

**PART 68—PROVISION OF FREE PUBLIC EDUCATION FOR ELIGIBLE CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874**

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AUTHORITY: 20 U.S.C. 241.

SOURCE: 52 FR 44389, Nov. 19, 1987, unless otherwise noted.

**§ 68.1 References.**

(a) Public Law 97-35, "Omnibus Budget Reconciliation Act of 1981," section 505(c), August 13, 1981 (20 U.S.C. 241 note).

(b) Public Law 81-874 dated September 30, 1950, section 6, as amended (20 U.S.C. 241).

(c) Public Law 95-561, "Defense Dependents' Education Act of 1978," sections 1009 and 1031(a), November 1, 1978 (20 U.S.C. 241).

(d) Memorandum of Understanding Between The Department of Defense and The Department of Education, August 16, 1982.

(e) FEDERAL REGISTER Document 84-11282, "Process for Section 6 Schools Operated by the Department of Defense," FEDERAL REGISTER, Volume 49, Number 82, page 18028, April 26, 1984.

(f) Assistant Secretary of Defense (Force Management & Personnel) Memorandum, "Education of Handicapped Students in Section 6 Schools Operated by the Department of Defense," December 10, 1986.

(g) Public Law 94-142, "Education for All Handicapped Children Act of 1975," as amended (20 U.S.C. 1401 *et seq.*).

(h) DoD Directive 1020.1, "Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," March 31, 1982.

(i) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981.

(j) DoD Directive 7600.6, "Audit of Nonappropriated Funds and Related Activities," January 4, 1974.

(k) DoD Directive 5500.7, "Standards of Conduct," January 15, 1977.

**§ 68.2 Purpose.**

This part:

(a) Establishes policies and prescribes procedures for the Department of Defense (DoD) to make arrangements (as defined in §68.5) for the provision of free public education to eligible dependent children as authorized by §68.1 (a), (b), and (c).

(b) Implements §68.1 (a), (b), (d), and (e).

**§ 68.3 Applicability and scope.**

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) The schools operated by DoD within the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

**§ 68.4 Policy.**

(a) In conformity with §68.1 (a), (b), and (c), it is DoD policy that dependent children of U.S. military personnel and federally employed civilian personnel residing on Federal property be educated, whenever suitable, in schools operated and controlled by local public school systems.

(b) When it is not suitable for the children of U.S. military personnel and federally employed civilian personnel to attend a locally operated public school, the Secretary of Defense, or designee, shall make arrangements for the free public education of such children. These arrangements may include the establishment of schools within the United States and specified possessions.

(c) The arrangements for such free public education shall be made by the Secretary of Defense, or designee, either with a local educational agency, or with the Head of a Federal Department or Agency, whichever in the judgment of the Secretary, or designee, appears to be more applicable. If such an arrangement is made with the Head of a Federal Department or Agency, either it must administer the property on which the children to be educated

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reside or, if the local schools are unavailable to the children of members of the Armed Forces on active duty because of official State or local action and no suitable free public education may be provided by a local educational agency, the Department or Agency must have jurisdiction over the parents of some or all of such children.

(d) Section 6 School Arrangements are required, to the maximum extent practicable, to provide educational programs comparable to those being provided by local public educational agencies in comparable communities in the State where the Section 6 School Arrangement is located. If the Section 6 School Arrangement is outside of CONUS, Alaska, or Hawaii, it shall provide, to the maximum extent practicable, educational programs that are comparable to the free public education provided by the District of Columbia.

(e) Section 6 School Arrangements operated by DoD under 68.1 (a)1 (b), and (d) shall comply, except as provided in this paragraph, with §68.1(g). If the State or other jurisdiction on which a Section 6 School Arrangement's educational comparability is based has adopted a "State plan" for the implementation of §68.1(g) that Section 6 School Arrangement shall provide its handicapped students a free appropriate public education, as defined in §68.1(g). That education, except as follows in this paragraph, is consistent with such State plan. To satisfy this responsibility, Section 6 School Arrangements shall conform to the substantive and procedural provisions of §68.1(g), except for those relating to impartial due process hearings in section 1415 of §68.1(g). The procedures of such Section 6 School Arrangements for the identification, assessment, and programming of handicapped students in special education and related services must conform to the comparable State's regulatory guidelines. Complaints with respect to the identification, evaluation or educational placement of, or the free appropriate public education provided to, students in such a Section 6 School Arrangement who are or may be handicapped shall be investigated under enclosure 5 to DoD

Directive 1020.1<sup>1</sup> (§68.1(h)). If the State on which a Section 6 School Arrangement's comparability is based has not adopted a State plan, the State plan of an adjacent State must be followed. If no adjacent State has adopted a State plan, the State plan of another State that is similar to the State in which the Section 6 School Arrangement is located shall be selected.

(f) After consultation with the Military Departments, funds shall be made available for the operation and maintenance of Section 6 School Arrangements, on either a direct or reimbursable basis, to the comptroller at the respective military installation. These funds shall remain separate and distinct from the funds of the individual Military Services.

(g) Attendance in Section 6 School and Special Arrangements within CONUS, Alaska, and Hawaii is limited to eligible dependent children under §68.1(b). Guidance, consistent with §68.1 (b) and (c) for student eligibility for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii shall be established by the Military Department concerned after coordination and approval by the General Counsel of the Department of Defense, or designee, and the Assistant Secretary of Defense (Force Management and Personnel), or designee.

(h) Where a member of the Armed Forces is transferred or retires and the member's family moves after the start of the school year from on-base (post) housing, the member's children shall be permitted to continue in attendance at the Section 6 School Arrangement for the remainder of the school year during which the transfer or retirement occurred, if the child is residing with a parent or legal guardian or another person acting in loco parentis.

(i) Where a member of the Armed Forces is assigned to an installation on which there is a Section 6 School Arrangement and is assigned on-base (post) family housing that is expected to be available for occupancy and to be occupied within 90 school days from

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

the reporting date, the member's children may be permitted to attend the school while residing in an area adjacent to such Federal property. Transportation for children attending a Section 6 School Arrangement under these conditions is the responsibility of the parent.

#### § 68.5 Definitions.

*Adjacent area.* A geographic location that is next to or near Federal property. This normally should include a student commuting area within 45 minutes of the Federal property, unless another area identified as adjacent is designated specifically by an administrator of the Federal property; i.e., the installation commander.

*Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children under Pub. L. 81-874 through, first, Section 6 School Arrangements or, second, Section 6 Special Arrangements:

(a) *Section 6 School Arrangement.* When a DoD-operated school is established on Federal property to provide a free public education for eligible children or, if not established on such property, the eligible child resides on such property.

(b) *Section 6 Special Arrangement.* An agreement, under § 68.1(b), between the Secretary of Defense, or designee, the ASD(FM&P), or designee, or the Secretary of a Military Department, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

*Comparability.* Comparability is the act of demonstrating that the educational services and programs, school plant and facilities, budget and per-pupil expenditures, and all associated activities and services provided in Section 6 School Arrangements for the free public education of eligible dependent children are, to the maximum extent practicable, equivalent in quality and availability to those provided

by school districts in the State where the Section 6 School Arrangement is located or the district(s) to which it is compared. Each Section 6 School Arrangement, in coordination with the Military Department concerned, shall provide an annual statement, with supporting documentation, which demonstrates its comparability.

*Dependent children.* Children who reside on Federal property, or are minor dependents who are the children, step-children, adopted children, or wards of U.S. military sponsors or federally employed sponsors, or who are residents in the households of bona fide sponsors who stand in loco parentis to such individuals and who receive one-half or more of their support from such sponsors, and are within the age limits for which the applicable State provides free public education.

*Federal property.* Real property that is owned or leased by the United States.

*Free public education.* Education that is provided at public expense under public supervision and direction without charge to the sponsor of a child, and that is provided at the elementary or secondary school level of the applicable State. The term shall not include any education provided beyond grade 12, except in the case of State policy regarding the education of handicapped students, nor does it preclude the collecting of tuition from an Agency responsible for the assignment of a child's sponsor resulting in the attendance of the child of a Section 6 School Arrangement.

*Local educational agency.* A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district in a State. The term includes any State Agency operating and maintaining facilities for providing free public education.

*Parent.* Includes a legal guardian or another person standing in loco parentis.

*State.* A State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.