

**DEPARTMENT OF EDUCATION****34 CFR Part 280**

RIN 1855-AA01

**Magnet Schools Assistance Program****AGENCY:** Office of Innovation and Improvement, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Magnet Schools Assistance Program (MSAP) regulations to reflect changes made to the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

**DATES:** These regulations are effective March 3, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** These regulations implement changes to the MSAP made by the NCLB (Pub. L. 107-110), enacted January 8, 2002. The changes align the regulations for the MSAP with the changes made to the program when the MSAP was reauthorized as part of the NCLB.

To reflect revisions to the MSAP's purposes made by section 5301(b) of the ESEA, in these final regulations, we make several changes to § 280.1 regarding the purpose of the MSAP. First, in § 280.1(a), (b) and (c), we clarify the purpose of the MSAP. We also add two new paragraphs, § 280.1(e) and (f), regarding the purpose of the MSAP. These two paragraphs reflect the addition of support for efforts to improve local educational agencies' (LEAs') capacity to continue magnet programs at a high performance level after Federal funding ends and for efforts to ensure that all students enrolled in magnet schools have equitable access to high quality education.

In accordance with section 5305(b) of the ESEA, we are making several changes to § 280.20. Specifically, we

revise the assurance in § 280.20(b)(2) regarding teacher qualifications and clarify requirements in § 280.20(i) concerning student academic achievement. In § 280.20(b)(2), we change the assurance related to teachers who would be employed, from State-certified or licensed teachers, to teachers who are highly qualified in the courses of instruction assisted under a grant. Section 280.20(i)(4)(i) adds a requirement that an application must include a description of how student academic achievement will be improved for all students attending the magnet schools included in a project.

Based on the language in section 5307(b) of the ESEA that describes the subject areas and types of skills that may be addressed using MSAP funds, we are making only one adjustment to the selection criteria in § 280.31. In the "Project design" criterion, we have changed § 280.31(c)(2)(iii) to add "technological" and "professional" skills to the existing list of subjects and skills that may be addressed in a magnet program.

Section 5306 of the ESEA includes only three priorities—addressing need for assistance, new or revised magnet schools, and selection of students. We remove from § 280.32 two other priorities—one addressing innovative approaches and systemic reform (§ 280.32(e)) and one addressing collaborative efforts (§ 280.32(f)).

Consistent with section 5307(a) and (b) of the ESEA, we are making several changes to § 280.40. In § 280.40(a), we clarify that professional development costs are not considered planning costs that are subject to the restrictions in § 280.41(a). Further, both § 280.40(b) and (c) clarify that funds used for books, materials, equipment, and teachers must be directly related to improving student academic achievement based on the State's challenging academic content standards and student achievement standards. Additionally, we amend § 280.40 by adding three new paragraphs, § 280.40(f) through (h). These paragraphs specifically authorize activities to build capacity to operate the magnet programs after the grant ends, enable magnet schools to serve students who enrolled in the school but not in the magnet program at the school, and permit flexibility in designing magnet schools.

Finally, in accordance with section 5309(b) of the ESEA, we revise § 280.41 to adjust the amount of funds that may be used for planning in each year of a project and remove the prohibition against the use of funds for planning after the third year that had been in § 280.41(d).

**Executive Order 12866***Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Summary of Potential Costs and Benefits*

Because the Secretary has chosen to regulate only to the extent necessary to reflect changes made to the ESEA, as amended by the NCLB, LEAs have considerable flexibility in implementing the provisions of the MSAP.

Consequently, the potential costs associated with the regulations are minimal. Benefits of the regulations include the addition of new uses of funds that provide LEAs greater latitude in the design of projects, the removal of restrictions on the amount of funds that may be used for professional development, greater flexibility in the use of funds for planning activities, and elimination of obsolete priorities.

**Waiver of Proposed Rulemaking**

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes to the ESEA and remove obsolete regulatory provisions. The changes do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B) the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs

affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

**Paperwork Reduction Act of 1995**

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

**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 this program.

**Assessment of Educational Impact**

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program.)

The Secretary of Education has delegated authority to the Deputy Under Secretary for Innovation and Improvement to issue these amendments to 34 CFR chapter II.

**List of Subjects in 34 CFR Part 280**

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

Dated: January 27, 2004.

**Nina Shokraii Rees,**

*Deputy Under Secretary for Innovation and Improvement.*

■ For the reasons discussed in the preamble, the Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

**PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM**

■ 1. The authority citation for part 280 is revised to read as follows:

**Authority:** 20 U.S.C. 7231-7231j, unless otherwise noted.

■ 2. Section 280.1 is amended by:

■ A. In the introductory text, removing the punctuation “;” and adding, in its place, the punctuation “—”.

■ B. In paragraph (a), adding the words “, which shall include assisting in the efforts of the United States to achieve voluntary desegregation in public schools” before the punctuation “;”.

■ C. Revising paragraphs (b) and (c).

■ D. In paragraph (d), removing the word “grasp” and adding, in its place, the word “attainment”; adding the words “, technological, and professional” after the word “vocational”; and removing the period at the end of the paragraph and adding, in its place, the punctuation “;”.

■ E. Adding new paragraphs (e) and (f).

■ F. Revising the authority citation following paragraph (f).

The revisions and additions read as follows:

**§ 280.1 What is the Magnet Schools Assistance Program?**

\* \* \* \* \*

(b) The development and implementation of magnet school projects that will assist LEAs in achieving systemic reforms and providing all students the opportunity to meet challenging State academic content standards and student academic achievement standards;

(c) The development and design of innovative educational methods and practices that promote diversity and

increase choices in public elementary schools and public secondary schools and public educational programs;

\* \* \* \* \*

(e) Improvement of the capacity of LEAs, including through professional development, to continue operating magnet schools at a high performance level after Federal funding for the magnet schools is terminated; and

(f) Ensuring that all students enrolled in the magnet school programs have equitable access to high quality education that will enable the students to succeed academically and continue with postsecondary education or productive employment.

(Authority: 20 U.S.C. 7231)

■ 3. Section 280.2 is amended by revising the authority citation following paragraph (b) to read as follows:

**§ 280.2 Who is eligible to apply for a grant?**

\* \* \* \* \*

(Authority: 20 U.S.C. 7231c)

■ 4. Section 280.3 is amended by:

■ A. In paragraph (a), removing the words “except that § 75.253(c) (relating to reducing a subsequent year’s award by the amount remaining available from the grantee’s current award) does not apply to this program,”; and by removing the words “(Uniform Administrative Requirements for State and Local Governments)” and adding, in their place, the words “(Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments)”.

■ B. Revising the authority citation following paragraph (b) to read as follows:

**§ 280.3 What regulations apply to this program?**

\* \* \* \* \*

(Authority: 20 U.S.C. 7231-7231j)

■ 5. Section 280.4 is amended by:

■ A. In paragraph (a), removing the words “Award”, “Grant”, and “Supplies”.

■ B. In paragraph (b), revising the definitions of “Act” and “Magnet school”.

■ C. Revising the authority citation following paragraph (b).

The revisions read as follows:

**§ 280.4 What definitions apply to this program?**

\* \* \* \* \*

(b) \* \* \*

Act means the Elementary and Secondary Education Act of 1965 as amended by title V, Part C of the No

Child Left Behind Act of 2001, Pub. L. 107-110 (20 U.S.C. 7231-7231j).

\* \* \* \* \*

*Magnet school* means a public elementary school, public secondary school, public elementary education center, or public secondary education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

\* \* \* \* \*

(Authority: 20 U.S.C. 7231-7231j)

■ 6. Section 280.20 is amended by:

■ A. In paragraph (b)(1), removing the figure "5102" and adding, in its place, the figure "5301(b)".

■ B. In paragraph (b)(2), adding the words "highly qualified" after the word "employ" and removing the words "who are certified or licensed by the State to teach, or supervise others who are teaching, the subject matter of the courses of instruction".

■ C. In paragraph (b)(7), removing the first occurrence of the word "projects" and adding, in its place, the word "program"; and removing the words "those projects", and adding, in their place, the words "the program, consistent with desegregation guidelines and the capacity of the applicant to accommodate students".

■ D. In paragraph (i)(1), removing the word "project" and adding, in its place, the word "programs".

■ E. In paragraph (i)(2), adding the word "academic" after the word "student".

■ F. Revising paragraphs (i)(3) and (i)(4).

■ G. In paragraph (i)(5), removing the word "projects" and adding, in its place, the word "program".

■ H. Revising the OMB approval parenthetical and the authority citation following paragraph (i).

The revisions read as follows:

**§ 280.20 How does one apply for a grant?**

\* \* \* \* \*

(j) \* \* \*

(3) How the LEA or consortium of LEAs will continue the magnet schools program after assistance under this part is no longer available, including, if applicable, why magnet schools previously established or supported with Magnet Schools Assistance Program grant funds cannot be continued without the use of funds under this part;

(4) How assistance will be used to—

(i) Improve student academic achievement for all students attending the magnet school programs; and

(ii) Implement services and activities that are consistent with other programs

under the Act and other statutes, as appropriate; and

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1855-0011) (Authority: 20 U.S.C. 7231d)

■ 7. Section 280.30 is amended by:

■ A. In paragraph (c), removing the figure "45" and adding, in its place, the figure "30".

■ B. Revising the authority citation following paragraph (c) to read as follows:

**§ 280.30 How does the Secretary evaluate an application?**

\* \* \* \* \*

(Authority: 20 U.S.C. 7231-7231j)

■ 8. Section 280.31 is amended by:

■ A. In paragraph (c)(2)(iii), adding the words "to improving" after the second occurrence of the word "or" and adding the words ", technological, and professional" after the word "vocational".

■ B. Revising the OMB approval parenthetical and the authority citation following paragraph (f) to read as follows:

**§ 280.31 What selection criteria does the Secretary use?**

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1855-0011) (Authority: 20 U.S.C. 7231-7231j)

■ 9. Section 280.32 is amended by:

■ A. In paragraph (a), removing the words "through (f)" and adding, in their place, the words "through (d)".

■ B. Removing paragraphs (e) and (f).

■ C. Revising the authority citation following paragraph (d) to read as follows:

**§ 280.32 How is priority given to applicants?**

\* \* \* \* \*

(Authority: 20 U.S.C. 7231e)

■ 10. Section 280.33 is amended by revising the authority citation following paragraph (b) to read as follows:

**§ 280.33 How does the Secretary select applications for new grants with funds appropriated in excess of \$75 million?**

\* \* \* \* \*

(Authority: 20 U.S.C. 7231j)

■ 11. Section 280.40 is amended by:

■ A. In paragraph (a), removing the words "and (d)" and adding, in their place, the words "and do not include activities described under paragraph (f) of this section".

■ B. In the introductory text of paragraph (b), removing the word "thereof" and

adding, in its place, the words "of materials, equipment and computers".

■ C. In paragraph (b)(2), removing the word "the" and adding, in its place, the words "student academic achievement based on the State's challenging academic content standards and student academic achievement standards or directly related to improving student"; and adding the words ", technological, or professional" after the word "vocational".

■ D. In paragraph (c)(1), removing the words "certified or licensed by the State" and adding, in their place, the words "highly qualified".

■ E. In paragraph (c)(3), removing the word "the" and adding, in its place, the words "student academic achievement based on the State's challenging academic content standards and student academic achievement standards or directly related to improving student"; and adding the words ", technological, or professional" after the word "vocational".

■ F. Adding new paragraphs (f), (g), and (h).

■ G. Revising the authority citation following paragraph (h).

The additions and revision read as follows:

**§ 280.40 What costs are allowable?**

\* \* \* \* \*

(f) Activities, which may include professional development, that will build the recipient's capacity to operate magnet school programs once the grant period has ended.

(g) Activities to enable the LEA or consortium of LEAs to have more flexibility in the administration of a magnet school program in order to serve students attending a school who are not enrolled in a magnet school program.

(h) Activities to enable the LEA or consortium of LEAs to have flexibility in designing magnet schools for students in all grades.

(Authority: 20 U.S.C. 7231f)

■ 12. Section 280.41 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (b), adding the word "or" after the punctuation ",".

■ C. In paragraph (c), removing the word "; or" and adding, in its place, the punctuation ".,".

■ D. Removing paragraph (d).

■ E. Revising the authority citation following paragraph (c).

The revisions read as follows:

**§ 280.41 What are the limitations on allowable costs?**

\* \* \*

(a) Expend for planning more than 50 percent of the funds received for the

first fiscal year, and 15 percent of the

funds received for the second or the  
third fiscal year;

\* \* \* \* \*

(Authority: 20 U.S.C. 7231g, 7231h(b))

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