

be modified to require that private school children be provided with an opportunity to participate in Title I in a manner that addresses the particular needs of the private school children.

*Discussion:* Section 1120 of Title I clearly provides private school children an opportunity to participate in Title I in a way that addresses their particular educational needs. It requires that equitable services be provided and requires an LEA to consult with private school officials about how private school children's needs will be identified and what services will be provided. Moreover, because there is no longer a districtwide needs assessment, the needs of private school children can be determined independently from the needs of public school children.

*Changes:* None.

#### **Section 200.13 Requirements Concerning Property, Equipment, and Supplies for the Benefit of Private School Children**

*Comment:* Several commenters recommended that § 200.13(d) of the regulations be revised to afford LEAs discretion in deciding whether to remove equipment and materials no longer needed to provide services to private school children if there is the possibility that the program would be resumed in a subsequent year. The commenters explained that new zoning ordinances in many districts make it very expensive, once portable units, for example, are removed, to resituate the units.

*Discussion:* The Secretary recognizes that, under the new law, services to eligible private school children may differ from those provided under Chapter 1. The Secretary has attempted in § 200.28 of the regulations to provide maximum flexibility to ease the transition to the new law. Consistent with that flexibility, however, if equipment is no longer needed to provide equitable services to private school children, it must be removed as required in § 200.13(d).

*Changes:* None.

#### **Capital Expenses**

##### **Section 200.16 Payments to LEAs for Capital Expenses**

*Comment:* Two commenters recommended amending § 200.16(a)(1)(i)(B) of the regulations to also allow capital expenses to pay for costs that would be incurred to improve the quality of services provided to private school students.

*Discussion:* Capital expenses funds may pay the costs of noninstructional goods and services needed to improve

the quality of equitable services provided to private school children. The Secretary did not amend the regulations because these costs would be covered under § 200.16(a)(1)(i)(A)—that is, capital expenses an LEA “is currently incurring” to provide equitable services.

*Changes:* None.

*Comment:* One commenter suggested that § 200.16(a)(1)(ii) of the regulations be revised to allow an LEA to apply for a payment to cover capital expenses it incurred in prior years for which it has not been reimbursed “only” if the LEA demonstrates that its current needs for capital expenses have been met.

*Discussion:* The Secretary believes that the regulatory language in § 200.16(a)(1)(ii) clearly does not permit payments for previously incurred capital expenses if the LEA cannot demonstrate that its current needs for capital expenses have been met.

*Changes:* None.

##### **Section 200.17 Use of LEA Payments for Capital Expenses**

*Comment:* One commenter supported the use of capital expenses for reimbursement of costs in prior years but suggested that such reimbursement not be contingent upon approval by the SEA.

*Discussion:* Section 200.16(a)(1)(ii) of the regulations makes clear that an LEA may apply to the SEA for capital expense funds to cover expenses it incurred in prior years only if the LEA has demonstrated that its current needs for capital expenses have been met. Section 200.17 reflects this provision.

*Changes:* None.

#### **Procedures for the Within-State Allocation of LEA Program Funds**

##### **Section 200.20 Allocation of Funds to LEAs**

*Comment:* One commenter asked why Sections 1124(a)(2) and 1125(d) of Title I and § 200.20(b)(2)(ii)(B) of the regulations concerning direct allocations to LEAs require the SEA to establish appeal procedures for an LEA dissatisfied with the determination by the SEA when section 14401(c) of the ESEA prohibits the Secretary from waiving any statutory or regulatory requirement relating to the allocations or distribution of funds to States, LEAs, or other recipients of funds under the ESEA.

*Discussion:* Section 200.20(b)(2)(ii)(B) of the regulations follows the statute, which requires that a State applying for authorization to allocate funds directly to LEAs without regard to counties assure that its SEA has established procedures through which LEAs

dissatisfied with the SEA's determination may appeal directly to the Secretary. In reviewing an LEA's appeal, the Secretary would consider whether the SEA's allocation procedures in general comply with the statute and regulations. The Secretary could not waive any of the statutory or regulatory requirements related to allocating funds, however.

*Changes:* None.

*Comment:* One commenter requested clarification of the provision in § 200.20(c) of the regulations concerning LEAs that contain two or more counties in their entirety. In the case of New York City, for example, the SEA is required to allocate funds to each county within the city school system as if each county were a separate LEA. The commenter asked whether the LEA or SEA could adjust individual county allocations within New York City to account for poor children who live in one county but attend school in another county. The commenter believes that the Title I allocation procedures would be more equitable if adjustments could be made to county allocations in cases where poor children who live in one county attend school in another county, even though those poor children are in the same LEA.

*Discussion:* The situation described by the commenter is similar to that provided for in section 1126(b) of Title I. Section 1126(b) allows an SEA, in cases where an LEA provides free public education for children who reside in the school district of another LEA, to adjust the amount of grants among the affected LEAs. Because the statute requires an SEA to treat the individual counties within a single school district as separate LEAs for allocation purposes, section 1126(b) authorizes an SEA to adjust the counties' amounts because they are treated as LEAs. Therefore, the SEA may adjust amounts made available to the counties within a single LEA to account for poor children who live in one county but attend school in another county.

*Changes:* None.

*Comment:* Because of the disruption the “one LEA with two or more counties” provision in § 200.20(c) of the regulations will cause the New York City school system, one commenter recommended that the regulations allow such LEAs to use current Chapter 1 allocation procedures for two more years in order to minimize disruption to ongoing projects and make the transition to the new law smoother.

*Discussion:* Section 3(a)(1)(A) of the IASA provides that Title I shall take effect on July 1, 1995. The Secretary