers (DEACs) or Civil Rights Equity Assistance Centers (CREACs).

Discussion: The Department appreciates the support expressed by many commenters for these changes. The

Department declines to adopt the commenters' alternate suggestions for names, as we maintain that the term "equity" better reflects the breadth of desegregation activities currently undertaken by the regional centers. Also, we note that the Department has for some time referred to the regional centers as "Equity Assistance Centers" in the notices inviting applications, in cooperative agreements, and on the Office of Elementary and Secondary Education's (OESE's) Web page for the grant program. Ultimately, the purpose of the regional centers is to ensure equitable access to educational opportunities for all students without regard to race, sex, national origin, or religion. Therefore, we believe it is appropriate to formally refer to the regional centers as "Equity Assistance Centers."

Changes: None.

Comment: Some commenters requested that we delay the implementation of these regulations until we engage in further consultation with the existing EACs, tribes, or other stakeholders.

Discussion: The Department solicited public comment on the open issues affecting these regulations through the NPRM. Existing EACs, along with other stakeholders, were notified of the proposed regulations multiple times throughout the

comment period. The Department provided the existing EACs with the same opportunity to comment on the proposed regulations as all other interested parties. Further, we note that these proposed regulations do not trigger the need for tribal consultation; while American Indian and Alaska Native students may benefit as a result of the EAC program, the program is aimed at servicing all LEAs seeking assistance with desegregation problems, and not directly Indian tribes. Thus, we decline to postpone the implementation of these regulations for the purpose of further consultation.

Changes: None.

Comment: One commenter suggested that the EACs renew a programmatic focus on supporting school integration efforts, and provide assistance for policy efforts designed to bring students together. This commenter also suggested the Department increase EAC accountability in reporting outputs, outcomes, best practices, and what works, to expand resources and awareness to a wide array of communities.

Discussion: The Department supports the continued development of an EAC program that works to ensure that students are brought together through eliminating segregation in schools on the basis of race, national

origin, sex and religion. The Department agrees that accountability plays an important role in this process, and directs this commenter to our Government Performance and Results Act (GPRA) measures, which measure the work of the EACs using a variety of criteria, and performance reporting requirements including annual performance reports, annual evaluations, and financial reports. These can be found in the notice inviting applications for new awards published elsewhere in this issue of the Federal Register. When running competitions for the EAC program, the Department hopes to attract applicants that will consider a range of methods for addressing the needs of each geographic region, which may include identifying different strategies to expand resources and awareness to a wide array of communities within the region. Finally, as to the sharing of best practices, the Department notes that under § 270.30(b), each EAC is expected to coordinate assistance in its geographic regions with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers, which could include the soliciting and sharing of best practices.

Changes: None.

Removal of previous 34 CFR part 271

Comment: Some commenters requested that the Department retain the regulations for the SEA Desegregation Program under existing 34 CFR part 271.

Discussion: The Department appreciates, but disagrees with, these comments. Congress has not funded the SEA Desegregation program in more than 20 years, and as a result, the Department no longer administers this program. Given these circumstances, the Department believes that retaining the SEA Desegregation program regulations under part 271 is not in the public interest, and could only result in public confusion. Thus, the Department will move forward in removing 34 CFR part 271, and consolidating current part 272 into part 270.

Changes: None.

Removal of previous §272.30: What criteria does the Secretary use to make a grant?

Comment: Several commenters objected to the Department removing the selection criteria under previous §272.30. Specifically, some of these commenters stated that the existing selection criteria are necessary because they are tailored to the special needs of the civil rights community. Another commenter requested that the selection criteria specify that the EACs can provide assistance in all desegregation assistance areas, and that EACs can help

to combat religious discrimination without decreasing other civil rights protections. Another commenter suggested that the Department consider an understanding of the elements required to effect real and lasting change versus information dissemination.

Discussion: The Department believes that using the general selection criteria listed in 34 CFR 75.210 will provide the Secretary with the necessary flexibility to ensure that the selection criteria reflect the needs and concerns identified at the time of each competition, including those of the civil rights community. The general selection criteria have been vetted and tested across many Departmental programs, and provide a wide range of factors for evaluating applications in any competition. In addition, adoption of the general selection criteria would allow the Secretary to improve the selection process, based upon experience gained in running the program.

With regard to the concern that EACs be able to provide assistance in all desegregation assistance areas, we decline to add this as a selection criterion because we will be using the general selection criteria under 34 CFR 75.210. However, the Department will ensure that through those criteria, we will select grantees that have the capability to provide technical assistance across all areas

of desegregation assistance. The Department expects that each grantee will have the capacity to provide all types of desegregation assistance, in accordance with requests for technical assistance. Finally, with regard to the concern that the selected EACs be able to effect real and lasting change, we expect that future grantees will continue the strong work of current and past EAC grantees, and will provide appropriate levels of technical assistance depending on the requests. This may take the form of information dissemination, which is often necessary to effect change. However, we believe that the selected EACs will be in the best position to determine the appropriate level of technical assistance in response to each request and that such technical assistance will be of sufficient quality, intensity, and duration to lead to improvements in practice among the eligible entities receiving those services.

Changes: None.

§ 270.4 What types of projects are authorized under this program?

Comment: Several commenters expressed support for the addition of "community organizations" to the list of parties that may receive desegregation assistance under this program.

Discussion: The Department appreciates the support for these changes.

Changes: None.

§ 270.5 What geographic regions do the EACs serve?

Comment: Several commenters asked that the Department maintain ten geographic regions, rather than reducing to four geographic regions. Among these, some commenters stated that demand for EAC services is rising, and expressed concern as to how four geographic regions could meet those demands. Some commenters requested that we instead increase the number of geographic regions.

Discussion: The Department believes that allowing the Secretary to determine the number and composition of geographic regions for the program is necessary to maximize the program funds devoted to technical assistance. As noted in the NPRM, Congress has reduced funding for the EAC program significantly since the program was first created. The Department will limit the number of centers to provide each center with more funding, which will help to ensure a greater percentage of funds are used to provide technical assistance and a smaller percentage of funds are devoted to overhead costs. Were the EAC program to receive additional funding in the future, the Department may consider

increasing the number of geographic regions, as appropriate.

With regard to the commenters who expressed concern that the demand for EAC services is rising, the Department notes that the regulations seek to streamline EAC services. Thus, the Department believes that these changes will help alleviate issues of excess demand, rather than aggravate them.

Changes: None.

Comment: Two commenters asked the Department to clarify how potential grantees will be able to identify partners and the needs of States if the geographic regions will not be announced until the notice inviting applications.

Discussion: The Department expects that a data-driven approach to identifying regional needs will help potential applicants anticipate the needs of each region and make better use of existing resources, including other Federal technical assistance providers and Federal, State, and local data sources. In addition, the Department anticipates that this will be an ongoing process, and that needs of the States and LEAs within each region will become more apparent throughout the project period. Similarly, while the Department expects applicants will have baseline knowledge of potential partners within the geographic

region, we hope that grantees will identify new partners throughout the project period, as appropriate.

Changes: None.

Comment: Several commenters expressed concern with the proposed criteria for determining the number and boundaries of the geographic regions. In addition, several commenters suggested that changing these criteria during an election year would create additional risk to the program. Finally, some commenters expressed general concern that providing the Secretary with flexibility to determine the number and composition of geographic regions for the program would expose the centers to political influences.

Discussion: The Department has identified objective criteria that will be used to establish both the number and the geographic boundaries of each region to be served by the EACs. Through the NPRM, we solicited comments on what factors the Secretary should consider when determining the composition of States in each geographic region, and gave careful consideration to all suggestions. As such, we believe that the criteria identified are sufficient to ensure that boundaries of the new geographic regions are based on appropriate data, and reflect the underlying needs of those regions.

Similarly, because the Department established the criteria for geographic boundaries through public comment and the boundaries will be based on objective measures, we believe the published criteria we will use when determining the number and composition of geographic regions for the EAC program insulate the EAC geographic boundary determinations from political influence.

Changes: None.

Comment: Some commenters suggested that the Department could allow the centers within each existing region to determine which States and LEAs in its region should receive focused attention based on available data.

Discussion: Title IV and our implementing regulations limit the centers to providing services upon request. The demand-driven nature of the program precludes the regional centers from focusing on specific States or LEAs without a request from those States or LEAs. Please note that once an EAC has developed materials in response to a request for technical assistance, that EAC may make those materials available to other interested parties.

Changes: None.

Comment: Several commenters expressed concern that these regulations could jeopardize the relationships between the existing centers and their clients, or would compromise

cross-center collaboration. Similarly, several commenters expressed concern that changing the current EAC serving a particular geographic region could affect the viability of multi-year projects underway in that region.

Discussion: While we appreciate commenters' concern that these regulations could disrupt the relationships between existing centers and their clients, we note that the EAC funds are awarded to centers through a competitive grant process. Therefore, there is always, and has always been, a possibility that the center will change during a new award cycle. The Department seeks to ensure that program funds are awarded to the most qualified applicants, which will ensure that program funds are used to maximum effect.

The Department appreciates the commenters' commitment to implementing comprehensive, multi-year plans for combating issues of inequity within their region. The Department notes that the EAC program will continue to fund multi-year grants, and the centers will continue to support multi-year technical assistance activities to improve equity, when necessary.

The Department agrees with commenters that ensuring continuity of services is essential to the work of the EAC program. Therefore, we are revising § 270.30 to require that the EACs selected following a new competition will

work with current EACs to support a smooth transition and to minimize disruption for the intended beneficiaries.

Changes: We have revised § 270.30 to include § 270.30(c), which requires that the EACs selected following a new competition must work with current EACs to support a smooth transition and to minimize disruption in the provision of technical assistance.

Comment: Several commenters expressed concern that, were the Department to reduce the number of geographic regions from 10 to 4, a number of beneficiaries would no longer receive services from the EAC program, or would no longer be able to afford them. Commenters expressed particular concern that this could lead to a reduction in services for English learners, low-income, or rural students.

Similarly, some commenters expressed concern that consolidating the geographic regions would lead to increased competition between the LEAs in that region.

Finally, several commenters expressed a concern that the EACs would focus on serving highly impacted States.

Discussion: The Department does not anticipate that changing the number of geographic regions will result in a reduction in EAC technical assistance provided. First, with regard to demand for services, we note that EACs provide assistance where requested by school boards or

other responsible governmental agencies. These services are and will continue to be provided free to responsible governmental agencies and we do not anticipate any impact on the number of requests for assistance from the EACs because of the reduction in the number of geographic regions. With regard to the ability of the EACs to continue to meet the demand for services, the Department believes that consolidating the number of geographic regions will increase efficiency in the use of time, staff, money, and other resources and increase the magnitude of direct technical assistance. We also anticipate that applicants will propose approaches to technical assistance that include the use of existing resources and emerging technologies to improve coordination of center staff and continuous oversight of assistance activities.

Furthermore, these regulations do not alter the level of funding established by Congress for the EAC program. As such, the resources available to fund EACs nationwide, as demand dictates, remain the same. For these reasons, we also disagree with the assertion that consolidating the geographic regions could lead to heightened competition amongst the LEAs within each consolidated region.

The Department agrees with commenters that it is important to ensure that LEAs with high numbers of low-

income students, rural LEAs, and other traditionally underserved populations continue to benefit from the EAC program. The Department intends to expand the reach of the EACs through these regulations by improving the effectiveness and efficiency of the delivery of services.

We note that the regulations do not use the terms "high impacted States" or "highly impacted States." As noted above, the regulations will not cause the EACs to focus on certain States within a region, because EACs provide services when responsible governmental agencies request assistance, not when EACs conduct outreach. Thus, as is now the case, EACs will continue to serve eligible entities within an entire geographic region, upon request for assistance. Please note that once an EAC has developed materials in response to a request for technical assistance, that EAC may make those materials available to other interested parties.

Changes: None.

Comment: Several commenters expressed concern regarding the potential costs associated with consolidating the geographic regions. Of these commenters, many were concerned that consolidation would result in overreliance on remote technical assistance by the EACs. Although some commenters supported EACs increasing their use of

technology, many expressed a belief that the work of the EACs necessitates face-to-face interaction. In addition, some commenters stated that the EACs could not increase the use of remote technical assistance because the EACs are already utilizing technology to the maximum extent possible. Moreover, some commenters expressed concern that poor and rural LEAs and Indian reservations do not have the technological infrastructure to support remote technical assistance. Finally, some commenters expressed concern that consolidation of the geographic regions would result in increased travel costs, as well as the need for more staff and infrastructure within each EAC.

Discussion: The Department believes that the concerns of the commenters are unwarranted. The Department stresses that, while we will consolidate the number of geographic regions, each region will receive a commensurate portion of EAC program funds. The increased funding for each new geographic region should at least partially offset any increased costs for travel, and enable the centers to accrue the necessary staff and infrastructure to serve that geographic region. The Department expects that the EACs will continue to provide on-the-ground technical assistance, and appreciates that such interaction is often

a necessary part of combatting entrenched issues that contribute to segregation.

In order to reach a wide array of eligible entities, we also expect that the EACs will enhance their technical assistance capacities through technology. As noted in the NPRM, the Internet now allows EACs to provide effective and coordinated technical assistance across much greater geographic distances than would have been possible when the previous regulations were promulgated in 1987. Thus, while we acknowledge that the EACs already make great use of technology, we expect that the EACs will need to continue to expand their use of technology to reflect the best practices and most current capabilities for providing remote technical assistance. In addition, we note that the current regulations are not intended to curtail in-person technical assistance, but rather acknowledge that significant advances in technology enable EACs to use a variety of methods for providing technical assistance, and that decreases in funding over the past three decades demand that the EACs continue to find novel methods of providing assistance in order to reach a broad range of eligible entities. Furthermore, we note that under the current structure of ten geographic regions, the EACs are already integrating the use of technology to serve the

large, geographically dispersed populations within the region and cannot respond to every request with in-person technical assistance. Thus, the EACs will need to continue to exercise professional judgment in considering whether a request for technical assistance can be addressed through remote technical assistance. The Department expects that centers will consider whether there are any barriers to providing and receiving technical assistance remotely. As such, the Department expects that high-quality applicants for funding under the EAC program will propose effective and efficient ways to serve the needs of the entire region.

Changes: None.

Comment: Several commenters expressed concern that reducing the number of regions could negatively affect the collaborative work that the EACs conduct with the Office for Civil Rights (OCR) and Department of Justice (DOJ), or that EACs would have to limit the role they play in supporting individual LEAs reaching settlement agreements with OCR or DOJ. Some of these commenters stated that OCR needs 300 new field investigators, and that reducing the number of EACs would contribute to this void. Other commenters stated that EACs provide technical assistance and training to DOJ and OCR, and expressed a concern that

these entities would no longer receive training were the number of geographic regions to be consolidated.

Discussion: The Department anticipates that the EACs will continue to collaborate with the OCR and DOJ, as appropriate. The Department does not anticipate that the EACs will scale back collaboration with these entities, because each EAC will receive funding commensurate with the size of the geographic region. Thus, each EAC will have comparable resources to support LEAs in meeting settlement agreements, upon request.

However, we note that while these entities all address civil rights matters, the role of the EACs is different from, and independent of, the role of OCR and DOJ. It would be inappropriate to base any aspect of the EAC program on the amount of resources devoted to programs aimed at providing similar services to eligible entities. Thus, it is inappropriate to consider the number of OCR field investigators when considering the number of regions for the EAC program. Finally, the Department notes that persons served by the EAC program are limited by section 270.3 to include public school personnel, students, parents, community organizations and other community members. Thus, while the Department anticipates that the EACs will continue to collaborate with OCR and DOJ, it

would be inappropriate for the EACs to provide technical assistance to OCR or DOJ using grant funds provided under these regulations.

Changes: None.

Comment: Several commenters proposed additional criteria the Secretary should consider when determining the size and number of the geographic regions. One commenter suggested the Secretary group contiguous States into regions. Other commenters suggested the Secretary consider: each proposed geographic region's history with inequities; whether a geographic area contains urban, suburban, rural, or frontier populations; the size and diversity of the student population; emerging issues in the field; active school desegregation cases; geographic miles served and number of LEAs; and number of civil rights complaints filed over a given time period in each region. Additional commenters suggested that the Department consider the distrust of Federal government agencies; the historical relationship between the Federal government and tribal schools, and the element of trust within that relationship; cultural affinity; the weather; and the politics of the region.

Discussion: The Department agrees with one commenter's suggestion that priority be given to grouping contiguous States into regions, as States in similar geographic

regions tend to face similar equity issues. The Department also plans to examine each region's history in addressing issues of equity, active school desegregation cases, number of civil rights complaints, and emerging issues in the field by examining the history of EAC and other Departmental technical assistance activities. The Department will limit its analysis to the composition of urban, city, and rural LEAs in each geographic region, because these are the designations for which we have available data. The size and diversity of the student population is included within § 270.5(c)(1). In addition, the number of LEAs in each geographic region is included under § 270.5(c)(2), and the Department believes this is a better measurement of the need of a region than geographic miles covered. The Department declines to incorporate all additional suggested criteria, because they are not aligned with the goals of the program and there is no clear way of measuring those suggested criteria.

Changes: We have revised § 270.5(c) to include a consideration of the geographic proximity of the States within each region.

Comment: One commenter expressed concern that consolidating the number of EACs would expand the EACs'

scope of responsibility into areas and issues associated with geographic regions for which they are not familiar.

Discussion: The Department expects high-quality applicants to be able to provide technical assistance across all desegregation assistance areas the program covers. The Department further expects that, if an EAC did not have experience in addressing a request for technical assistance, it would develop that expertise or partner with other EACs or Federal technical assistance centers to develop that expertise collaboratively. Such coordination would be within the scope of § 270.30(b), which requires EACs to coordinate assistance with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. The Department expects high-quality applicants to identify adequate supports and leverage all available resources, including non-Federal resources, in light of the program's current funding level. In doing so, we believe that EACs will have the capacity to effectively respond to the particular needs of each region.

Changes: None.

Section 270.7 What definitions apply to this program?

Comment: Several commenters expressed support for the Department clarifying and updating the definition of "sex

desegregation" to explain that sex desegregation includes desegregation based on transgender status, gender identity, sex stereotypes, and pregnancy and related conditions consistent with the Department's interpretation of "sex" under Title IX of the Education Amendments of 1972 (Title IX) and implementing regulations, and the interpretations and rules of other Federal agencies. No commenters opposed including all of these terms in the Department's proposed definition. In addition, some commenters suggested that the definition of "sex desegregation" should include desegregation based on "sexual orientation," and that sex stereotyping should specify that stereotypical notions of gender include the sex-role expectation that females should be attracted to and romantically involved only with males (and not females) and that males should be attracted to and romantically involved only with females (and not males).

Discussion: In the NPRM, the Department noted that it updated the definition of "sex desegregation" to clarify to whom it applies and highlight some emerging issues for which EACs may provide technical assistance, including the treatment of students with regard to sex stereotypes.

In the NPRM, the Department also noted that the inclusion of "sex stereotypes" was aligned with our Office for Civil Rights' interpretation of the prohibition of sex

discrimination in Title IX and its regulations, and was consistent with other Federal agencies' recent regulatory proposals, which defined "sex stereotypes" to include treating a person differently because he or she does not conform to sex-role expectations by being in a relationship with a person of the same sex. After the NRPM, the Department of Health and Human Services and the Department of Labor both issued final regulations providing that sex stereotyping includes expectations related to the appropriate roles and behavior of a certain sex. 81 FR 31,376, 31,468 (May 18, 2016) (to be codified at 45 CFR 92.4); 81 FR 39,108, 39,168 (June 15, 2016) (to be codified at 41 CFR 60-20.7(a)(3)).

Some Federal district courts have recognized in the wake of the Supreme Court's decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), that discrimination on the basis of "sex" includes discrimination based on sex stereotypes about sexual attraction and sexual behavior or about deviations from "heterosexually defined gender norms." See, e.g., *Videckis v. Pepperdine Univ.*, No. CV1500298DDPJCX, 2015 WL 8916764 (C.D. Cal. Dec. 15, 2015); *Isaacs v. Felder*, 2015 WL 6560655 (M.D. Ala. Oct. 29, 2015); *Baldwin v. Dep't of Transp.*, Appeal No. 0120133080, Agency No. 2012-24738-FAA-03 (July 15, 2015) ("Sexual

orientation discrimination...is sex discrimination because it necessarily involves discrimination based on gender stereotypes.""). For example, Videckis held that the distinction between discrimination based on gender stereotyping and sexual orientation is artificial, and that claims based on sexual orientation are covered by Title VII and Title IX as sex or gender discrimination. As the Department noted in the NPRM, interpretations of Title IX and its regulations are particularly relevant to the meaning of "sex" under Title IV because Congress's 1972 amendment to Title IV to add sex as an appropriate desegregation assistance area was included in Title IX. Discrimination against an individual because he or she does not conform to sex-role expectations by being attracted to or in a relationship with a person of the same sex will inevitably rely on sex stereotypes. Therefore, in order to provide clarity for EACs on a type of sex discrimination on which they may provide technical assistance, the Department is amending the regulation by adding this language after the reference to "sex stereotypes" as an example of one included in the commentary of the NPRM.

Changes: The Department will amend the definition of "sex desegregation" to add the phrase "such as treating a person differently because he or she does not conform to sex-role

expectations because he or she is attracted to or is in a relationship with a person of the same sex” after “sex stereotypes.”

Comment: Several commenters expressed support for the Department’s proposal to add a definition of “religion desegregation,” and to incorporate religion into the definitions of “desegregation assistance” and “desegregation assistance areas.” Additional commenters supported the addition, but requested that the Department amend the definition of “religion desegregation” or provide additional guidance to ensure that this does not result in harm to other students’ civil rights, result in discrimination, or deprive any student of educational opportunities due to another student’s religious beliefs. In addition, one commenter expressed that the Department should add “religious desegregation” only if additional funds are provided. Finally, one commenter opposed the addition of “religion desegregation” as being out of alignment with the other desegregation assistance activities carried out under this program.

Discussion: First, the Department appreciates the support expressed by many commenters for these changes. The Department is satisfied that the definition of “religion desegregation” set forth in the proposed regulations is the

most appropriate one for the work of the EAC program. The Department notes that religion is specifically included in the definition of "desegregation" in Section 401 of Title IV, the statute authorizing the EAC program. Under Title IV the Secretary is authorized to provide technical assistance to support the desegregation of public schools and the assignment of students to schools without regard to religion. The addition of "religious desegregation" does not alter the civil rights of students, but rather provides the EACs the ability to assist schools to address religion desegregation matters. The Department is aware of an increasing number of incidents of anti-Semitic bullying and harassment in public schools. See, e.g., *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332 (S.D.N.Y. 2014). In addition, the Department is aware of reports documenting that students who are or are perceived as Hindu, Muslim, Sikh, Arab, Middle Eastern, South Asian, or Southeast Asian are frequent targets of bullying and harassment. Given the increasing religious diversity in the United States, and the increased tension that has developed in many of our schools related to a student's actual or perceived religion, the Department believes these regulations are necessary to provide support and technical assistance for schools to assist in developing effective strategies to

ensure all students have a full opportunity to participate in educational programs, regardless of religion. The Department believes that the need and ability for EACs to provide technical assistance to address religion desegregation should not be tied to the EAC funding levels. Accordingly, the Department declines to change the regulations based on these comments.

Changes: None.

Comment: One commenter suggested that the Department update the definition of "race desegregation" to reflect the nature of modern desegregation efforts. Another commenter expressed concern that the caveat that "race desegregation" does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action was too limiting. This commenter suggested that the Department define racial desegregation "to include racial integration efforts permitted by law and the Department's guidance."

Discussion: The definition of "race desegregation" is rooted in the definition of "desegregation" under section 401 of Title IV. In section 401(b), Congress defined "desegregation" to mean the assignment of students to public schools and within such schools without regard to

their race, color, religion, sex, or national origin. The definition under section 401(b) specifies that "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance. Thus, the Department believes that the current definition of "race desegregation" incorporates the statutory definition.

Changes: None.

Comment: One commenter requested that the Department amend the definition of "Special educational problems occasioned by desegregation" to problems that arise "in the course of" rather than "as a result of" desegregation efforts.

Another commenter suggested that the Department change the term "special educational problems occasioned by desegregation," rather than add a definition for the existing term. Both expressed that the term and its definition presented a deficit-based perspective on desegregation activities, rather than focusing on the benefits of these activities.

Discussion: The term "special educational problems occasioned by desegregation" is rooted in section 403 of Title IV, which states that technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with

special educational problems occasioned by desegregation. Thus, we decline to alter the term "special educational problems occasioned by desegregation." However, the Department agrees that the underlying definition would be better served by referring to problems that arise "in the course of" rather than "as a result of" desegregation efforts because the language of the former more accurately reflects the scope of activities covered under "special educational problems occasioned by desegregation."

Changes: We have revised the definition of "special educational problems occasioned by desegregation" under §270.7 to mean those issues that arise in classrooms, schools, and communities in the course of desegregation efforts based on race, national origin, sex, or religion.

Comment: One commenter suggested that the Department adopt language requiring greater parent and parent organization engagement in informing EAC work with schools and LEAs. Similarly, another commenter advocated that the Department require successful applicants to demonstrate substantive partnership with parent organizations.

Discussion: Proposed §270.4 added "community organizations" to the list of parties that may receive desegregation assistance under this program. The Department interprets "community organizations" to include

parent organizations. The Department believes that this addition will enable greater parent organization involvement in EAC technical assistance activities. Furthermore, we note that parents of students are eligible to receive technical assistance under the EAC program.

With regard to the request that the Department require successful applicants to the EAC program to demonstrate substantive partnership with parent organizations, the Department expects that the EACs will engage all interested beneficiaries and eligible stakeholders within an LEA that requests technical assistance. However, the Department believes that the EACs are in the best position to assess who to engage based on the factual situation encountered, in order to successfully address an identified need for desegregation assistance. Thus, the Department declines to add a requirement that applicants demonstrate a substantive partnership with parent organizations.

Changes: None.

Section 270.32 What limitation is imposed on providing Equity Assistance under this program?

Comment: One commenter opposed proposed §270.32 and suggested that the Department clarify that the regulation will not prevent EACs from assisting LEAs in need of support and assistance with inclusive curriculum design.

Another commenter proposed that the Department amend current § 270.6(b) to read that the activities prohibited under § 270.6(a) do not prohibit the DACs from assisting LEAs with implementing appropriate language services for English Learner students.

Discussion: Consistent with the General Education Provisions Act, 20 U.S.C. 1232(a), we cannot and do not authorize centers to exercise direction or control over the curriculum. The Department believes it necessary to amend previous § 270.6(b) because, as drafted, § 270.6(b) could be misconstrued to permit the development or implementation of activities for direct instruction; removing this provision will ensure clarity. The Department agrees that EACs could provide technical assistance to ensure that English learner programs do not unjustifiably segregate students on the basis of national origin or English learner status, consistent with our "Dear Colleague Letter: English Learner Students and Limited English Proficient Parents" (Jan. 7, 2015), (<http://www2.ed.gov/ocr/letters/colleague-el-201501.pdf>). Because the Department has developed publicly available guidance on the responsibilities of SEAs and LEAs to ensure equal educational opportunities for English learners, we do not believe it is necessary to add this to the regulation.

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

Discussion of Costs and Benefits: We have determined that the potential costs associated with this regulatory action will be minimal while the potential benefits are significant.

For EAC grants, applicants may anticipate costs in developing their applications. Application, submission, and participation in a competitive discretionary grant program are voluntary. The final regulations will create flexibility for us to use general selection criteria listed in EDGAR 75.210. We believe that any criterion from EDGAR 75.210 used in a grant competition will not impose a financial burden that applicants would not otherwise incur in the development and submission of a grant application. Other losses may stem from the reduction of the number of regional centers for those applicants that do not receive a grant in future funding years, including the costs of phasing out those centers and associated job losses. Additionally, due to the consolidation of EACs, the remaining geographic regions will cover a larger geographic range. As a result, future grantees may experience increased travel costs in providing in-person technical

assistance. However, this should be offset in part by an increased amount of funding, commensurate with the size of its geographic region.

We do not believe that reducing the number of regions will prevent EACs from providing technical assistance across the country. Technological advancements allow EACs to provide effective and coordinated technical assistance across much greater geographic distances than when the previous regulations were promulgated.

The benefits include enhancing project design and quality of services to better meet the statutory objectives of the programs. These changes will allow more funds to be used directly for providing technical assistance to responsible governmental agencies for their work in equity and desegregation, by reducing the amount of funds directed to overhead costs. The flexibility of the geographic regions will increase the Department's ability to be strategic with limited resources. In addition, these changes will result in each center receiving a greater percentage of the overall funds for the program, and this greater percentage and amount of funds for each selected applicant will help to incentivize an increased quality and diversity of applicants.

In addition, the Secretary believes that students covered under sex desegregation and religion desegregation will strongly benefit from the final regulations. The revised definition of "sex desegregation" will provide clarification regarding the scope of issues covered under sex desegregation, removing any confusion about appropriate technical assistance. For religion desegregation, grantees will need to provide technical assistance to responsible governmental agencies seeking assistance on this subject, but the costs associated with these new technical assistance activities will be covered by program funds.

Paperwork Reduction Act of 1995

These final regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

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(Catalog of Federal Domestic Assistance Number: 84.004D)

List of Subjects in 34 CFR Parts 270, 271, and 272

Elementary and secondary education, Equal educational opportunity, Grant programs-education, Reporting and recordkeeping requirements.

Dated: July 12, 2016

Ann Whalen,
Senior Advisor to the Secretary
Delegated the Duties of Assistant
Secretary for Elementary and
Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 270, 271, and 272 of title 34 of the Code of Federal Regulations as follows:

1. Part 270 is revised to read as follows:

PART 270— EQUITY ASSISTANCE CENTER PROGRAM

Subpart A - General

Sec.

- 270.1 What is the Equity Assistance Center Program?
- 270.2 Who is eligible to receive a grant under this program?
- 270.3 Who may receive assistance under this program?
- 270.4 What types of projects are authorized under this program?
- 270.5 What geographic regions do the EACs serve?
- 270.6 What regulations apply to this program?
- 270.7 What definitions apply to this program?

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Award a Grant?

Sec.

270.20 How does the Secretary evaluate an application for a grant?

270.21 How does the Secretary determine the amount of a grant?

Subpart D—What Conditions Must I Meet after I Receive a Grant?

Sec.

270.30 What conditions must be met by a recipient of a grant?

270.31 What stipends and related reimbursements are authorized under this program?

270.32 What limitation is imposed on providing Equity Assistance under this program?

AUTHORITY: 42 U.S.C. 2000c-2000c-2, 2000c-5, unless otherwise noted.

Subpart A - General

§270.1 What is the Equity Assistance Center Program?

This program provides financial assistance to operate regional Equity Assistance Centers (EACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools, and in the development of effective methods of coping with special educational problems occasioned by desegregation.

§270.2 Who is eligible to receive a grant under this program?

A public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to receive a grant under this program.

§270.3 Who may receive assistance under this program?

(a) The recipient of a grant under this part may provide assistance only if requested by school boards or other responsible governmental agencies located in its geographic region.

(b) The recipient may provide assistance only to the following persons:

- (1) Public school personnel.
- (2) Students enrolled in public schools, parents of those students, community organizations and other community members.

§270.4 What types of projects are authorized under this program?

(a) The Secretary may award funds to EACs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools.

(b) A project must provide technical assistance in all four of the desegregation assistance areas, as defined in 34 CFR 270.7.

(c) Desegregation assistance may include, among other activities:

(1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(2) Assistance and advice in coping with these problems; and

(3) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, community organizations, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

§270.5 What geographic regions do the EACs serve?

(a) The Secretary awards a grant to provide race, sex, national origin, and religion desegregation assistance under this program to regional EACs serving designated geographic regions.

(b) The Secretary announces in the Federal Register the number of centers and geographic regions for each competition.

(c) The Secretary determines the number and boundaries

of each geographic region for each competition on the basis of one or more of the following:

- (1) Size and diversity of the student population;
- (2) The number of LEAs;
- (3) The composition of urban, city, and rural LEAs;
- (4) The history and frequency of the EAC and other Department technical assistance activities, ;
- (5) Geographic proximity of the States within each region; and
- (6) The amount of funding available for the competition.

§270.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 81 (General Education Provisions Act—Enforcement), except that 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under this program.

(b) The regulations in this part.

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2

CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

§270.7 What definitions apply to this program?

In addition to the definitions in 34 CFR 77.1, the following definitions apply to the regulations in this part:

Desegregation assistance means the provision of technical assistance (including training) in the areas of race, sex, national origin, and religion desegregation of public elementary and secondary schools.

Desegregation assistance areas means the areas of race, sex, national origin, and religion desegregation.

English learner has the same meaning under this part as the same term defined in section 8101(20) of the Elementary and Secondary Education Act, as amended.

(Authority: Section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Pub. L. No. 114-95 (2015) (ESSA))

Equity Assistance Center means a regional desegregation technical assistance and training center funded under this part.

National origin desegregation means the assignment of

students to public schools and within those schools without regard to their national origin, including providing students such as those who are English learners with a full opportunity for participation in all educational programs regardless of their national origin.

Public school means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from governmental sources.

Public school personnel means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

Race desegregation means the assignment of students to public schools and within those schools without regard to their race, including providing students with a full opportunity for participation in all educational programs regardless of their race. "Race desegregation" does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

Religion desegregation means the assignment of

students to public schools and within those schools without regard to their religion, including providing students with a full opportunity for participation in all educational programs regardless of their religion.

Responsible governmental agency means any school board, State, municipality, LEA, or other governmental unit legally responsible for operating a public school or schools.

School board means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

Sex desegregation means the assignment of students to public schools and within those schools without regard to their sex (including transgender status; gender identity; sex stereotypes, such as treating a person differently because he or she does not conform to sex-role expectations because he or she is attracted to or is in a relationship with a person of the same sex; and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.

Special educational problems occasioned by desegregation means those issues that arise in classrooms,

schools, and communities in the course of desegregation efforts based on race, national origin, sex, or religion. The phrase does not refer to the provision of special education and related services for students with disabilities as defined under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)

Subpart B-[RESERVED]

Subpart C-How Does the Secretary Award a Grant?

§270.20 How does the Secretary evaluate an application for a grant?

(a) The Secretary evaluates the application on the basis of the criteria in 34 CFR 75.210.

(b) The Secretary selects the highest ranking application for each geographic region to receive a grant.

§270.21 How does the Secretary determine the amount of a grant?

The Secretary determines the amount of a grant on the basis of:

(a) The amount of funds available for all grants under this part;

(b) A cost analysis of the project (that shows whether

the applicant will achieve the objectives of the project with reasonable efficiency and economy under the budget in the application), by which the Secretary:

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations;

(c) Evidence supporting the magnitude of the need of the responsible governmental agencies for desegregation assistance in the geographic region and the cost of providing that assistance to meet those needs, as compared with the evidence supporting the magnitude of the needs for desegregation assistance, and the cost of providing it, in all geographic regions for which applications are approved for funding;

(d) The size and the racial, ethnic, or religious diversity of the student population of the geographic region for which the EAC will provide services; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's geographic region.

Subpart D—What Conditions Must I Meet after I Receive a Grant?

§270.30 What conditions must be met by a recipient of a grant?

(a) A recipient of a grant under this part must:

(1) Operate an EAC in the geographic region to be served; and

(2) Have a full-time project director.

(b) A recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. As part of this coordination, the recipient shall seek to prevent duplication of assistance where an SEA, Comprehensive Center, Regional Educational Laboratory, or other Federal technical assistance center may have already provided assistance to the responsible governmental agency.

(c) A recipient of a grant under this part must communicate and coordinate with the most recent EAC grant recipient(s) in its region, as needed, to ensure a smooth transition for ongoing technical assistance under the EAC program.

§270.31 What stipends and related reimbursements are authorized under this program?

(a) The recipient of an award under this program may pay:

(1) Stipends to public school personnel who participate in technical assistance or training activities funded under this part for the period of their attendance, if the person to whom the stipend is paid receives no other compensation for that period; or

(2) Reimbursement to a responsible governmental agency that pays substitutes for public school personnel who:

(i) Participate in technical assistance or training activities funded under this part; and

(ii) Are being compensated by that responsible governmental agency for the period of their attendance.

(b) A recipient may pay the stipends and reimbursements described in this section only if it demonstrates that the payment of these costs is necessary to the success of the technical assistance or training activity, and will not exceed 20 percent of the total award.

(c) If a recipient is authorized by the Secretary to pay stipends or reimbursements (or any combination of these payments), the recipient shall determine the conditions and

rates for these payments in accordance with appropriate State policies, or in the absence of State policies, in accordance with local policies.

(d) A recipient of a grant under this part may pay a travel allowance only to a person who participates in a technical assistance or training activity under this part.

(e) If the participant does not complete the entire scheduled activity, the recipient may pay the participant's transportation to his or her residence or place of employment only if the participant left the training activity because of circumstances not reasonably within his or her control.

§270.32 What limitation is imposed on providing Equity Assistance under this program?

A recipient of a grant under this program may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

PART 271 [REMOVED AND RESERVED]

2. Under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, part 271 is removed and reserved.

PART 272 [REMOVED AND RESERVED]

3. Under the authority of section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, part 272 is removed and reserved.

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