



April 29, 2022

United States Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

**Submitted via Email to [EquitableServices@ed.gov](mailto:EquitableServices@ed.gov) (Subject line: ESEA Title VIII Equitable Services)**

**Re: U.S. Department of Education, Draft Title VIII, Part F of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers and Families—Non-Regulatory Guidance (2022).**

To Whom It May Concern:

Thank you for the opportunity to comment on the draft non-regulatory guidance for Title VIII, Part F of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act – Providing Equitable Services to Eligible Private School Children, Teachers and Families (2022). The Association of Christian Schools International (ACSI) is the largest Protestant school association in the world; many of our U.S. member-schools participate in equitable services and thus have an interest in the FAQs governing that process. Further, ACSI is a member association of the Council for American Private Education (CAPE), a coalition of national organizations serving private elementary and secondary schools. We wanted to emphasize our agreement with CAPE’s observations below along with one addition under H-12.

Our comments and suggestions are as follows:

**A-7.**

We recommend this language: “All private school officials should be contacted based on the nature of the program and the entity responsible for providing equitable services. For Title II, Part A and Title IV, Part A, an LEA should contact and begin consultation with school officials representing all private schools located within its boundaries. The LEA might make contact with respect to all covered programs for which it receives funds. For other programs, however, such as the 21st Century Community Learning Centers Program, a subgrantee would consult with private school officials in the specific geographic area(s) to be served by the program. LEAs can utilize private school associations and member organizations to ensure they are reaching all private schools. Examples of groups that could help the LEA with communication are the state CAPE affiliate, the Catholic Diocese central office, or member organizations such as state independent school associations, the Association for Christian Schools International, Agudath Israel of America, etc.”

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**A-9.**

It would be preferable if the following sentence were moved such that it would be the first sentence of the paragraph: "Consultation must be ongoing throughout the school year to help ensure effective implementation, service delivery, and assessment of equitable services."

**A-10.**

As with A-7, the appropriate official could be found at the state CAPE affiliate, the Catholic Diocese central office, or at member organizations such as state independent school associations, the Association for Christian Schools International, Agudath Israel of America, etc.

**A-13.**

Clarification is needed on the matter of who is responsible for signing the consultation agreement if individual schools choose a representative to engage in consultation on their behalf. Does each school need to sign or just the designated representative?

**A-17.**

We suggest replacing the word "need" with the word "request" in the question.

**A-20.**

Please add language that this should be "at no fee."

**B-1.**

We suggest adding a line in the example chart to show the impact of carryover.

**B-6, B-7.**

These answers are highly problematic and conflict with carryover instructions in B-10. LEAs should not redistribute funds allocated to private schools for equitable services until the full length of time to spend has passed, and carryover possibilities have been discussed as explained in B-10. We recommend that the Department resolve this problem by deleting the phrase "public and" in the last sentence of B-6 and the phrase "both public and" in the last sentence of B-7.

**B-8.**

We recommend that language be added which indicates that administrative costs for private schools are not separate from the total LEA administrative costs that are calculated "off the top" prior to calculating the proportionate share for public and private schools.

**B-17.**

We recommend that in the final paragraph of the answer, language be added that indicates that LEAs should provide this information to private school officials in a timely manner.

**C-9, C-15, H-7, H-11.**

The answers to these questions pose problems with interpretation of “supplement not supplant.” Public officials should not be permitted to inquire into the operational budgets of the schools requesting services, nor to make judgments about permitted activities. Any of the permitted activities may be supplemental since they may enhance the activity that might be provided by the school with additional resources for a more robust program to meet student needs.

**C-10, C-24, H-7, H-10, H-12, I-8.**

The proposed guidance has six different questions implicating the “secular, neutral, and nonideological” requirement in ESEA section 8501(a)(2). The Department should consider waiting to finalize guidance on the implementation of ESEA section 8501(a)(2) until after the Supreme Court issues its ruling in *Carson v. Makin*, which concerns the use of government funds for religious education.

**C-28.**

We suggest the answer be reworked to read this way: “No. Establishing a blanket rule prohibiting certain services and programs prior to consultation would preclude meaningful consultation, whereby the LEA and private school officials would discuss how best to meet the needs of eligible private school children and educators. In carrying out its responsibility to provide equitable services to eligible private school children and educators, an LEA may establish policies that, for reasons of effectiveness, quality, cost, or other relevant factors, favor certain kinds of services and programs that the particular program statute authorizes and that meet the needs of eligible private school children and educators.”

**Section F**

We suggest adding a new question about Federal Financial Assistance, modeled after question Number 11 in the [August 2019 document](#) from the Office of Non-Public Education “Frequently Asked Questions – General Issues Related to Nonpublic Schools.”

**11. Are private elementary and secondary schools whose students and, as applicable, their teachers and families, receive equitable services under the ESEA or IDEA considered to be “recipients of federal financial assistance”?**

No. The Department does not consider private schools whose students or teachers receive equitable services under the ESEA or IDEA to be recipients of federal financial assistance. Typically, LEAs or other entities operate these programs for the benefit of students in private

schools, not for the benefit of the private schools themselves. As a result, certain requirements that apply to recipients do not apply to private schools by virtue of their students or teachers receiving equitable services under the ESEA or IDEA. If a private school is not a recipient, but the private school's students or teachers receive services under a federal education program administered by an LEA or SEA (including equitable services under the ESEA or IDEA), the LEA or SEA involved remains responsible for ensuring that there is no discrimination with respect to administering the federal education program.

However, if a private school otherwise receives federal financial assistance, including a grant or subgrant of federal funds to administer a federal education program, the school would then be considered a recipient.

A private school that is a recipient of federal financial assistance is subject to the federal civil rights laws enforced by the Department's Office for Civil Rights prohibiting discrimination based on race, color, national origin, sex, disability, and age and is subject to the Department's jurisdiction for purposes of enforcing those laws. It is also possible that some federal laws administered by other federal agencies may apply to private schools. Questions about recipient status for such programs should be directed to the appropriate federal agency.

#### **H-9.**

The proposed answer contains certain ambiguities that could cause conflict with C-18 and C-19, which say that LEAs may reimburse for conferences. The answer to H-9 should clearly explain that conferences can meet the definition of professional development outlined in ESEA, are eligible uses of Title II, Part A funds, and that there is no outright prohibition. We suggest the following language as an answer to H-9: "Yes, if a private school official can demonstrate, through consultation with an LEA, that attendance at a short-term conference is part of a sustained and comprehensive professional development plan for a teacher that meets these Title II, Part A requirements, including the statutory definition of professional development, then an LEA may use Title II, Part A funds for costs associated with a private school teacher's participation in the conference. There is no federal prohibition on conferences for professional development for private school educators and LEAs may not establish blanket rules prohibiting certain services or programs prior to consultation (see C-28). However, because many conferences are short-term or are stand-alone, they may not meet this definition as an allowable expenditure under ESEA section 2103(b)(3) without further integration into a comprehensive plan for professional development for a teacher or teachers. Furthermore, depending on the content and substance of the conference, participation may be allowable under other specifically defined activities in Title II, Part A, which do not need to meet the ESEA section 8101(42) definition of professional development. For example, ESEA section 2103(b)(3)(H), (J), (K), and (L) allows training for selecting and implementing formative and classroom-based assessments, for identifying gifted and talented children, for supporting instructional services provided by effective school library programs, and for preventing and recognizing child sexual abuse."

**H-10.**

While funds related to equitable services may only be used for secular, neutral, and nonideological purposes (a policy that may be affected by the forthcoming decision in *Carson v. Makin*), the suggested method of tracking time at a conference that may have both secular and religious content is highly problematic, and will lead to unnecessary obtrusions and administrative burdens for school leaders. The process in the provided example is onerous, will lead to a more laborious approval process for school leaders, and would require follow up after the conference in such a manner that one error in paperwork could lead to a teacher not receiving the expected reimbursement after having attended a conference. Since school leaders cannot obligate funds and may only participate in programs approved by the LEA, it must be clear up front what the approved expense will be, not recalculated after the conference has occurred. It is also arduous to tie travel expenses to the percent of religious content at a conference; the religious content is at the conference itself, not on an airplane or in a hotel room. If not revised, the proposed guidance on this question will likely lead to teachers not attending conferences due to the risk of not being reimbursed.

**H-12.**

The guidance here states that Title II, Part A funds may not be used to “pay for an online subscription to a professional development video database that contains content that is not fully secular, neutral, and non-ideological”. The adjective “fully” could well eliminate the use of equitable services funds to access any online training offered in core subjects such as math, science, and English by religious professional development providers that may include religious portions and thus severely limit the number of providers available for Christian schools and staff. The Department should eliminate the qualifier “fully,” which would then allow the use of online professional development in core subjects and still ensure that the equitable services are “secular, neutral, and nonideological” without adding overbearing and prohibitive qualifications.

Thank you for your consideration.

Respectfully submitted,



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