

THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965: THE BIRTH OF COMPENSATORY EDUCATION†

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INTRODUCTION

Less than three months after President Johnson recommended "that legislation be enacted to authorize a major program of assistance to public elementary and secondary schools serving children of low-income families,"¹ Congress responded with the Elementary and Secondary Education Act (ESEA) of 1965.² Title I of ESEA reflected the presidential recommendation by providing that school districts with heavy concentrations of low-income families be the chief recipients of "compensatory education" benefits.

One must understand that the term "compensatory education" is not to be associated with the notion of strictly financial compensation or subsidization to the states for their existing education programs. Rather, compensatory education under Title I is a *supplementary* vehicle for fulfilling the needs of school children aged five through seventeen who are disadvantaged by reason of their home lives, their economic environments, the quality of the education they have received, and the social class backgrounds of their classmates.³ These

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1. SENATE SUBCOMM. ON EDUCATION, COMM. OF LABOR & PUB. WELFARE, ELEMENTARY & SECONDARY EDUCATION ACT OF 1965, BACKGROUND MATERIALS WITH RELATED PRESIDENTIAL RECOMMENDATIONS, S. DOC. NO. 1, 89th Cong., 1st Sess. 14 (1965).

2. Act of April 11, 1965, Pub. L. No. 89-10, 79 Stat. 27 [hereinafter referred to as ESEA].

3. For a brief but definitive analysis of the educational problems extant in the homes of disadvantaged children, see O. C. Moles, Jr., *Educational Training in Low Income Families*, in WELFARE ADMIN., DEP'T OF H.E.W., LOW INCOME LIFE STYLES (L.M. Ireland ed. 1966).

and other factors combine to produce children who are poor in mathematics and severely lacking in the basic communicative skills: reading, speaking, and writing. Without these skills, the President and Congress saw little hope of extricating children from the grips of poverty. Compensatory education, therefore, seeks to improve the quality of education for disadvantaged children through remedial instruction, cultural enrichment, pre-school education, and the early fostering of a spirit of self-esteem.⁴ The overall objectives of compensatory education programs have been summarized succinctly by sociologist Sloan Wayland:

Start the child in school earlier; keep him in school more and more months of the year; . . . expect him to learn more and more during this period, in wider and wider areas of human experience, under the guidance of a teacher, who has had more and more training, and who is assisted by more and more specialists who provide an ever-increasing range of services . . .⁵

How Title I was designed to reach these goals and whether it has done so are the subjects of this Note.

I. TITLE I: A BRIEF STATUTORY ANALYSIS

It will aid one's understanding of Title I to bear in mind the tripartite, interlocking relationship existing among the United States Office of Education (USOE), the state departments of education, and the local educational agencies. The federal government, through the USOE, determines the amounts of and makes grants to state departments of education only after each state gives its assurances to USOE that the funds will be used in the state in accordance with

4. See 1 UNITED STATES COMM'N ON CIVIL RIGHTS, *RACIAL ISOLATION IN THE PUBLIC SCHOOLS*, Chs. 3-4 (1967). Remedial instruction gives more intensive attention to students in academic difficulty via reduction of the number of students per teacher, extra help during and after school, and use of special teaching aids to improve basic skills. Cultural enrichment broadens the horizons of poor children by providing opportunities which are ordinarily out of their reach, but are available to students in middle class schools. These cultural stimulators include such rewards as field trips, visits to museums, concerts, and other schools and colleges. Self-esteem can be injected into disadvantaged children by enabling them to feel the excitement of academic success and by overcoming negative and defeatist attitudes generated in the poverty home. The pre-school approach to compensatory education is an effort to train youngsters to develop some verbal skills and to provide typical kindergarten-type cultural experiences before they enter primary grades.

5. S. Wayland, *Old Problems, New Faces and New Standards*, in *EDUCATION IN DEPRESSED AREAS* 67 (Passow ed. 1963). See also UNITED STATES COMM'N ON CIVIL RIGHTS, *supra* note 4 at 115.

COMPENSATORY EDUCATION

the Act. The state departments of education, in turn, approve project plans submitted by local educational agencies and suballocate basic grant funds to local educational agencies.⁶

With the above "overview" in mind, we begin with the notion that ESEA is an act "to strengthen and improve educational quality and educational opportunities in the Nation's elementary and secondary schools."⁷ More specifically, in enacting this historic legislation Congress declared it to be the

. . . policy of the United States to provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means which contribute particularly to meeting the special educational needs of educationally deprived children.⁸

Having so declared its policy, Congress next defined the limits of the "basic grant" available to local educational agencies and the criteria for receiving such grants. To be eligible for federal financial assistance, ESEA requires that local educational agencies must serve a school district in which there are a significant number of school-

6. Though the scheme for distribution of federal funds to the states pursuant to the terms of the Act is simplistic in nature, the decision to adopt this scheme was not an easy one, for it was fraught with intense problems of educational and administrative policy which split educators and policy makers into a "new" and an "old" guard. As Bailey and Mosher described it in their exhaustive work on ESEA:

Among the "old guard" were educators with a state and local orientation, including many USOE staff members responsible for the existing grant programs. They favored reliance on a formula enacted by Congress that would be automatic in application, preserving intact the structure of intergovernmental responsibilities to which they were accustomed, and restricting funds to programs controlled by professional educators. *USOE would serve merely as a conduit through which funds would flow to the State or local agencies, or to both.* [The "new guard" on the other hand] regarded such arrangements, even when hedged with categorical program requirements, as likely to reinforce the educational status quo. The "new guard" urged a more aggressive Federal leadership role and favored detailed statutory provisions designed to produce specific, measurable results. . . . Bureau of the Budget staff members argued that Educational programs, like other Federal programs, should be funded and assessed according to their success in achieving explicit goals. Improvements could be expected only when it became possible to finance activities that had demonstrated their productivity, and to eliminate those that had not. (Emphasis added). S. BAILEY & E. MOSHER, ESEA—THE OFFICE OF EDUCATION ADMINISTERS THE LAW 46-47 (1968).

7. Preamble to ESEA.

8. ESEA, Title I, § 201. "Declaration of Policy." Note that it is the congressional intent to provide financial assistance only, as opposed to providing, for example, federal human resources, and other "capital" equipment and machinery, to accomplish the purpose of the Act. This provision for purely financial assis-

aged children⁹ from families with an annual income less than the "low-income factor" (\$2,000).¹⁰ Whether the concentration of such children is sufficient to meet eligibility standards may be determined on either a county or a school district basis.

Eligibility on a school district basis is determined with the aid of the most recent census data. The following criteria are used in determining this type of eligibility:

1. All school districts in which the total number of school-aged children from families with an annual income of less than \$2,000 represents at least three per cent of all school-aged children in the district and totals not less than ten are eligible to receive basic grants under the Act.

2. All districts containing 100 or more school-aged children from families with an annual income of less than \$2,000 are automatically eligible regardless of percentage of such children.¹¹

On the county basis eligibility is determined by use of the most recent nationally uniform demographic and economic data. Where such data is not available for sub-county allocations, problems of eligibility are left to state education department officials to be determined in accordance with federal guidelines.

The school district and county bases for determining eligibility are novel features for a national education package of the size and scope of Title I.

[T]his procedure left practically no discretion to the individual states, except within counties, but it did assign to them specific project approval. Once the formula [for basic grants] was applied, the amounts were assured to each county. School districts were not required to compete with other school districts for funds, as was the case under NDEA and Titles II and III of ESEA.¹²

tance comports with the general congressional intent embodied in Section 604 of the Act prohibiting federal control of education. Section 604 provides:

Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, programs of instruction, administration or personnel of any educational institution or school system . . .

9. As used throughout this Note, the term "school-aged children" means "children aged five to seventeen, inclusive." ESEA, Title I, § 203(b).

10. ESEA §§ 203(b), (c) & (d).

11. ESEA § 203(b). Where census data are not available on a school district basis, the Commissioner determines eligibility on a *county* basis in the following manner: Based on the most recent census, if a given county contained 100 or more school-aged children from families with an income of less than \$2,000, it is eligible along with all local educational agencies located within it. *See* DEP'T OF H.E.W., GUIDELINES: SPECIAL PROGRAMS FOR EDUCATIONALLY DEPRIVED CHILDREN, ESEA OF 1965, TITLE I at 3 [hereinafter referred to as GUIDELINES].

12. S. BAILEY & E. MOSHER, *supra* note 6 at 49.

COMPENSATORY EDUCATION

Having outlined the criteria for determining whether or not a particular local educational agency is eligible for participation in Title I compensatory education programs, the Act next prescribes the limits of maximum basic grants available to state agencies. It specifically provides that the amounts of such grants to the states are to be determined *in accordance with the Act*.¹³ The law provides that the United States Commissioner of Education determines maximum basic grants for each eligible *district* for which the requisite census data is available. Where census data is not available, the Commissioner determines the aggregate maximum basic grant for each eligible *county*.¹⁴

In all cases the formula for computing maximum basic grants is the same. The amount of the grant is determined by multiplying the sum of school-aged children in the district who:

- (A) come from families with an annual income of less than \$2,000,
- (B) come from families with an annual income exceeding \$2,000 in the form of aid to families with dependent children under Title IV of the Social Security Act,
- (C) live in "institutions . . . for neglected or delinquent children, . . ." and
- (D) live in foster homes supported with public money,

by one-half the state or national average per pupil expenditure (whichever is larger) for the second preceding year.¹⁵

These are the key substantive elements of the Act. Its remaining sections are generally procedural in nature. For example, Section 205 sets out the determinations which the state educational agencies must make before approving a local educational agency's application for a basic grant. Section 206 requires that any state desiring to participate in Title I must submit, through its state educational agency, to the Commissioner an application which provides satisfactory assurances with respect to use of funds, accounting procedures, and periodic evaluations. Finally, Section 207 prescribes who makes payments and how payments are made to the states, and, in turn, how the states are to distribute such funds to local educational agencies.

13. ESEA § 203(a)(2) & (3).

14. *Id.*

15. 45 C.F.R. § 116.3(a) (1969). Substituting the letters *A*, *B*, *C*, and *D*, respectively, for the four categories of children, and substituting *E* for the average per pupil expenditure, the formula appears thus:

$$(A+B+C+D) \times \frac{1}{2}E = \text{Max. Basic Grant (in dollars).}$$

II. ADMINISTRATION OF COMPENSATORY EDUCATION PROGRAMS

Title I, Section 201 of Public Law 89-10, ESEA, captioned "Declaration of Policy," specifically provides that it shall be the "policy of the United States to provide financial assistance (as set forth in this title) to local educational agencies . . ."¹⁶ The Act authorized the United States Commissioner of Education to draft regulations for the administration of the various compensatory education programs to be instituted under Title I. The regulations define "local educational agency" as:

[A] public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. . . . It also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.¹⁷

Though the regulations provide that federal financial assistance may be given directly to public school boards or other public authorities, the Act has not been administered in that manner. The House Subcommittee on Education of the Committee on Education and Labor experienced considerable difficulty in deriving the most practical and equitable formula for disbursement of the funds authorized under ESEA.¹⁸ After much discussion and debate, Congress decided that the best and most equitable method of distributing federal funds would be to make the allocations to counties.¹⁹ Consequently, under Section 202 of the Act the federal government, through USOE, makes payments to state educational agencies,²⁰ usually the various state departments of education, which in turn re-allocate the funds to eligible counties.²¹

16. ESEA, Title I, § 201.

17. 45 C.F.R. § 116.1(r) (1969).

18. See *Hearings on H.R. 2362 Before the General Subcomm. on Education of the House Comm. on Education and Labor*, 89th Cong., 1st Sess. 3 (1965).

19. Letter from D. Harold Blackburn, Director of Urban and Community Education Programs of Regional Office VI, Kansas City, Mo., to Carl L. LoPresti October 8, 1969.

20. The regulations define "state educational agency" as "the officer or agency primarily responsible for the State supervision of public elementary and secondary schools." 45 C.F.R. § 116.1(aa) (1969).

21. STAFF OF THE SUBCOMM. ON EDUCATION, OF THE COMM. ON LABOR & PUB. WELFARE, 89TH CONG., 1ST SESS., MAXIMUM BASIC GRANTS, ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (Comm. Print 1965).

COMPENSATORY EDUCATION

Once the funds have been allocated to eligible counties, it remains for the imagination, discretion, and ingenuity of local school officials to devise projects²² defining the needs of the educationally deprived children of that project area.²³ The project plan is then submitted to the state educational agency, generally the state department of education, for approval under guidelines established by the United States Commissioner.²⁴

Before analyzing the guidelines which the state educational agency must comply with in approving or disapproving a local project plan, it will be helpful to know what information must be submitted in the project application. This will provide a better understanding of the term "eligibility" for participation in Title I compensatory education programs.

Part I of the application for federal assistance under Title I deals exclusively with school data. The local educational agency must provide such items of information as average yearly per pupil expenditure of non-federal funds,²⁵ the number of school-aged children residing in the applicant's school district, and the concentration of children from low-income families in the applicant's district. The application also must contain a listing of attendance areas²⁶ eligible for Title I projects, and a characterization of the educationally deprived children residing in the eligible attendance area indicating the children's need for special educational assistance. The characteristics are broken down into categories of achievement, ability, attitude, behavior, and handicaps, as well as characteristics related to learning difficulties, such as poor health, malnutrition, emotional and social instability, etc. The

22. The Commissioner has defined "project" to mean "an activity, or a set of activities, proposed by a State or local educational agency or the Department of Interior and designed to meet certain of the special educational needs of certain educationally deprived children." 45 C.F.R. § 116.1(u) (1969). See also OFFICE OF EDUCATION, DEP'T OF H.E.W., ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, FOCUS ON TITLE I: BETTER SCHOOLING FOR EDUCATIONALLY DEPRIVED CHILDREN (1965) [hereinafter referred to as OFFICE OF EDUCATION].

23. "Project area" is defined by the Commissioner to mean:

[T]he attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the location of the project itself, is designated as the area whose children are to be served by the project. The term does not apply to a project to be carried out by a State agency at a school operated or supported by that agency for handicapped children or for children in institutions for neglected or delinquent children. 45 C.F.R. § 116.1(v) (1969).

24. See OFFICE OF EDUCATION, *supra* note 22.

25. See 45 C.F.R. § 116.1(d) (1969).

26. 45 C.F.R. § 116.1(b).

local educational agency then certifies Part I of the application as to its correctness and completeness.

Part II is comprised of the Project Application itself. In it the applicant provides such information as the project title, its time schedule (beginning and ending dates), the amount of money requested, the project area and participants, the number of project staff members, the budget and objectives of the project, and lastly, the means of evaluating the results of the project.

Based on the nature of the information required in the project application forms, the overriding concern of USOE, and of Congress itself, is that federal funds available under Title I be used only in providing compensatory educational services and programs to meet the "special educational needs of educationally deprived children."²⁷ Yet it should be borne in mind that project benefits are not limited to children of low-income families; the presence of low income identifies the *attendance area* to be served. It is educational deprivation which determines who may participate in the project.²⁸

III. ADMINISTRATION OF COMPENSATORY EDUCATION PROGRAMS UNDER TITLE I AT THE STATE LEVEL: GUIDELINES

A. Administration and Reporting

The chief responsibility for the administration of Title I programs rests with the Commissioner.²⁹ These administrative duties consist mainly of the following:

1. Approval of applications submitted by state educational agencies for participation in the program;
2. Making funds available for the program;
3. Developing regulations, guidelines, and other materials relating to the program;
4. Providing consulting services to state educational agencies in carrying out their responsibilities;
5. Reviewing and assessing programs and progress made under Title I throughout the nation;
6. Compiling, from reports submitted by the state agencies, various fiscal and program reports to the Congress and the public.³⁰

27. ESEA, Title I, § 201.

28. OFFICE OF EDUCATION, DEP'T OF H.E.W., ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, TITLE I, SCHOOL PROGRAMS FOR EDUCATIONALLY DEPRIVED CHILDREN, BASIC FACTS FOR SCHOOL ADMINISTRATORS, at 7 (1965).

29. ESEA, Title I, § 202.

30. GUIDELINES at 1.

COMPENSATORY EDUCATION

Once the state educational agency has secured the Commissioner's approval for a specific compensatory education program, it then has the following administrative responsibilities:

1. To suballocate basic grant funds, where necessary, to eligible local educational agencies, these agencies being for the most part the school districts in low-income counties;
2. To assist local education agencies in developing projects;
3. To approve proposed projects in accordance with Section 205 (a) of Title I and make payment of funds to local educational agencies;
4. To maintain fiscal reports on all grants;
5. To prepare and submit fiscal and evaluative reports to USOE.³¹

In view of the nationwide applicability of ESEA's compensatory education programs under Title I, the most important responsibility of the state educational agencies to insure success and to stay abreast of progress and problems is the *evaluative* process. Consequently, Congress required state educational agencies to

. . . make to the Commissioner (A) periodic reports . . . evaluating the effectiveness of payments under this Title and of particular programs assisted under it in improving the educational attainment of educationally deprived children, and (B) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this Title . . .³²

In addition, Congress wisely provided for the establishment, by the President, of a National Advisory Council on the Education of Disadvantaged Children "for the purpose of reviewing the administration and operation of this Title, including its effectiveness in improving the educational attainment of educationally deprived children, and making recommendations for the improvement of this Title and its administration and operation."³³ The Council acts as a watchdog over the entire system of compensatory education programs to insure that the states carry out the spirit of Title I. It is therefore the key check the Commissioner has on the national pulse.

It should be noted that Title I requires evaluation at four government levels: local, state, USOE, and the National Advisory Council. The results of these reports are essential to any congressional review of this nationally-applicable legislation.³⁴ The most important ques-

31. *Id.* at 1-2.

32. ESEA, Title 1, § 206(a)(3).

33. *Id.*, § 212.

34. GUIDELINES at 34.

tion these reports answer is whether Title I has raised the educational attainment of children participating in compensatory education programs.

B. Fiscal Administration

As might be expected of a program of this magnitude, fiscal administration is an awesome task. The procedures for insuring fiscal control of the enormous sums of money poured into Title I require the state and local educational agencies, and USOE itself, to employ complex accounting methods. In this connection the Commissioner has made specific provisions in the regulations for the use of funds determined on the basis of documentary evidence of binding commitments for the acquisition of goods or property, for construction, for the performance of work, and the like.³⁵ These fiscal requirements coupled with the good faith supervisory efforts of the state educational agencies and of USOE fairly well insure fiscal control over the program.³⁶

C. Project Design and Evaluation

The critical need for state evaluation of various Title I programs and the evaluative process has already been discussed. As noted earlier, the states must maintain this constant evaluative process in order to enable Congress to review the program effectively and to enact supplementary legislation when necessary.

In addition to the evaluation requirement, the state educational agencies must insure that the local educational agencies use Title I funds for projects designed to meet the needs of educationally deprived children in school attendance areas containing substantial numbers of children from "low-income families" as defined in the regulations.³⁷ The second most important duty incumbent upon the

35. 45 C.F.R. § 116.46(c) (1969).

36. One of the pressing problems with Title I expenditures is their use to *supplant* entirely the use of state and local funds, a use forbidden by 20 U.S.C. § 240(d)(2) (1969). Title I funds were intended to *aid* the states in helping educationally deprived children, but they were not intended to supplant the states' efforts to help their own children. ESEA, Title I, § 210 specifically provides that the Commissioner may cut off funds to a state educational agency or may require state educational agencies to withhold disbursement of funds to local educational agencies if the Commissioner finds in his discretion that the state has failed to comply substantially with any assurance set forth in the application of that state. Judicial review of the Commissioner's action may be had by filing a petition for review in the appropriate United States Court of Appeals, and the judgment of the court may be reviewed by the Supreme Court upon certiorari as provided in 28 U.S.C. § 1254. See ESEA, Title I, § 211 for the provisions governing judicial review.

37. ESEA, Title I, § 205(a)(1). See also GUIDELINES at 34.

COMPENSATORY EDUCATION

states is to insure that the local projects it approves for Title I funding are of sufficient size, scope, and quality to meet the special educational needs of the students participating in the project. The Commissioner recommends that first year Title I project funds be used to meet the needs of the most severely deprived children.³⁸ He also urges that state educational agencies see that project leaders have sufficient resources in relation to the number of students in order to avoid giving them "fragmentary" help.³⁹ This assurance can best be maintained through the adoption by the state educational agencies of a visitation schedule for purposes of monitoring Title I projects in the various schools throughout the state.⁴⁰

Equally important is the state's responsibility to see that local educational agencies use their funds to carry out the purposes of Title I projects and that the funds remain under the control and administration of the public agency entrusted with their use.⁴¹

IV. THE PLANNING PROCESS, APPLICATION PROCEDURES, AND LEVELS OF DECISION-MAKING: A MISSOURI MODEL

In order to understand more clearly how Title I programs are instituted at the local level, it will be helpful to examine the application and planning procedures which the local educational agencies must observe before obtaining state approval for a given project,⁴² and to examine the levels of decision-making between a local school authority and a state department of education. The writer has chosen Missouri as the model state in which to trace these activities.

A. Pre-Application: The Planning Process

The first step a Missouri school district must take to secure Title I funds is to devise a project plan which will meet with the approval of the Missouri State Department of Education. To devise such a plan, the chief school district administrator must hold a series of meetings with teachers, counselors, supervisors, other administrators, parents,

38. See GUIDELINES at 24.

39. *Id.*

40. Office of Education, Dep't of H.E.W., Program Guides Nos. 44 & 45-A, March 18, 1968, and July 31, 1969.

41. ESEA, Title I, § 205(a)(3). See also GUIDELINES at 25.

42. Additional guidelines governing the consideration of other factors in project planning, the number of projects to be planned, the age and grade level to be served, and special projects for pre-school children, drop-outs, Indian children, handicapped children, migratory children, etc., are discussed in GUIDELINES at 29-34.

community representatives, and outside consultants to formulate and justify a proposed Title I project to be put in operation somewhere in the area. The first decision, then, in the pre-application stage, goes to a determination of the educational needs of the school district. In making this decision the educators must consider the effectiveness of their proposed project with respect to meeting the specific needs of educationally deprived children in their district. Consideration must also be given to how well the proposed project can be evaluated, since the overall program success is virtually dependent on the validity of its evaluation process.

Having determined the area's educational needs, the teachers and administrators must determine the eligible attendance areas⁴³ within the school district. In other words, they must determine those areas within the district which have high concentrations of children from low-income families. Once this has been done, there follows an orderly progression of additional determinations: the number⁴⁴ of educationally deprived children within the eligible attendance areas, the specific and most pressing needs⁴⁵ of those children, a determination of how to satisfy those needs, and lastly, formulation of a project design for specific activities or services having the greatest promise for achieving the proposed objectives of the project.⁴⁶

The foregoing are the essential steps planners must take during the pre-application stages to secure Title I funds through the Missouri State Department of Education.⁴⁷

43. MISSOURI DEPT OF EDUCATION, *GUIDE FOR THE DEVELOPMENT AND IMPLEMENTATION OF TITLE I PROJECTS IN MISSOURI* (1967) [hereinafter referred to as *MISSOURI GUIDE*].

Among the factors which the local administrators and educators will consider in determining the eligible attendance areas are:

1. AFDC data relative to the school district;
2. Free lunch data;
3. Census data;
4. Health statistics for school children in the district;
5. Employment records.

Id. at 4.

44. Factors for consideration here are individual student records in the school district, including:

1. Permanent records;
2. Attendance records;
3. Health records;
4. Guidance records, including achievement test results.

Id. at 7.

45. *Id.* at 6.

46. *Id.* at 8.

47. ESEA, Title I, § 205(a)(1).

COMPENSATORY EDUCATION

B. Determination of What Resources Are Needed to Meet Project Objectives and How They May Be Used

Assume that the pre-application planning process conducted by the school district results in a finding that an elementary school within the district meets the attendance area requirements and has a pressing need for improvement of basic reading skills in grades one through six. What kind of project can the planners propose to cure this deficiency, and what resources will it have at its disposal through Title I to do so?

The Act leaves nearly complete discretion to the local educators, administrators, and teachers to determine how Title I funds shall be used to implement a project designed to cure elementary reading deficiencies. This discretion means that the school authority may purchase audio-visual aids and special books designed for remedial reading instruction, as well as any other equipment or printed materials which tend to improve children's reading skills and comprehension. This latitude also enables the school district to hire specially trained personnel to work directly with educationally deprived youngsters, which is perhaps the single most important boon which Title I offers to local educational agencies.

C. Application and Review Procedure Leading to State Approval for Request of Funds

The application procedure is essentially a mechanical task, fraught with the usual myriad of forms.⁴⁸ These forms provide the Missouri State Department of Education with such basic data as the eligible attendance areas which the district has marked for projects, the findings upon which the project design is predicated, an outline of the special educational needs of the children in that area, and a detailed description of the activity to be carried on in the particular project, showing the program participants and the nature of their involvement. Lastly, to assure a degree of state fiscal control, the local school

48. In this connection, GUIDELINES specifically states: "Title I relies on local initiative for its operation. It is the responsibility of the local educational agencies to *design, develop* and *prepare* projects that will fulfill the legislative intent of this title." (Emphasis added). GUIDELINES at 21. In encouraging local school authorities to participate in Title I, USOE has emphasized local discretion and ingenuity in planning projects: "Projects to be carried out under this program will be determined by the *imagination* and *discretion* of local school leaders, and will be as varied as the special educational needs of each community. A creative approach in designing the project is encouraged." (Emphasis added). See OFFICE OF EDUCATION, *supra* note 22.

authority certifies to the Missouri State Department of Education its average per pupil expenditure under the project.⁴⁹ The application is now ready for submission to the State Department of Education for review and approval.

In reviewing the school district's project application, the Department will scrutinize the proposed project to see that it complies with twelve basic criteria:⁵⁰

1. The Department will first want assurances that the project will be conducted in a limited number of eligible attendance areas and will provide higher concentrations of services in the poorer areas. This criterion reflects the state's duty to assure that the proposed project comports with Section 201 of the Act, which declares the Act's policy to be the assistance of children of low-income families with special educational needs.

2. The application should indicate that the school district has comprehensively assessed the most imminent needs of children in the eligible attendance areas and has done its planning with a view to the functions and capabilities of other agencies.

3. The application must show that the project will allow children with the highest priority needs to participate in activities and services designed specifically to meet those needs successfully.

4. The project should be planned so that the services provided will be concentrated. Missouri recommends that, for successful project administration, the investment in each project child should be about one-half the expenditure of state and local funds for each child in the applicant's regular school program.

5. The project services and activities should be available where the children can best be served.

6. The needs of students attending private schools have been given the same consideration as those of children attending public schools.

7. Construction or equipment costs should be cut to a minimum.

8. The proposed project staff must be appropriate to accomplish the program's objectives. This means that the student-staff ratio should be low enough to provide concentrated services and that a variety of personnel should be used to provide the planned services.

9. The application should reflect plans for in-service training di-

49. MISSOURI GUIDE at 13.

50. See MISSOURI GUIDE at 14-19, for a more detailed discussion of the nature and application of these criteria during the review process.

COMPENSATORY EDUCATION

rected toward the improvement of Title I services and designed to improve the capability of the staff to provide those services.

10. The project plan should assure that news of developments in, and information relating to, compensatory education programs are available to other schools in the nation in planning and conducting their programs.

11. The application should reveal a plan for evaluating the impact of the project on the children who participate in it. As emphasized earlier, Title I can be only as successful as its evaluative methods are valid and appropriate to the various types of programs administered. Consequently, the Missouri State Department of Education will scrutinize the application to be sure that the method of evaluation devised by the school district is appropriate for the services offered and consistent with the project objectives.

12. The project application must finally show that parents of children involved in the program can participate as well. The rationale here is that having parents work in the project will better support the children's well-being, growth, and development.

If the application meets the above criteria, the school district may request formal allocation of funds from the state, and may begin to implement its project.

V. EVALUATION OF TITLE I COMPENSATORY EDUCATION PROGRAMS FOR FISCAL YEAR 1968

Though enacted in 1965, ESEA Title I compensatory education programs never became fully operational until 1967 due to congressional delay in funding. During fiscal year 1968, nearly eight million children participated in Title I programs. Of these, approximately 341,000, or four per cent, were non-public school children. First through eighth graders comprised 75% of the participating children, 21% were children in grades nine through twelve, and the remaining four per cent were in pre-school programs.⁵¹ To serve these children, 198,000 staff positions were created.⁵² In schools with high concentrations of participants, the 1968 drop-out rate was reduced, particularly in grades nine and ten. Generally the drop-out rate decreased more in schools utilizing Title I compensatory education programs than in other schools.⁵³

51. DEP'T OF H.E.W., STATISTICAL REPORT, FISCAL YEAR 1968: A REPORT ON THE THIRD YEAR OF TITLE I, ESEA OF 1965, at 3-5 (1968).

52. *Id.* at 8.

53. *Id.* at 12.

While these statistics may be impressive, the overriding problem is evaluation of the success of the compensatory education programs.⁵⁴ One report stated:

There has been little systematic evaluation of the impact of Title I funds on the learning of educationally disadvantaged children in spite of both the large number of children and school districts involved, and the vast resources in terms of personnel and facilities invested in the program. Furthermore, there is almost a total absence of meaningful analysis of the programs aimed at educationally disadvantaged pre-schoolers.⁵⁵

The crux of this problem stems from the manner in which Title I funds are allocated. Once the funds reach the local level, a subtle change in focus occurs. Local school authorities institute their programs in *attendance areas* comprised of schools with at least 50% of their students residing in a poverty area. Once these attendance areas are determined, *all* children residing in that area are eligible to participate in Title I compensatory education programs without proof of income eligibility. Thus at the local level there is a shift in focus from *economically* disadvantaged children to *educationally* disadvantaged children residing in designated areas. This shift results in the *exclusion* of some children from low-income families because they live outside the eligible attendance areas and the *inclusion* of some from families above the poverty line because they live within the eligible attendance areas. The significance of this finding is as follows:

Income is often used as the key description of a target group's socio-economic status, and many researchers infer certain other population characteristics from income data. However, Title I programs at the local level are open to all children within an educationally disadvantaged area; therefore, there is no shorthand way to establish the poverty status of children within a Title I program. In practice this means that one cannot be sure that children in different Title I programs are from the same target populations. Thus a researcher can make comparisons between

54. Interestingly enough, HEW's 1968 Statistical Report, *supra* note 51, makes no mention whatever of the evaluation problem. Furthermore, the Report issues no caveat concerning the reliability or validity of its statistical compilations in light of the overall evaluation problem. The disparity between the statistical information in the 1968 Report and that contained in Research Management Corp.'s report (*infra* note 55) is obvious but apparently inexplicable.

55. Research Management Corp., *Evaluations of the War on Poverty: Educational Programs*, March 28, 1969.

COMPENSATORY EDUCATION

the services offered and the impact on the participants, but cannot assure without careful documentation that the children are from similarly deprived backgrounds.⁵⁶

In addition to the problem arising from the shift in focus at the local level, the Act itself creates a problem. Section 205(a)(6) requires local educational agencies to report periodically on the effectiveness of their programs. Although *local* educational agencies are required to evaluate Title I programs, neither Congress nor the Commissioner was able to forge *standards* for making these evaluations of program effectiveness. Variations thus occur from place to place, and the evaluation problem continues unabated. One cure for this problem would be for Congress to enact legislation granting USOE the authority to prescribe evaluation standards, tools, and techniques for *state* as well as local educational agencies, thus insuring a means of achieving a systematic, valid national assessment. HEW Title I administrators seem to favor this solution,⁵⁷ but to date Congress has not responded with the desired legislation.

Any national program of ESEA's magnitude, from the standpoint of both the human and financial resources invested in it, will be fraught with a serious assessment problem. HEW administrators recognize this problem and at the same time realize that there may be *no* solution to it. Indeed, considering the fact that the program has been fully operational for only three years, the statisticians and evaluators may be expecting far too much data far too soon. Instead, a more revealing evaluation of the national impact of Title I compensatory education programs might be obtained if all *subjective* assessment requirements, especially at the state and local levels, were eliminated. The Commissioner might then institute a strictly *statistical* reporting requirement in the evaluative process, thereby insuring national uniformity and objectivity in assessment at all levels.

56. *Id.* at 121-22.

57. *Id.* at 124-27.