



Equitable Services Under ESSA, IDEA, and the CARES Act

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Equitable Services Generally

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Consultation

- Consultation is still key
- LEA initiates – Annual contact – *even if declined past year*
- Intent to participate form
 - Best practice
 - Can set deadline for submission
 - Send to all privates in district that may have eligible students

Consultation Documentation

- Written affirmation that timely and meaningful consultation occurred
 - If no affirmation provided within “reasonable period of time” after consultation, forward to SEA documentation of consultation process
- LEAs must give option to private school officials to indicate belief that timely and meaningful consultation did not occur or that the program design is not equitable with respect to eligible private school children.
- When disagreement, the LEA must provide in writing:
 - The basis of the disagreement,
 - The LEA’s decision, and
 - Complaint options.



Coordination of Consultation

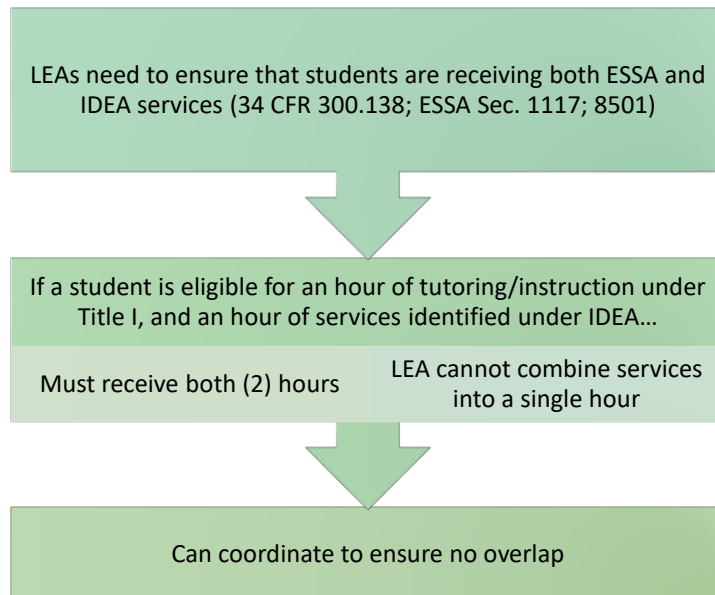
Consultation for Title I and IDEA may be coordinated, but not combined

- 34 CFR 300.134 (IDEA); Sec. 1117(c) of ESEA, 20 USC 6320(c) (Title I)
- Schedule on the same day, but should run consecutively, not concurrently.
 - Different staff
 - Different requirements
 - Different services and consideration



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Coordination of Services



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Staff Qualifications

- Do NOT apply to:
 - Non-public school teachers or paraprofessionals
 - Third party contractor teachers or paraprofessionals
 - Unless state law requires qualifications.
- DOES apply to:
 - LEA teachers teaching non-public school students
 - LEA paraprofessionals

LEA Maintains Control



LEA plans, designs, and implements program (through timely and meaningful consultation)



LEA controls all finances
*Includes maintaining title to materials, equipment, and property purchased with those funds



When no longer needed for the purposes of the program, equipment and supplies must be removed. 76.661(b); 200.313(a)(1), (c)(1) and 200.314(a)



Equitable Services under ESSA

ED's Informational Document Dated October 2019:
<https://www2.ed.gov/about/inits/ed/non-public-education/files/equitable-services-guidance-100419.pdf>
Supersedes: ED's 2003 Toolkit and ED's 2016 Guidance

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Equitable Services – ESSA Rules

ESSA Title I, Section 1117

- LEAs must provide educational services and benefits to eligible private school students (and teachers) that are equitable in comparison to the Title I services provided to public school students. ESSA Section 1117(a)(3).

ESSA Title VIII, Section 8501

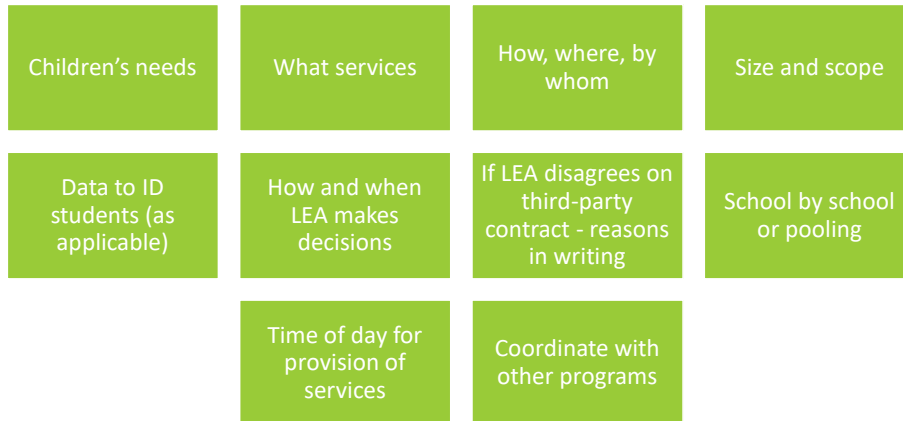
- Title I,C – Migrant Children
- Title II,A – Instruction
- Title III,A – English Learners
- Title IV,A – Student Support and Academic Enrichment
- Title VI,B – 21st CCLC

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ESEA Consultation Topics Generally



Consultation (cont.)

A-12. Is other documentation on consultation helpful?

- **Yes**, LEAs & private schools should maintain a record of notes about issues in consultation meetings
- As a best practice LEA should document that it has:
 - Annually informed private school officials of available services;
 - Engaged in timely consultation;
 - Identified needs of private school student, teachers, families;
 - Allocated amounts appropriately;
 - Provided services;
 - Evaluated programs and services for effectiveness;
 - Adequately addressed problems and formal complaints.

Private School Documentation

A-15. In general, what documentation does an LEA need from private school officials in order to provide Title I services to eligible students in those schools?

- LEA may request documentation, as needed.
- Info to ID students who generate equitable services funds
- Info to ID student eligible for services
- Names, addresses and grade level of students
- Eligible students residing in a different LEA



Newly Opened School

A-16. What is an LEA's obligation to consult with, and provide services to eligible students attending, a new private school that opens after the LEA's deadline for indicating an intent to participate?

- An LEA is NOT required to provide equitable services in the current year if the school opens after the LEA's deadline for indicating an intent to participate.
- However, LEA can choose to do so
- **When contacting schools in the following year, the new school must be included**



Private School Declines to Participate

A-17. What is an LEA's obligation to provide equitable services under Title I if a private school declines to participate or does not respond to the LEA's request to consult?

- LEA has no further responsibility to provide equitable services to students in that school during that school year.
- LEA must demonstrate it made a good faith effort.
- LEA must contact the school again next year.

Title I, A Proportionate Share Calculation

- Proportionate Share Formula (ESSA Section 1117(a)(4)):
- Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools
- Figure out the proportion of children in private schools
- Apply the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate share
- Include funds transferred into Title I

Example – Determining the Proportional Share			
Public School Attendance Area	Number of Public School Low-Income Children	Number of Private School Low-Income Children	Total Number of Low-Income Children
A	500	120	620
B	300	9	309
C	200	6	206
D	350	15	365
Total	1,350	150	1,500
Proportional Share	90%	10%	
	\$900,000	\$100,000	

Source: The U.S. Department of Education Guidance¹

Title I, A Proportionate Share Calculation

EXAMPLE: TOTAL TITLE I
ALLOCATION OF
\$1,000,000

New Q&A – Remaining Share

B-10. After an LEA determines the proportional share, the administrative costs amount, and, if applicable, the parent and family engagement activities amount, how does the LEA allocate the remainder of the proportional share to provide equitable services?

- LEA subtracts from the proportional share these amounts and divides the remainder by the total number of private school students from low-income families in participating public school attendance areas to establish a per-pupil amount.
- LEA then multiplies this per-pupil amount by the number of private school students from low-income families that attend a participating private school (or pool of schools) to determine the amount available to serve eligible students in the school or, as applicable, pool.



Pooling

Pooling – Provide equitable services by pooling Title I funds within (or across) the LEA, such as in a group of schools under the authority of a single organization.

B-8: Need consultation and agreement for any pooling!

- “agreement” requirement new – places more power in hands of schools
- But can use “reasonable deadlines” and pooling option to encourage more schools to participate/use offered opportunities?

Pooling (cont.)

B-9: May an LEA choose unilaterally to pool funds/services?

- No. Proportion of services is intended to be “commensurate with the Title I funds generated by students from low-income families in the school”
- Pooling can be done after meaningful consultation and **MUTUAL AGREEMENT** to serve a group of eligible students
- “LEA and appropriate private school officials must agree through consultation for the LEA to pool Title I funds among a group of private schools because it impacts the services eligible students in a given private school would otherwise receive”



Poverty Data & Transferability

B-24 & B-25: May an LEA retain funds or transfer funds solely to provide equitable services?

- No.

Carryover

B-28: How does the 15 percent carryover limitation in ESEA section 1127(a) apply to equitable services carryover?

“[I]f an LEA exceeds the carryover limitation, and an SEA reduces the LEA’s allocation as a result, such reduction may not come from the portion of carryover funds used to provide equitable services.”

(Exception if one or more private schools declines some or all services AND there are no other participating private schools)



Third party contracting (C-28)

- May contract with religious organizations
- *Trinity Lutheran v. Comer* (Supreme Court)
- Any third party contractor must be independent from private school

New Q&A – Independent Contractor

C-29. What does it mean for a contractor to be independent of the private school in the provision of equitable services?

- Depends on the extent to which the contractor has administrative or fiscal direction and control over the private school.
- Example 1: an administrative body that oversees a group of affiliated private schools and has control over the schools' curriculum and hiring policies would NOT be independent of a private school subject to its authority.
- Example 2: a membership organization with no authority over the operations of its member schools likely would be considered independent of such schools.

Ombudsman requirement

E-1. What are the roles and responsibilities of an ombudsman?

SEA must designate an ombudsman to monitor and enforce ESEA equitable services requirements under both Title I and Title VIII

- Serve as general resource for LEAs and private school officials
- Develop monitoring protocols with SEA
- Provide technical assistance for SEA staff administering applicable programs, LEA staff, and private school officials

Complaint Requirements

F-1. What information must a formal written complaint to the SEA include?

- A statement that an SEA or LEA has violated a requirement of a Federal statute or regulation that applies to a program requiring equitable participation;
- The facts on which the statement is based and the specific statutory or regulatory requirement allegedly violated; and
- The signature of the complainant.

34 CFR §299.12

SEA Handling of Complaints

F-3. What options are available to private school officials if the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem?

- Private school officials may appeal to ED no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within 45 days).
- ED investigates and resolves the appeal no later than 90 days after receipt of the appeal. (ESEA section 8503)

F-4. May an SEA require a private school official to file a formal complaint with the LEA and await the LEA's resolution before filing a complaint with the SEA?

- Yes, but the 45-day limit still applies

Individuals with Disabilities Education Act (IDEA)



Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools (April 2011):

https://sites.ed.gov/idea/files/Private_School_QA_April_2011.pdf

Equitable Services & Child Find

“Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in non-public, including religious, elementary and secondary schools located in the school district served by the LEA.” 34 CFR § 300.131(a)(2006)

→ LEA must identify all “parentally placed non-public school children” with disabilities

Parentally-Placed Non-Public School Children w/Disabilities

- Who are these children?
 - Voluntarily enrolled by their parents in non-public schools
 - Not referred to non-public schools to receive FAPE
- Right to “equitable participation services” in IDEA, Part B
 - NO individual right to services, not entitled to FAPE
- Must spend proportionate share of Part B subgrant funds on providing special education and related services
 - LEA makes final decisions on services – type, how, where, by whom
 - “Services Plan” vs. IEP

IDEA Consultation Requirements



- “Timely and meaningful” consultation
- Who?
 - Non-public school representatives and
 - Representatives of parents of parentally-placed non-public school children with disabilities

Required Consultation Topics

Child find process

Proportionate share of Part B funds

- How calculated (Appendix B)

Consultation Process

- How will consultation operate throughout the year to ensure parentally-placed non-public school children with disabilities can meaningfully participate?

Provision of special education & related services

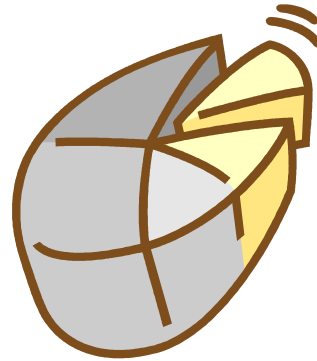
- How, where, and by whom; Types of services; How apportioned if funds insufficient for all and; How and when decisions will be made.

Written explanation of disagreement.

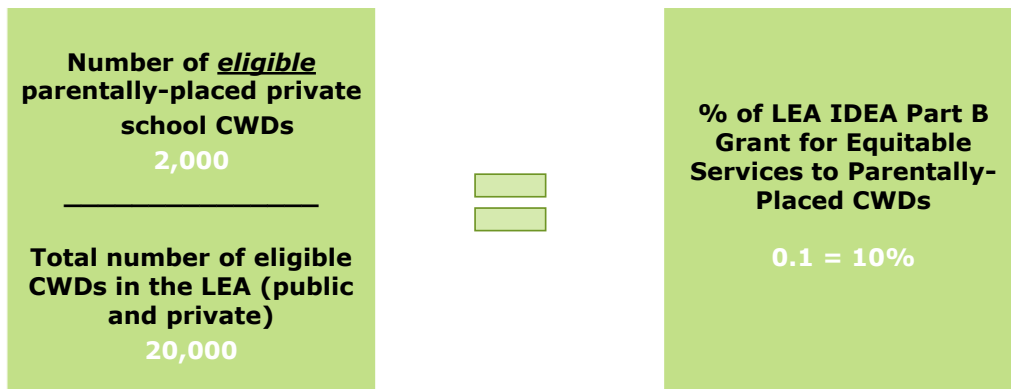
- How LEA will provide written explanation when LEA final decision on services disagrees with non-public school officials

The Proportionate Share Set Aside

- LEA must calculate the proportionate share for parentally-placed non-public school children with disabilities before earmarking funds for any early intervening activities in § 300.226. (Appendix B to regulations)
- How are numbers of parentally-placed non-public school children with disabilities derived?
 - LEA determines the number, after consultation requirements



Calculate the Proportionate Share (cont.)



REMEMBER: Calculation based on students *eligible*, not just those participating.

Carryover

- “...LEA must spend” the proportionate share
 - If LEA fails to spend entire proportionate share for the given year → LEA must obligate remaining funds for equitable services for a carry-over period of one additional year.
- At end of carry-over year?
 - Assuming LEA is in compliance with Child Find, consultation, and other IDEA equitable services requirements → LEA may use the unexpended funds to pay for other allowable Part B expenditures for that same LEA.

Delivery and Provision of Services

- Requirement is to provide “special education and related services (including direct services)”
 - Not required to provide direct services exclusively
 - Possibilities: consultative services, equipment or materials for eligible parentally placed CWDs, training for non-public school teachers and other non-public school personnel
 - No individual right to services
- Provided directly by LEA or through 3rd party
- May be on-site at non-public school, with safeguards

Services plan

- To the extent appropriate, must be developed, reviewed, and revised in accordance with the IEP requirements in 34 CFR §§ 300.321-324; 34 CFR §§ 300.132(b) and 300.138(b)
 - Review periodically and revise as necessary
 - Parent participation in review and development



State complaint process

No individual right to FAPE.

Under 34 CFR §300.136, a private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

Parent may also file a state complaint that services plan is not being implemented. 34 CFR §300.140(c)

If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation related to the complaint to the Secretary.

CARES Act Equitable Services



Providing Equitable Services to Students and Teachers in Non-public Schools under the CARES Act Programs: <https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf>

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CARES Act Equitable Services

Section 18005 provides for equitable services

- Applies to the Elementary and Secondary School Education Relief Fund (ESSER) and the Governors Emergency Education Relief Fund (GEER)
- Services should be provided to students and teachers in non-public schools “in the same manner as provided under Section 1117 of the ESEA”
 - Subject to consultation
- Funds must remain “under the control” of the public entity (LEA)

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ED October 2020 Guidance

- Should calculate set-aside based on Title I percentage
 - Can use 19-20 or 20-21
- Once set-aside is calculated, should offer services to all private schools and students *located* in your district
- Can base individual private school portion on total enrollment of schools



Which private schools are eligible to participate?

- Non-profit private schools
- In existence prior to March 13, 2020
- Located in the District
 - (October guidance)



Must the equitable services funding be used for supplemental costs?

- No!
- E.g. May use funding to facilitate remote learning for students and teachers in private schools
 - Purchase laptops
 - Increase bandwidth
 - Provide improved cyber security or virtual classroom platform licenses
- But ...
 - LEA must maintain title to the materials, equipment and property
 - LEA must administer the contract, materials, equipment and property
 - All services, materials and equipment must be secular

Can the LEA use CARES funds for repairs, renovation or remodeling in a private school? (E.g., creating outdoor classrooms)

- No. LEA must maintain title to any materials, equipment and property.
- 34 CFR 76.661(c)(2) applies to CARES Act funds – requires equipment and supplies placed in a private school to be removable without remodeling.
- But – nonpermanent improvements, easily removed may be allowable, such as setting up a screening area in a tent; temporary partitions to assist with social distancing; or hand sanitizing stations.

How long may equipment and supplies purchased with CARES Act funds placed in a non-public school remain there?

- During the period of performance or until the equipment and supplies are no longer needed for the purposes of the CARES Act program
 - 76.661(b); 200.313(a)(1), (c)(1) and 200.314(a)
- Once no longer needed, the LEA may continue to use the equipment or supplies in the non-public school to the extent they are needed for other allowable purposes under another federal education program (ESEA, IDEA).



Questions?

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