

Notice Exempting Title I Schoolwide Programs From Requirements of Other ED Programs

DEPARTMENT OF EDUCATION

Notice Authorizing Schoolwide Programs To Consolidate Federal Education Funds and Exempting Them From Complying With Statutory or Regulatory Provisions of Those Programs

July 2, 2004 [69 FR 40360-40365]

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

ACTION: Notice of authorization and exemption of schoolwide programs.

SUMMARY: The U.S. Secretary of Education (the Secretary) authorizes a schoolwide program under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), to consolidate funds from Federal education programs that the Secretary administers and exempts the school from complying with many statutory or regulatory provisions of those programs, if the intent and purposes of the programs are met in the schoolwide program. This notice identifies which Federal education program funds and services may be incorporated in a schoolwide program and provides guidance on satisfying the intent and purposes of the programs incorporated.

FOR FURTHER INFORMATION

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SUPPLEMENTARY INFORMATION:

Schoolwide Programs In General

A schoolwide program is a comprehensive reform strategy to improve the

academic achievement of all students in the school, particularly the lowest-achieving students. Schoolwide programs grew out of research about what makes schools work for disadvantaged students. Repeated findings show that staff in highly successful high poverty schools develop and carry out comprehensive schoolwide reform strategies, establish safe environments that are conducive to learning, and support enriched instruction in an expanded core of subjects for all students. Over the years, researchers have documented that, when the entire school is the target of change, schools serving even the most academically challenged students can achieve success.

Section 1114 of Title I authorizes a school with a concentration of poverty of at least 40 percent to use funds under Title I, Part A, along with other Federal, State and local funds, to operate a schoolwide program and upgrade the entire educational program in the school in order to improve the academic achievement of all students, particularly the lowest-achieving students. This is in contrast to a Title I targeted assistance program, in which Part A funds may be used only for supplementary educational services for eligible children identified as being most at risk of not meeting State standards. The school operating a schoolwide program may also combine other Federal education funds (see the heading "Inclusion of Other Federal Education Program Funds").

There are three core elements of a schoolwide program. (1) A school operating as a schoolwide program must conduct a comprehensive needs assessment of the entire school to determine the performance of its students in relation to the State's challenging academic content and achievement standards. (2) Using data from its needs assessment, the school must then develop a comprehensive plan to improve teaching and learning in the school, particularly for those students farthest away from demonstrating proficiency on the State's academic content and achievement standards. The comprehensive plan must (a) include schoolwide reform strategies that are research-based and designed to strengthen the core academic program so that all students attain proficient and advanced levels of achievement; (b) provide for instruction by highly qualified teachers

and contain strategies to attract them; (c) provide high-quality and ongoing professional development for staff and parents; (d) include strategies to increase parental involvement; (e) provide activities to ensure that students who experience difficulty attaining proficiency receive effective and timely additional assistance; (f) include plans for assisting preschool students in the successful transition from early childhood programs to elementary schoolwide programs; and (g) provide for coordination and integration of Federal, State and local services and programs. (3) A school operating a schoolwide program must annually evaluate the implementation of, and the results achieved by, the schoolwide program and revise the plan as necessary based on the results of the evaluation to ensure continuous improvement of students in the school. The final Title I regulations that were published in the **Federal Register** on December 2, 2002 (67 FR 71710) explain schoolwide programs in greater detail.

A school operating a schoolwide program is not required to identify particular students as eligible to participate in the schoolwide program, or demonstrate that the services provided with Title I, Part A funds are supplemental to services that would otherwise be provided. The school is also not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds, but must maintain records that demonstrate that the schoolwide program addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program. Each State educational agency (SEA) must encourage schools to consolidate funds from Federal, State and local sources in their schoolwide programs, and must modify or eliminate State fiscal and accounting barriers so that these funds can be more easily consolidated.

Inclusion of Other Federal Education Program Funds

A school that operates a schoolwide program may consolidate funds from other Federal education programs in addition to Title I, Part A funds to improve academic achievement throughout the school. Specifically, section 1114(a)(3)(A) of Title I authorizes the

Schoolwide Programs Notice

Secretary, through publication of a notice in the **Federal Register**, to permit schoolwide programs to consolidate funds from any other noncompetitive, formula grant program or any discretionary grant program administered by the Secretary and to exempt schoolwide program schools from many statutory and regulatory provisions of the programs whose funds are consolidated, if the intent and purposes of the programs are met.

Except as noted below and consistent with section 1114 of Title I and this notice, the Secretary authorizes a schoolwide program school to consolidate funds that the school receives from any Federal education program, administered by the Secretary, whose funds can be used to carry out activities in a public elementary or secondary school. This authority also extends to services, materials, and equipment purchased with those funds and provided to a public elementary or secondary school. To provide schoolwide program schools maximum discretion in using resources from Federal education programs to their best advantage, the Secretary encourages local educational agencies (LEAs), to the extent possible, to provide Federal funds directly to those schools, rather than only providing personnel, materials, or equipment. All consolidated funds and services must support the school's schoolwide plan.

This authority affords a schoolwide program school significant flexibility to better serve all students by improving the entire instructional program, rather than only providing separate services to specific target populations. The Secretary emphasizes that a school operating a schoolwide program must address the needs of all students in the school, particularly the needs of the lowest-achieving students who are members of the target population of any program that is included in the schoolwide program.

A schoolwide program school may not consolidate funds under Subpart 1 of Part B of Title I of the ESEA (Reading First) to establish reading programs for students in kindergarten through grade 3.

A schoolwide program school may consolidate funds under the following programs only as outlined below:

- Migrant Education. Consistent with section 1306(b)(4) of Title I and 34 CFR 200.29(c)(1) before a school operating as a schoolwide program consolidates funds received under Part C of Title I, ESEA for the education of migra-

tory children, the school must, in consultation with parents of migratory children or organizations representing those parents, or both, first meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle and those other needs that are necessary to permit those students to participate effectively in school, and must document that these needs have been met.

- Indian Education. Consistent with section 7115(c) of the ESEA and 34 CFR 200.29(c)(2), a school operating as a schoolwide program may consolidate funds received under Subpart 1 of Part A of Title VII of the ESEA regarding Indian education only if the parent committee established by the LEA under section 7114(c)(4) of the ESEA approves the inclusion of those funds.
- Special Education. Consistent with section 613 (a)(2)(D) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 200.29(c)(3), a school that operates as a schoolwide program may consolidate funds received under Part B of IDEA. However, the amount of funds consolidated may not exceed the amount received by the LEA under Part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program. A school may also consolidate funds it receives for students with disabilities under section 8003(d) of the ESEA. A school that consolidates funds under Part B of IDEA or section 8003(d) of the ESEA may use those funds in its schoolwide program for any activities under its schoolwide program plan but must comply with all other requirements of Part B of IDEA, to the same extent it would if it did not consolidate funds under Part B of IDEA or section 8003(d) of the ESEA in the schoolwide program.

The Secretary notes that he does not administer the National School Lunch Program or Head Start programs. As a result, the authority to consolidate funds in a schoolwide program does not extend to those programs.

In addition, the authority to consolidate funds from other Federal programs in schoolwide program schools does not apply to funds that are allocated by formula to nonschoolwide program schools in an LEA. This is not an authority to redistribute funds among schools. Any redistribution of funds would have to be consistent with the authorizing statute.

Satisfying "Intent and Purposes"

Consistent with section 1114 of Title I, a school that consolidates and uses, in a schoolwide program, funds from any other Federal program administered by the Secretary, except Reading First, is not required to meet most statutory or regulatory requirements of the program applicable at the school level, but must meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries are met. Such a school must be able to demonstrate that its schoolwide program contains sufficient resources and activities to reasonably address the intent and purpose of included programs, particularly as they relate to the lowest-performing students.

The school is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular program funds. It must, however, maintain records that demonstrate that the schoolwide program as a whole addresses the intent and purposes of each of the Federal education programs whose funds were consolidated to support it.

A school operating a schoolwide program must identify in its schoolwide plan the programs that have been consolidated and address how it intends to meet the intent and purposes of those programs.

The following examples illustrate how a schoolwide program can meet the intent and purposes of specific Federal education programs. An LEA should make similar determinations for all other programs it combines.

Title IV, Part A, Subpart 1—Safe and Drug-Free Schools and Communities State Grants Program

The intent and purposes of this program are to support programs that prevent violence in and around schools; prevent the illegal use of alcohol, tobacco and drugs; and involve parents and communities in efforts to foster a safe and drug-free learning environment that supports student achievement. A schoolwide program school may

demonstrate that it has met these intent and purposes if the school has implemented drug and violence prevention programs and activities that are consistent with the Safe and Drug-Free Schools and Communities Act principles of effectiveness, and are coordinated with other school and community-based services and programs.

Title I, Part D, Subpart 2—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk

The intent and purposes of this program are to support the operation of LEA programs that involve collaboration with locally operated correctional facilities to (1) carry out high-quality education programs to prepare children and youth for secondary school completion, training, employment, or further education; (2) provide activities to facilitate the transition of such students and youth from the correctional program to further education or employment; and (3) operate programs in local schools for children and youth returning from correctional facilities and programs that may serve at-risk children and youth. A schoolwide program school may demonstrate that it meets the intent and purposes of this program if its comprehensive schoolwide plan addresses the need to improve educational services and opportunities for the achievement of neglected or delinquent children, by, for example, providing transitional programming for students returning from institutionalization to further schooling or by creating other support systems to prevent these students from dropping out of school.

Title III, Part A, Subpart 1—English Language Acquisition and Language Enhancement and Academic Achievement

The intent and purposes of this program are to help ensure that children with limited English proficiency become proficient in English, develop high academic attainment in English, and meet the same challenging State academic content and achievement standards in the core academic subjects that all other children are expected to meet. Another purpose of this program is to increase the capacity of schools to establish, implement and sustain high-quality language instruction programs and English language development programs that assist schools in effectively teaching students with limited

English proficiency. Title III, Part A is also designed to promote the participation of parents and communities of limited English [[Page 40363]] proficient children in English language instruction programs.

A schoolwide program may demonstrate that it meets these intents and purposes if it incorporates strategies that provide high-quality instruction for students with limited English proficiency in English in the core academic subjects that are designed to assist these students in attaining the same high academic content and achievement standards that all children are expected to meet. In addition, to meet the intents and purposes of this program, a schoolwide school must support the participation of the parents of limited English proficient students in English language instruction programs through the parent involvement component of the schoolwide program.

Title II, Part A—Preparing, Training, and Recruiting High Quality Teachers and Principals

The intent and purposes of this program are to increase student academic achievement through strategies such as improving teacher and principal quality; increasing the number of highly qualified teachers, principals, and assistant principals in schools; and holding LEAs and schools accountable for improvements in student academic achievement.

A schoolwide program may demonstrate that it meets the intent and purposes of this program if the school's comprehensive plan contains activities and strategies that promote increased student achievement such as helping teachers and the principal or principals become more highly qualified through high-quality professional development; increasing the number of highly qualified teachers in the school through recruitment initiatives; and implementing initiatives designed to promote the retention of highly qualified teachers, such as teacher mentoring and support or other incentives.

IDEA, Part B

To help facilitate the inclusion of students with disabilities, the 1997 Amendments to the IDEA, under Section 613(a)(2)(D) and 34 CFR 300.234(a), provided new flexibility to LEAs. The Amendments allow an LEA to use a portion of the funds received under Part B of IDEA for any fiscal year to carry out a schoolwide program under the ESEA, so

long as students with disabilities included in such schoolwide programs receive special education and related services in accordance with a properly developed Individualized Education Program (IEP), and are afforded all of the rights and services guaranteed to children with disabilities under IDEA.

The intent and purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education designed to meet their individual needs. A schoolwide program may demonstrate that it meets the intent and purpose of this program by ensuring that, except as to certain use of funds requirements, all the requirements of the IDEA are met, and that children with disabilities are included in schoolwide activities.

High-quality professional development required for all staff and designed to result in improved learning outcomes for all children, including children with disabilities, is one example of a schoolwide activity that meets the intent and purposes of the IDEA. For example, a school may combine IDEA, Part B funds with other program funds for professional development activities that support the implementation of a comprehensive student assessment model aligned with student academic content and achievement standards that enables teachers of all core academic subjects to incorporate alternative assessment procedures in the instructional setting in order to diagnose student achievement and monitor student progress on an ongoing basis. Alternate assessment procedures might include individual reading inventories, writing samples, classroom observations, conferences, and self-assessments. Using this kind of professional development as a way of meeting the intent and purposes of the IDEA ensures that all students, regardless of their special needs, will benefit.

Requirements With Which a Schoolwide Program School Must Comply

A school that consolidates funds from other Federal programs in its schoolwide program is not relieved of the requirements relating to—

- *Health and safety.*
- *Civil rights.*

These include the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

1975, and Title II of the Americans with Disabilities Act of 1990. In addition, if a schoolwide program school receives Magnet Schools Assistance funds to eliminate, reduce, or prevent minority group isolation, the school must continue to operate under its desegregation plan.

- Participation and involvement of parents and students. A schoolwide program school must implement extensive parent involvement requirements under Part A that would likely satisfy most, if not all, parent involvement requirements in other Federal education programs.
- Private school children, teachers, and other educational personnel. Applicable requirements concerning the equitable participation of eligible private school children, teachers, and other educational personnel under other Federal education programs must be met even though funds from those programs are consolidated in schoolwide program schools.
- Maintenance of effort. For programs covered under the maintenance of effort requirements in section 9521 of the ESEA, those requirements would be met through participation in Part A. Note that the use of IDEA funds in a schoolwide program does not change an LEA's obligation to meet the maintenance of effort requirements in 34 CFR 300.231.
- Comparability of services. To be eligible to receive funds under Parts A and C of Title I, an LEA must already meet the comparability requirements in section 1120A(c) of Title I with respect to schoolwide program schools. If an LEA consolidates funds under the Carl D. Perkins State Vocational and Applied Technology Education Program in a secondary schoolwide program, the school must be provided services from State and local funds that, taken as a whole, are at least comparable to the services being provided in other secondary schools or sites within the same LEA that are not being served with Perkins funds.
- Use of Federal funds to supplement, not supplant non-Federal funds. A school operating as a schoolwide program must receive at least the same amount of State and local funds that, in the aggregate, it would have received in the

absence of the schoolwide program, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency. The school, however, does not have to demonstrate that the specific services provided to students with those funds are supplemental to services that would have been provided to them in that school in the absence of the schoolwide program.

Distribution of Funds to State Educational Agencies (SEAs) and LEAs

Cross-Cutting Federal Requirements

There are requirements contained in the General Education Provisions Act and in the Education Department General Administrative Regulations that apply generally to Department of Education grants, including Title I. To the extent that these requirements affect activities in schools, they would also apply to a schoolwide program school by virtue of its participation in Title I. The consolidation of Department programs in a schoolwide program, however, would not add to these requirements or require that they be applied separately on a program-by-program basis.

Discretionary Grant Funds

In general, a schoolwide program school may consolidate funds it receives from discretionary (competitive) grants as well as from formula grants, except for Reading First as indicated earlier in this notice. If a schoolwide program school consolidates funds from discretionary grant programs, the school must still carry out the activities described in the application under which the funds were awarded. However, a schoolwide program school would not need to account separately for specific expenditures of the consolidated Federal funds.

Although not required, it is preferable that the applicant LEA or school indicate in its application for discretionary funds that some or all of the funds would be used to support a schoolwide program and describe its activities accordingly. Moreover, if authorized by the program statute, the Department or an SEA could include in its selection criteria for a particular program extra points for conducting activities in a schoolwide program school. For example, an SEA could include such points when awarding subgrants under the Even Start Family Literacy program, which requires an SEA to give priority to applicants that target services to families in need of family literacy services residing in areas with high levels of poverty, illiteracy, or other such need-related

factors, including projects that would serve a high percentage of children who reside in participating areas under Part A.

The following examples illustrate how schoolwide program schools can consolidate and use discretionary grant funds by carrying out the activities described in the application under which the funds were awarded.

Programs Under the Adult Education and Family Literacy Act, Title II of the Workforce Investment Act of 1998

The intent and purposes of Adult Education and Family Literacy programs are to improve the basic and literacy skills of adults through high-quality research-based programs that will equip those adults to succeed in the next phase of their education and employment as demonstrated by meeting core performance indicators. An LEA receiving Adult Education and Family Literacy Act funds has the flexibility to determine how it will offer services. Some LEAs may decide to offer services at the district level; others may decide to offer services through schools, including them as part of a schoolwide program. A schoolwide school that combines Adult Education and Family Literacy funds must still carry out the activities described in the LEA's Adult Education and Family Literacy Act application under which the funds were awarded, including complying with the performance reporting and accountability requirements established by the State to meet the requirements of section 212 of the Act.

A schoolwide program school could incorporate adult literacy services in a number of ways, e.g., as part of a family literacy program or as part of a parent involvement strategy to help parents work with their children to improve their children's achievement. However adult literacy services are addressed through a schoolwide program, however, the school's comprehensive plan must contain specific goals and objectives for meeting the core performance indicators.

Even Start Family Literacy Programs

If an LEA participates in a partnership that receives an Even Start discretionary subgrant, the approved project may be part of a schoolwide program as long as the LEA and its required partners carry out the activities described in the Even Start application under which the funds were awarded, including serving families with eligible adults and children generally under the age of eight. A schoolwide program school can consolidate and use Even Start discretionary grant funds by offering a four-component family literacy

program that is an integral part of the overall instructional program of the school. This family literacy program must integrate high-quality, intensive, instructional programs based on scientifically based reading research (to the extent that research is available) in four areas: Early childhood education, adult literacy (adult basic and secondary-level education and/or instruction for English language learners), parenting education, and interactive parent and child literacy activities. While each eligible family that participates in these family literacy services must be most in need of the services for Even Start purposes, a schoolwide program could extend these services to other needy families as part of a comprehensive parent involvement strategy.

Limitations

This notice does not apply to nonschoolwide program schools that participate in Title I. Those schools must comply with all statutory and regulatory requirements that apply to funds or benefits they receive. This notice also does not relieve an LEA from complying

with all requirements that do not affect the operation of a schoolwide program. For example, to the extent an LEA is required under the Stewart B. McKinney Homeless Assistance Act to designate a homeless liaison to ensure, among other things, that homeless children and youth enroll and succeed in school, the LEA would not be relieved of this requirement by virtue of operating one or more schoolwide programs.

Guidance and Technical Assistance

The Secretary intends to issue additional guidance on schoolwide programs in the near future. In addition, staff in the office of Student Achievement and School Accountability Programs, in conjunction with staff in the other affected Federal program offices, are available to assist LEAs and schools operating schoolwide programs to implement the authority contained in this notice. If LEAs or schools have specific questions, they should contact Jacquelyn C. Jackson, Ed.D, Director, Student Achievement and School Accountability Programs, as provided in the section **FOR FURTHER INFORMATION CONTACT**.

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Dated: June 28, 2004. Rod Paige, Secretary of Education. [FR Doc. 04-15121 Filed 7-1-04; 8:45 am] BILLING CODE 4000-01-P