

gram, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of this title.

§ 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

(Pub. L. 92-318, title IX, §909, as added Pub. L. 100-259, §3(b), Mar. 22, 1988, 102 Stat. 29.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IX of Pub. L. 92-318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c-6, 2000c-9, and 2000h-2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

CONSTRUCTION

This section not to be construed to extend application of Education Amendments of 1972, Pub. L. 92-318, to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a note under section 1687 of this title.

ABORTION NEUTRALITY

Pub. L. 100-259, §8, Mar. 22, 1988, 102 Stat. 31, provided that: “No provision of this Act or any amendment made by this Act [see Short Title of 1988 Amendment note under section 1681 of this title] shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds [sic] to perform or pay for an abortion.”

CHAPTER 39—EQUAL EDUCATIONAL OPPORTUNITIES AND TRANSPORTATION OF STUDENTS

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SUBCHAPTER I—EQUAL EDUCATIONAL OPPORTUNITIES

PART 1—POLICY AND PURPOSE

§ 1701. Congressional declaration of policy

(a) Entitlement to equal educational opportunity; neighborhood as appropriate basis

The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

(b) Purpose

In order to carry out this policy, it is the purpose of this subchapter to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

(Pub. L. 93-380, title II, §202, Aug. 21, 1974, 88 Stat. 514.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

SHORT TITLE

Pub. L. 93-380, title II, §201, Aug. 21, 1974, 88 Stat. 514, provided that: “This title [enacting this chapter and

section 1228 of this title and amending section 1608 of this title] may be cited as the 'Equal Educational Opportunities Act of 1974'."

§ 1702. Congressional findings

(a) Dual school systems as denial of equal protection; depletion of financial resources of local educational agencies; transportation of students; inadequacy of guidelines

The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have not established, a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) Necessity of Congress to specify appropriate remedies for elimination of dual school systems

For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except that the provisions of this chapter are not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States.

(Pub. L. 93-380, title II, §203, Aug. 21, 1974, 88 Stat. 514.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

PART 2—UNLAWFUL PRACTICES

§ 1703. Denial of equal educational opportunity prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this subchapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

(Pub. L. 93-380, title II, §204, Aug. 21, 1974, 88 Stat. 515.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1704. Balance not required

The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

(Pub. L. 93-380, title II, §205, Aug. 21, 1974, 88 Stat. 515.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1705. Assignment on neighborhood basis not a denial of equal educational opportunity

Subject to the other provisions of this subchapter, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

(Pub. L. 93-380, title II, §206, Aug. 21, 1974, 88 Stat. 515.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

PART 3—ENFORCEMENT

§ 1706. Civil actions by individuals denied equal educational opportunities or by Attorney General

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the “Attorney General”), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

(Pub. L. 93-380, title II, §207, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1707. Population changes without effect, per se, on school population changes

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

(Pub. L. 93-380, title II, §208, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1708. Jurisdiction of district courts

The appropriate district court of the United States shall have and exercise jurisdiction of

proceedings instituted under section 1706 of this title.

(Pub. L. 93-380, title II, §209, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1709. Intervention by Attorney General

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.

(Pub. L. 93-380, title II, §210, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1710. Civil actions by Attorney General; notice of violations; certification respecting undertaking appropriate remedial action

The Attorney General shall not institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

(Pub. L. 93-380, title II, §211, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

PART 4—REMEDIES

§ 1712. Formulating remedies; applicability

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

(Pub. L. 93-380, title II, §213, Aug. 21, 1974, 88 Stat. 516.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1713. Priority of remedies

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of stu-

dents, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 1714 of this title;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 1714 and 1715 of this title.

(Pub. L. 93-380, title II, §214, Aug. 21, 1974, 88 Stat. 517.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1714. Transportation of students

(a) Limitation to school closest or next closest to place of residence

No court, department, or agency of the United States shall, pursuant to section 1713 of this title, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

(b) Health risks; impingement on educational process

No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

(c) School population changes resulting from population changes

When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no

vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

(Pub. L. 93-380, title II, §215, Aug. 21, 1974, 88 Stat. 517.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1715. District lines

In the formulation of remedies under section 1712 or 1713 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

(Pub. L. 93-380, title II, §216, Aug. 21, 1974, 88 Stat. 518.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1716. Voluntary adoption of remedies

Nothing in this subchapter prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this subchapter nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this subchapter, if such plan is voluntarily proposed by the appropriate educational agency.

(Pub. L. 93-380, title II, §217, Aug. 21, 1974, 88 Stat. 518.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1717. Reopening proceedings

A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, or an educational agency subject to a court order or a desegregation plan under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] in effect on August 21, 1974, and intended to end segregation of students on the basis of race, color, or national origin, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the

time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.

(Pub. L. 93-380, title II, §218, Aug. 21, 1974, 88 Stat. 518.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

§ 1718. Limitation on court orders; termination of orders conditioned upon compliance with fifth and fourteenth amendments; statement of basis for termination orders; stay of termination orders

Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws may, to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof. The court of initial jurisdiction shall state in its order the basis for any decision to terminate an order pursuant to this section, and the termination of any order pursuant to this section shall be stayed pending a final appeal or, in the event no appeal is taken, until the time for any such appeal has expired. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found not to have satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable.

(Pub. L. 93-380, title II, §219, Aug. 21, 1974, 88 Stat. 518.)

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

PART 5—DEFINITIONS

§ 1720. Definitions

For the purposes of this subchapter—

(a) The term “educational agency” means a local educational agency or a “State educational agency” as defined by section 801(k)¹ of the Elementary and Secondary Education Act of 1965.

(b) The term “local educational agency” means a local educational agency as defined by section 801(f)¹ of the Elementary and Secondary Education Act of 1965.

¹ See References in Text note below.

(c) The term “segregation” means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term “desegregation” means desegregation as defined by section 2000c(b) of title 42.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(Pub. L. 93-380, title II, §221, Aug. 21, 1974, 88 Stat. 518.)

REFERENCES IN TEXT

Section 801 of the Elementary and Secondary Education Act of 1965, referred to in subsecs. (a) and (b), is section 801, title VIII, of Pub. L. 89-10, which was formerly classified to section 881 of this title. Section 801 of that Act was renumbered section 1001 of title X by Pub. L. 95-561, title VIII, §801(1), (2), Nov. 1, 1978, 92 Stat. 2284, and was reclassified to section 3381 of this title. Section 1001 was subsequently renumbered section 8001 and amended generally by Pub. L. 100-297, title I, §1002, Apr. 28, 1988, 102 Stat. 293, and, as so amended, did not contain subsections or specific definitions. Section 8001 was subsequently omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. For definitions, see section 7801 of this title.

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

PART 6—MISCELLANEOUS PROVISIONS

§ 1721. Separability

If any provision of this subchapter or of any amendment made by this subchapter, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this subchapter and of the amendments made by this subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 93-380, title II, §223, Aug. 21, 1974, 88 Stat. 519.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this part”, meaning part A of title II of Pub. L. 93-380, Aug. 21, 1974, 88 Stat. 519, which is classified generally to this subchapter.

EFFECTIVE DATE

Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 1221-1 of this title.

SUBCHAPTER II—ASSIGNMENT AND TRANSPORTATION OF STUDENTS

§ 1751. Prohibition against assignment or transportation of students to overcome racial imbalance

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.