

SEC. 701. INDIANS, NATIVE HAWAIIANS, AND ALASKA NATIVES.

Title VII (20 U.S.C. 7401 et seq.) is amended to read as follows:

TITLE VII — INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION

PART A — INDIAN EDUCATION

SEC. 7101. STATEMENT OF POLICY.

It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.

SEC. 7102. PURPOSE.

(a) PURPOSE- It is the purpose of this part to support the efforts of local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students, so that such students can meet the same challenging State student academic achievement standards as all other students are expected to meet.

(b) PROGRAMS- This part carries out the purpose described in subsection (a) by authorizing programs of direct assistance for —

- (1) meeting the unique educational and culturally related academic needs of American Indians and Alaska Natives;
- (2) the education of Indian children and adults;
- (3) the training of Indian persons as educators and counselors, and in other professions serving Indian people; and
- (4) research, evaluation, data collection, and technical assistance.

SEC. 7111. PURPOSE.

It is the purpose of this subpart to support local educational agencies in their efforts to reform elementary school and secondary school programs that serve Indian students in order to ensure that such programs —

- (1) are based on challenging State academic content and student academic achievement standards that are used for all students; and
- (2) are designed to assist Indian students in meeting those standards.

SEC. 7112. GRANTS TO LOCAL EDUCATIONAL AGENCIES AND TRIBES.

- (a) IN GENERAL- The Secretary may make grants, from allocations made under section 7113, to local educational agencies and Indian tribes, in accordance with this section and section 7113.
- (b) LOCAL EDUCATIONAL AGENCIES-
- (1) ENROLLMENT REQUIREMENTS- A local educational agency shall be eligible for a grant under this subpart for any fiscal year if the number of Indian children eligible under section 7117 who were enrolled in the schools of the agency, and to whom the agency provided free public education, during the preceding fiscal year —
- (A) was at least 10; or
- (B) constituted not less than 25 percent of the total number of individuals enrolled in the schools of such agency.
- (2) EXCLUSION- The requirement of paragraph (1) shall not apply in Alaska, California, or Oklahoma, or with respect to any local educational agency located on, or in proximity to, a reservation.
- (c) INDIAN TRIBES-
- (1) IN GENERAL- If a local educational agency that is otherwise eligible for a grant under this subpart does not establish a committee under section 7114(c)(4) for such grant, an Indian tribe that represents not less than 1/2 of the eligible Indian children who are served by such local educational agency may apply for such grant.
- (2) SPECIAL RULE- The Secretary shall treat each Indian tribe applying for a grant pursuant to paragraph (1) as if such Indian tribe were a local educational agency for purposes of this subpart, except that any such tribe is not subject to section 7114(c)(4), section 7118(c), or section 7119.

SEC. 7113. AMOUNT OF GRANTS.

- (a) AMOUNT OF GRANT AWARDS-
- (1) IN GENERAL- Except as provided in subsection (b) and paragraph (2), the Secretary shall allocate to each local educational agency that has an approved application under this subpart an amount equal to the product of —
- (A) the number of Indian children who are eligible under section 7117 and served by such agency; and
- (B) the greater of —
- (i) the average per pupil expenditure of the State in which such agency is located; or
- (ii) 80 percent of the average per pupil expenditure of all the States.
- (2) REDUCTION- The Secretary shall reduce the amount of each allocation otherwise determined under this section in accordance with subsection (e).
- (b) MINIMUM GRANT-

(1) IN GENERAL- Notwithstanding subsection (e), an entity that is eligible for a grant under section 7112, and a school that is operated or supported by the Bureau of Indian Affairs that is eligible for a grant under subsection (d), that submits an application that is approved by the Secretary, shall, subject to appropriations, receive a grant under this subpart in an amount that is not less than \$3,000.

(2) CONSORTIA- Local educational agencies may form a consortium for the purpose of obtaining grants under this subpart.

(3) INCREASE- The Secretary may increase the minimum grant under paragraph (1) to not more than \$4,000 for all grantees if the Secretary determines such increase is necessary to ensure the quality of the programs provided.

(c) DEFINITION- For the purpose of this section, the term 'average per pupil expenditure', used with respect to a State, means an amount equal to —

(1) the sum of the aggregate current expenditures of all the local educational agencies in the State, plus any direct current expenditures by the State for the operation of such agencies, without regard to the sources of funds from which such local or State expenditures were made, during the second fiscal year preceding the fiscal year for which the computation is made; divided by

(2) the aggregate number of children who were included in average daily attendance for whom such agencies provided free public education during such preceding fiscal year.

(d) SCHOOLS OPERATED OR SUPPORTED BY THE BUREAU OF INDIAN AFFAIRS-

(1) IN GENERAL- Subject to subsection (e), in addition to the grants awarded under subsection (a), the Secretary shall allocate to the Secretary of the Interior an amount equal to the product of —

(A) the total number of Indian children enrolled in schools that are operated by —

(i) the Bureau of Indian Affairs; or

(ii) an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government, for the children of that tribe under a contract with, or grant from, the Department of the Interior under the Indian Self-Determination Act or the Tribally Controlled Schools Act of 1988; and

(B) the greater of —

(i) the average per pupil expenditure of the State in which the school is located; or

(ii) 80 percent of the average per pupil expenditure of all the States.

(2) SPECIAL RULE- Any school described in paragraph (1)(A) that wishes to receive an allocation under this subpart shall submit an application in accordance with section 7114, and shall otherwise be treated as a local educational agency for the purpose of this subpart, except that such school shall not be subject to section 7114(c)(4), section 7118(c), or section 7119.

(e) RATABLE REDUCTIONS- If the sums appropriated for any fiscal year under section 7152(a) are insufficient to pay in full the amounts determined for local educational agencies under subsection (a)(1) and for the Secretary of the Interior under subsection (d), each of those amounts shall be ratably reduced.

SEC. 7114. APPLICATIONS.

(a) APPLICATION REQUIRED- Each local educational agency that desires to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) **COMPREHENSIVE PROGRAM REQUIRED**- Each application submitted under subsection (a) shall include a description of a comprehensive program for meeting the needs of Indian children served by the local educational agency, including the language and cultural needs of the children, that —

(1) describes how the comprehensive program will offer programs and activities to meet the culturally related academic needs of American Indian and Alaska Native students;

(2)(A) is consistent with the State and local plans submitted under other provisions of this Act; and

(B) includes academic content and student academic achievement goals for such children, and benchmarks for attaining such goals, that are based on the challenging State academic content and student academic achievement standards adopted under title I for all children;

(3) explains how Federal, State, and local programs, especially programs carried out under title I, will meet the needs of such students;

(4) demonstrates how funds made available under this subpart will be used for activities described in section 7115;

(5) describes the professional development opportunities that will be provided, as needed, to ensure that —

(A) teachers and other school professionals who are new to the Indian community are prepared to work with Indian children; and

(B) all teachers who will be involved in programs assisted under this subpart have been properly trained to carry out such programs; and

(6) describes how the local educational agency —

(A) will periodically assess the progress of all Indian children enrolled in the schools of the local educational agency, including Indian children who do not participate in programs assisted under this subpart, in meeting the goals described in paragraph (2);

(B) will provide the results of each assessment referred to in subparagraph (A) to--

(i) the committee described in subsection (c)(4); and

(ii) the community served by the local educational agency; and

(C) is responding to findings of any previous assessments that are similar to the assessments described in subparagraph (A).

(c) ASSURANCES— Each application submitted under subsection (a) shall include assurances that--

(1) the local educational agency will use funds received under this subpart only to supplement the funds that, in the absence of the Federal funds made available under this subpart, such agency would make available for the education of Indian children, and not to supplant such funds;

(2) the local educational agency will prepare and submit to the Secretary such reports, in such form and containing such information, as the Secretary may require to—

(A) carry out the functions of the Secretary under this subpart; and

(B) determine the extent to which activities carried out with funds provided to the local educational agency under this subpart are effective in improving the educational achievement of Indian students served by such agency;

(3) the program for which assistance is sought—

(A) is based on a comprehensive local assessment and prioritization of the unique educational and culturally related academic needs of the American Indian and Alaska Native students for whom the local educational agency is providing an education;

(B) will use the best available talents and resources, including individuals from the Indian community; and

(C) was developed by such agency in open consultation with parents of Indian children and teachers, and, if appropriate, Indian students from secondary schools, including through public hearings held by such agency to provide to the individuals described in this subparagraph a full opportunity to understand the program and to offer recommendations regarding the program; and

(4) the local educational agency developed the program with the participation and written approval of a committee—

(A) that is composed of, and selected by--

(i) parents of Indian children in the local educational agency's schools;

(ii) teachers in the schools; and

(iii) if appropriate, Indian students attending secondary schools of the agency;

(B) a majority of whose members are parents of Indian children;

(C) that has set forth such policies and procedures, including policies and procedures relating to the hiring of personnel, as will ensure that the program for which assistance is sought will

be operated and evaluated in consultation with, and with the involvement of, parents of the children, and representatives of the area, to be served;

(D) with respect to an application describing a schoolwide program in accordance with section 7115(c), that has—

- (i) reviewed in a timely fashion the program; and
- (ii) determined that the program will not diminish the availability of culturally related activities for American Indian and Alaska Native students; and

(E) that has adopted reasonable bylaws for the conduct of the activities of the committee and abides by such bylaws.

SEC. 7115. AUTHORIZED SERVICES AND ACTIVITIES.

(a) GENERAL REQUIREMENTS- Each local educational agency that receives a grant under this subpart shall use the grant funds, in a manner consistent with the purpose specified in section 7111, for services and activities that —

(1) are designed to carry out the comprehensive program of the local educational agency for Indian students, and described in the application of the local educational agency submitted to the Secretary under section 7114(a);

(2) are designed with special regard for the language and cultural needs of the Indian students; and

(3) supplement and enrich the regular school program of such agency.

(b) PARTICULAR ACTIVITIES- The services and activities referred to in subsection (a) may include —

(1) culturally related activities that support the program described in the application submitted by the local educational agency;

(2) early childhood and family programs that emphasize school readiness;

(3) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging State academic content and student academic achievement standards;

(4) integrated educational services in combination with other programs that meet the needs of Indian children and their families;

(5) career preparation activities to enable Indian students to participate in programs such as the programs supported by the Carl D. Perkins Vocational and Technical Education Act of 1998, including programs for tech-prep education, mentoring, and apprenticeship;

(6) activities to educate individuals concerning substance abuse and to prevent substance abuse;

(7) the acquisition of equipment, but only if the acquisition of the equipment is essential to achieve the purpose described in section 7111;

(8) activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency;

(9) activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency;

(10) family literacy services; and

(11) activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors.

(c) SCHOOLWIDE PROGRAMS- Notwithstanding any other provision of law, a local educational agency may use funds made available to such agency under this subpart to support a schoolwide program under section 1114 if —

(1) the committee established pursuant to section 7114(c)(4)

approves the use of the funds for the schoolwide program; and

(2) the schoolwide program is consistent with the purpose described in section 7111.

(d) LIMITATION ON ADMINISTRATIVE COSTS- Not more than 5 percent of the funds provided to a grantee under this subpart for any fiscal year may be used for administrative purposes.

SEC. 7116. INTEGRATION OF SERVICES AUTHORIZED.

(a) PLAN- An entity receiving funds under this subpart may submit a plan to the Secretary for the integration of education and related services provided to Indian students.

(b) CONSOLIDATION OF PROGRAMS- Upon the receipt of an acceptable plan under subsection (a), the Secretary, in cooperation with each Federal agency providing grants for the provision of education and related services to the entity, shall authorize the entity to consolidate, in accordance with such plan, the federally funded education and related services programs of the entity and the Federal programs, or portions of the programs, serving Indian students in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

(c) PROGRAMS AFFECTED- The funds that may be consolidated in a demonstration project under any such plan referred to in subsection (a) shall include funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, under which the entity is eligible for receipt of funds under a statutory or administrative formula for the purposes of providing education and related services that would be used to serve Indian students.

(d) PLAN REQUIREMENTS- For a plan to be acceptable pursuant to subsection (b), the plan shall —

(1) identify the programs or funding sources to be consolidated;

(2) be consistent with the objectives of this section concerning authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy that identifies the full range of potential educational opportunities and related services to be provided to assist Indian students to achieve the objectives set forth in this subpart;

- (4) describe the way in which services are to be integrated and delivered and the results expected from the plan;
- (5) identify the projected expenditures under the plan in a single budget;
- (6) identify the State, tribal, or local agency or agencies to be involved in the delivery of the services integrated under the plan;
- (7) identify any statutory provisions, regulations, policies, or procedures that the entity believes need to be waived in order to implement the plan;
- (8) set forth measures for academic content and student academic achievement goals designed to be met within a specific period of time; and
- (9) be approved by a committee formed in accordance with section 7114(c)(4), if such a committee exists.

(e) **PLAN REVIEW-** Upon receipt of the plan from an eligible entity, the Secretary shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the entity submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the entity to implement the plan. Notwithstanding any other provision of law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by the entity or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the objectives of this subpart or those provisions of the statute from which the program involved derives authority that are specifically applicable to Indian students.

(f) **PLAN APPROVAL-** Within 90 days after the receipt of an entity's plan by the Secretary, the Secretary shall inform the entity, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the entity shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend the plan or to petition the Secretary to reconsider such disapproval.

(g) **RESPONSIBILITIES OF DEPARTMENT OF EDUCATION-** Not later than 180 days after the date of enactment of the No Child Left Behind Act of 2001, the Secretary of Education, the Secretary of the Interior, and the head of any other Federal department or agency identified by the Secretary of Education, shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this section. The lead agency head for a demonstration project under this section shall be —

(1) the Secretary of the Interior, in the case of an entity meeting the definition of a contract or grant school under title XI of the Education Amendments of 1978; or

(2) the Secretary of Education, in the case of any other entity.

(h) **RESPONSIBILITIES OF LEAD AGENCY-** The responsibilities of the lead agency shall include —

- (1) the use of a single report format related to the plan for the individual project, which shall be used by an eligible entity to report on the activities undertaken under the project;
- (2) the use of a single report format related to the projected expenditures for the individual project which shall be used by an eligible entity to report on all project expenditures;
- (3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and
- (4) the provision of technical assistance to an eligible entity appropriate to the project, except that an eligible entity shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

(i) REPORT REQUIREMENTS- A single report format shall be developed by the Secretary, consistent with the requirements of this section. Such report format shall require that reports described in subsection (h), together with records maintained on the consolidated program at the local level, shall contain such information as will allow a determination that the eligible entity has complied with the requirements incorporated in its approved plan, including making a demonstration of student academic achievement, and will provide assurances to each Secretary that the eligible entity has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements that have not been waived.

(j) NO REDUCTION IN AMOUNTS- In no case shall the amount of Federal funds available to an eligible entity involved in any demonstration project be reduced as a result of the enactment of this section.

(k) INTERAGENCY FUND TRANSFERS AUTHORIZED- The Secretary is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to an eligible entity in order to further the objectives of this section.

(l) ADMINISTRATION OF FUNDS-

(1) IN GENERAL- Program funds for the consolidated programs shall be administered in such a manner as to allow for a determination that funds from a specific program are spent on allowable activities authorized under such program, except that the eligible entity shall determine the proportion of the funds granted that shall be allocated to such program.

(2) SEPARATE RECORDS NOT REQUIRED- Nothing in this section shall be construed as requiring the eligible entity to maintain separate records tracing any services or activities conducted under the approved plan to the individual programs under which funds were authorized for the services or activities, nor shall the eligible entity be required to allocate expenditures among such individual programs.

(m) OVERAGE- The eligible entity may commingle all administrative funds from the consolidated programs and shall be entitled to the full amount of such funds (under each program's or agency's regulations). The overage (defined as the difference between the amount of the commingled funds and the actual administrative cost of the programs) shall be considered to be

properly spent for Federal audit purposes, if the overage is used for the purposes provided for under this section.

(n) FISCAL ACCOUNTABILITY- Nothing in this part shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31, United States Code.

(o) REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION-

(1) PRELIMINARY REPORT- Not later than 2 years after the date of enactment of the No Child Left Behind Act of 2001, the Secretary of Education shall submit a preliminary report to the Committee on Education and the Workforce and the Committee on Resources of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Indian Affairs of the Senate on the status of the implementation of the demonstration projects authorized under this section.

(2) FINAL REPORT- Not later than 5 years after the date of enactment of the No Child Left Behind Act of 2001, the Secretary of Education shall submit a report to the Committee on Education and the Workforce and the Committee on Resources of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Indian Affairs of the Senate on the results of the implementation of the demonstration projects authorized under this section. Such report shall identify statutory barriers to the ability of participants to integrate more effectively their education and related services to Indian students in a manner consistent with the objectives of this section.

(p) DEFINITIONS- For the purposes of this section, the term Secretary' means —

(1) the Secretary of the Interior, in the case of an entity meeting the definition of a contract or grant school under title XI of the Education Amendments of 1978; or

(2) the Secretary of Education, in the case of any other entity.

SEC. 7117. STUDENT ELIGIBILITY FORMS.

(a) IN GENERAL- The Secretary shall require that, as part of an application for a grant under this subpart, each applicant shall maintain a file, with respect to each Indian child for whom the local educational agency provides a free public education, that contains a form that sets forth information establishing the status of the child as an Indian child eligible for assistance under this subpart, and that otherwise meets the requirements of subsection (b).

(b) FORMS- The form described in subsection (a) shall include —

(1) either —

(A)(i) the name of the tribe or band of Indians (as defined in section 7151) with respect to which the child claims membership;

(ii) the enrollment number establishing the membership of the child (if readily available); and
(iii) the name and address of the organization that maintains updated and accurate membership data for such tribe or band of Indians; or

(B) the name, the enrollment number (if readily available), and the name and address of the organization responsible for maintaining updated and accurate membership data, of any parent or grandparent of the child from whom the child claims eligibility under this subpart, if the child is not a member of the tribe or band of Indians (as so defined);

(2) a statement of whether the tribe or band of Indians (as so defined), with respect to which the child, or parent or grandparent of the child, claims membership, is federally recognized;

(3) the name and address of the parent or legal guardian of the child;

(4) a signature of the parent or legal guardian of the child that verifies the accuracy of the information supplied; and

(5) any other information that the Secretary considers necessary to provide an accurate program profile.

(c) STATUTORY CONSTRUCTION- Nothing in this section shall be construed to affect a definition contained in section 7151.

(d) FORMS AND STANDARDS OF PROOF- The forms and the standards of proof (including the standard of good faith compliance) that were in use during the 1985-86 academic year to establish the eligibility of a child for entitlement under the Indian Elementary and Secondary School Assistance Act shall be the forms and standards of proof used —

(1) to establish eligibility under this subpart; and

(2) to meet the requirements of subsection (a).

(e) DOCUMENTATION- For purposes of determining whether a child is eligible to be counted for the purpose of computing the amount of a grant award under section 7113, the membership of the child, or any parent or grandparent of the child, in a tribe or band of Indians (as so defined) may be established by proof other than an enrollment number, notwithstanding the availability of an enrollment number for a member of such tribe or band. Nothing in subsection (b) shall be construed to require the furnishing of an enrollment number.

(f) MONITORING AND EVALUATION REVIEW-

(1) IN GENERAL-

(A) REVIEW- For each fiscal year, in order to provide such information as is necessary to carry out the responsibility of the Secretary to provide technical assistance under this subpart, the Secretary shall conduct a monitoring and evaluation review of a sampling of the recipients of grants under this subpart. The sampling conducted under this subparagraph shall take into account the size of and the geographic location of each local educational agency.

(B) EXCEPTION- A local educational agency may not be held liable to the United States or be subject to any penalty, by

reason of the findings of an audit that relates to the date of completion, or the date of submission, of any forms used to establish, before April 28, 1988, the eligibility of a child for an entitlement under the Indian Elementary and Secondary School Assistance Act.

(2) FALSE INFORMATION- Any local educational agency that provides false information in an application for a grant under this subpart shall —

(A) be ineligible to apply for any other grant under this subpart; and

(B) be liable to the United States for any funds from the grant that have not been expended.

(3) EXCLUDED CHILDREN- A student who provides false information for the form required under subsection (a) shall not be counted for the purpose of computing the amount of a grant under section 7113.

(g) TRIBAL GRANT AND CONTRACT SCHOOLS- Notwithstanding any other provision of this section, in calculating the amount of a grant under this subpart to a tribal school that receives a grant or contract from the Bureau of Indian Affairs, the Secretary shall use only one of the following, as selected by the school:

(1) A count of the number of students in the schools certified by the Bureau.

(2) A count of the number of students for whom the school has eligibility forms that comply with this section.

(h) TIMING OF CHILD COUNTS- For purposes of determining the number of children to be counted in calculating the amount of a local educational agency's grant under this subpart (other than in the case described in subsection (g)(1)), the local educational agency shall —

(1) establish a date on, or a period not longer than 31 consecutive days during, which the agency counts those children, if that date or period occurs before the deadline established by the Secretary for submitting an application under section 7114; and

(2) determine that each such child was enrolled, and receiving a free public education, in a school of the agency on that date or during that period, as the case may be.

SEC. 7118. PAYMENTS.

(a) IN GENERAL- Subject to subsections (b) and (c), the Secretary shall pay to each local educational agency that submits an application that is approved by the Secretary under this subpart the amount determined under section 7113. The Secretary shall notify the local educational agency of the amount of the payment not later than June 1 of the year for which the Secretary makes the payment.

(b) PAYMENTS TAKEN INTO ACCOUNT BY THE STATE- The Secretary may not make a grant under this subpart to a local educational agency for a fiscal year if, for such fiscal year, the State in which the local educational agency is located takes into consideration payments made under this chapter in

determining the eligibility of the local educational agency for State aid, or the amount of the State aid, with respect to the free public education of children during such fiscal year or the preceding fiscal year.

(c) REDUCTION OF PAYMENT FOR FAILURE TO MAINTAIN FISCAL EFFORT-

(1) IN GENERAL- The Secretary may not pay a local educational agency the full amount of a grant award determined under section 7113 for any fiscal year unless the State educational agency notifies the Secretary, and the Secretary determines, that with respect to the provision of free public education by the local educational agency for the preceding fiscal year, the combined fiscal effort of the local educational agency and the State, computed on either a per student or aggregate expenditure basis, was not less than 90 percent of the amount of the combined fiscal effort, computed on the same basis, for the second preceding fiscal year.

(2) FAILURE TO MAINTAIN EFFORT- If, for the preceding fiscal year, the Secretary determines that a local educational agency and State failed to maintain the combined fiscal effort for such agency at the level specified in paragraph (1), the Secretary shall —

(A) reduce the amount of the grant that would otherwise be made to such agency under this subpart in the exact proportion of the failure to maintain the fiscal effort at such level; and

(B) not use the reduced amount of the agency and State expenditures for the preceding year to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1).

(3) WAIVER-

(A) IN GENERAL- The Secretary may waive the requirement of paragraph (1) for a local educational agency, for not more than 1 year at a time, if the Secretary determines that the failure to comply with such requirement is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the agency's financial resources.

(B) FUTURE DETERMINATIONS- The Secretary shall not use the reduced amount of the agency's expenditures for the fiscal year preceding the fiscal year for which a waiver is granted to determine compliance with paragraph (1) for any succeeding fiscal year, but shall use the amount of expenditures that would have been required to comply with paragraph (1) in the absence of the waiver.

(d) REALLOCATIONS- The Secretary may reallocate, in a manner that the Secretary determines will best carry out the purpose of this subpart, any amounts that —

(1) based on estimates made by local educational agencies or other information, the Secretary determines will not be needed by such agencies to carry out approved programs under this subpart; or

(2) otherwise become available for reallocation under this subpart.

SEC. 7119. STATE EDUCATIONAL AGENCY REVIEW.

Before submitting an application to the Secretary under section 7114, a local educational agency shall submit the application to the State educational agency, which may comment on such application. If the State educational agency comments on the application, the agency shall comment on all applications submitted by local educational agencies in the State and shall provide those comments to the respective local educational agencies, with an opportunity to respond.