Private Schools and the Every Student Succeeds Act

CAPE Council for American Private Education

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Voice of America's Private Schools

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Introduction

On December 10, 2015, President Barack Obama signed the *Every Student Succeeds Act* (ESSA), which reauthorized and updated the *Elementary and Secondary Education Act* (ESEA).

The new law includes numerous provisions championed by the CAPE community to improve equitable services to private school students and teachers. CAPE's issue paper identifying the improvements we were seeking in the reauthorization is available on CAPE's Web site at <www.capenet.org/pdf/IP-ESEA2013.pdf>; a scorecard identifying which of those improvements were actually enacted is available at <www.capenet.org/pdf/ESSAscorecard.pdf>; and a useful side-by-side comparison of ESSA to its predecessor with respect to some significant private school provisions is available at <www.capenet.org/pdf/ESSA2015sbs.pdf>.

Background

When ESEA was first enacted in the mid-1960s, Congress determined that federal education aid should be directed in an equitable way toward helping all children in need, regardless of the type of school they attend. That principle of equitable services governed the implementation of ESEA from 1965 until its most recent iteration, the *No Child Left Behind Act* (NCLB), when certain funding formulas and set-asides began to erode equity. The new ESSA corrects those inequities and improves the protection of services for private school children. Herewith some highlights of those improvements.

Proportional Funding

Under Title I, which provides assistance to school districts to help high-need students do well in school, a school district now has to calculate funds for services to private school students based on its total Title I allocation, without excluding certain expenditures for other purposes, which it was allowed to do under NCLB.

Professional Development

Under Title II-A, designed to ensure high-quality teachers, a district now has to set aside a proportionate share of funds for services to teachers in private schools based on its total Title II-A allocation, not just on the funds it earmarks for professional development, which was the case under NCLB.

Ombudsman & Funding

The new law requires states to designate an ombudsman to monitor and enforce the requirements imposed on school districts to ensure equitable services to private school students and teachers. States also have to tell private school officials "in a timely manner" the amount of funds that a district determines are available for services and benefits to private school students and teachers. In turn, districts are required to spend the funds allocated for the benefit of private school children in the fiscal year for which the funds are received.

Consultation

One way the federal education law has tried to ensure cooperation between public school officials and private school officials in working out the delivery of equitable services is through a series of provisions governing consultation. ESSA strengthens the consultation provisions to a significant degree. For starters, it specifies that the goal of consultation shall be to reach "agreement on how to provide equitable and effective programs for eligible private school children." New topics of consultation include how the proportion of funds for services to private school children should be determined and whether services should be provided directly by the district or through a third-party. The new law also applies to certain other programs under ESSA some of the consultation provisions that had previously applied only to Title I.

New Grant Program

ESSA establishes a new "Student Support and Academic Enrichment" block grant program to provide states and school districts with flexibility in directing funds to a broad array of educational purposes. Allowable activities under the program, which the act authorizes at $1.65 billion in FY 2017, include those relating to health and safety, the use of technology, foreign language instruction, STEM education, and various other purposes. The new program is covered by uniform provisions in ESSA that require equitable services to address the needs of private school students and teachers. Indeed, a district's application for the grant has to include an assurance that it will comply with the equitable services provisions.

High Ability Learners

Similarly, a program relating to "High-Ability Learners and Learning" requires the U.S. Secretary of Education, in awarding grants, to ensure, where appropriate, "that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools."

Other Equitable Components

Other components within ESSA that include equitable services to private school students and teachers are those relating to community learning centers, the education of migratory children, and English language learners.

Preschool

The legislation also authorizes $250 million annually for preschool development grants to states. One purpose of the program is to "maximize parental choice among a mixed delivery system of early childhood education program providers."

Effective Dates

The federal fiscal year begins October 1 and ends the following September 30. The fiscal year coincides with the ending date. Thus, FY 2017 starts October 1, 2016, and ends September 30, 2017. Almost every education program is forward funded, which means the monies appropriated for the program in a given fiscal year do not flow to states or school districts until July 1 of that year. Thus, education funds for FY 2017, which Congress is supposed to approve by October 1, 2016, do not affect programs until the school year that starts September 2017.

That said, ESSA includes a timetable for its implementation. Briefly, the new law is not going to take effect overnight. Changes affecting non-competitive formula grant programs were slated to take effect July 1, 2016 (unless otherwise stated), although subsequent language in the *Consolidated Appropriations Act of 2016* seems to delay that another year. Changes affecting competitive grant programs are slated to take place October 1, 2016 (unless otherwise stated).

About This Guide

This guide is a work in progress. Its initial publication date is January 2016, and almost all of the information in the first version is based simply on the statute itself. However, as the U.S. Department of Education develops guidance and regulations in coming months and years, the guide will be updated, as necessary, to reflect that information. Thus, it is important to make sure you have the latest version of the guide as a reference. The date of the version is noted in the bottom right corner of page 2.

For each program in ESSA that relates to private schools, the guide presents the program's purpose(s), authorized funding levels, and private school provisions. For the most part, the guide incorporates the language of the statute, deviating for the sake of clarity, brevity, coherence, convenience, or consistency.

At the top and bottom of each page are links to the contents and index pages. The table of contents and index are interactive; just click on a topic or page number to go to the appropriate page. Additional links (including links to Web pages) are scattered throughout the document and are identified by blue text. And you can always search for particular terms in the guide using Adobe Acrobat's search function.

Title I, Part A: Improving Basic Programs

Purpose

The purpose of Title I-A is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps (Sec. 1001).

Authorized Funding

ESSA authorizes $15.0 billion for Title I-A in FY 2017, $15.5 billion in FY 2018, $15.9 billion in FY 2019, and $16.2 billion in FY 2020 (Sec. 1002(a)).

Private School Participation

School districts must set aside a share of Title I-A funds for services for eligible students in private schools. Eligible private school students are those who reside in a participating public school attendance area and who are failing, or are most at risk of failing, to meet the state's challenging student academic achievement standards (Sec. 1117(a)(1) and Sec. 1115(c)). The share of Part A funds set aside for services for private school students must be equal to the proportion of low-income students in the district who attend private schools (Sec. 1117(a)(4)).

After timely and meaningful consultation with appropriate private school officials, the school district must provide eligible private school children, on an equitable basis, special educational services or other benefits that address their needs (Sec. 1117(a)(1)).

Services must be provided to children individually or in combination, as requested by private school officials, and the services may include instructional services (including evaluations to determine the progress being made in meeting such students' academic needs), counseling, mentoring, one-on-one tutoring, or other benefits (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) (Sec. 1117(a)(1)(A)).

School districts must also ensure that teachers and families of the private school students receiving services participate, on an equitable basis, in services and activities designed to promote parental involvement and family engagement described in Sec. 1116 (Sec. 1117(a)(1)(B)).

Equitable Services

Services and other benefits to private school students must be secular, neutral, and nonideological (Sec. 1117(a)(2)), must be provided in a timely manner, and must be equitable in comparison to services and other benefits for public school children (Sec. 1117(a)(3)(A)). To help ensure such equity, the state education agency must designate an ombudsman to monitor and enforce the requirements relating to the participation of children in private schools (Sec. 1117(a)(3)(B)).

Expenditures

Expenditures for services to private school children must be proportionate to the number of children from low-income families who attend private school in a given attendance area (Sec. 1117(a)(4)(A)(i)). Moreover, the proportional share must be determined based on the total amount of funds received by the school district for Title I-A prior to the district making any allowable expenditures or transfers of funds (Sec. 1117(a)(4)(A)(ii)).

School districts must obligate the funds reserved for services to private school students in the fiscal year for which the funds are received (Sec. 1117(a)(4)(B)). State education departments must provide timely notice to private school officials of how much funds have been allocated for services to private school students based on information provided by school districts (Sec. 1117(a)(4)(C)). School districts may determine that share each year

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or every two years (Sec. 1117(a)(4)(D)).

School districts may provide services directly through personnel employed by the district or through contracts with public and private agencies, organizations, and institutions (Sec. 1117(a)(5)).

Consultation

School districts must consult with appropriate private school officials during the design and development of the agency's programs under Title I-A. The goal of such consultation shall be to reach agreement on how to provide equitable and effective programs for eligible private school children. Further, the results of the agreement must be transmitted to the ombudsmen designated by the state to monitor private school student participation (Sec. 1117(b)(1)).

Consultation must cover issues such as:

(A) how the children's needs will be identified;
(B) what services will be offered;
(C) how, where, and by whom the services will be provided;
(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;
(E) the size and scope of the equitable services to be provided to the eligible private school children, and the proportion of funds that is allocated for such services, and how that proportion of funds is determined;
(F) the method or sources of data that are used to determine the number of children from low-income families in participating school attendance areas who attend private schools;
(G) how and when the school district will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers;
(H) how, if the school district disagrees with the views of the private school officials on the provision of services through a contract, the district will provide in writing to such private school officials an analysis of the reasons why it has chosen not to use a contractor;
(I) whether the school district shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor;
(J) whether to provide equitable services to eligible private school children by combining the funds generated by private school children into one or more pools of funds;
(K) when, including the approximate time of day, services will be provided; and
(L) whether to provide services to eligible private school children by consolidating and using funds in coordination with eligible funds available for services to private school children under programs covered by Section 8501(b)(1).

The consultation must also include a discussion of service delivery mechanisms that a school district can use to provide equitable services to eligible private school children (Sec. 1117(b)(4)).

Timing

Consultation must include meetings of school district officials and private school officials and must occur before the district makes any decision that affects the opportunities of eligible private school children to participate in programs under Title I-A. Such meetings must continue throughout the implementation and assessment of the services provided (Sec. 1117(b)(3)).

Documentation

Each school district must maintain in its records, and provide to the state education department involved, a written affirmation, signed by officials of each participating private school, that the meaningful consultation required has occurred. The written affirmation must provide the option for private school officials to indicate their belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If private school officials do not provide such affirmation within a reasonable period of time, the school district shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the state education department (Sec. 1117(b)(5)).

Disagreement

If a school district disagrees with the views of private school officials regarding an issue of consultation, the district must provide in writing to such private school officials the reasons why it disagrees (Sec. 1117(b)(2)).

Ensuring Compliance

A school district must submit a plan to the state education department detailing the services it will provide under Title 1-A. The plan must include an assurance that the district will provide services to eligible children attending private schools, and will undertake timely and meaningful consultation with private school officials regarding such services (Sec. 1112(c)(2)).

A private school official has the right to file a complaint with the state education department asserting that the school district did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats private school students equitably (Sec. 1117(b)(6)(A)).

If the private school official wishes to file a complaint, he/she must provide the basis of the noncompliance with the law by the school district to the state education department, and the school district must forward appropriate documentation to the state education department (Sec. 1117(b)(6)(B)).

A state education department must provide services under this section directly or through contracts with public or private agencies, organizations, and institutions, if the appropriate private school officials have requested that it do so and have demonstrated that the school district involved has not met the requirements of law, according to the procedures for making such a request, as prescribed by the state education department (Sec. 1117(b)(6)(C)).

Counting Eligible Students

A school district has the final authority to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools. It may use one of the following methods:

(A) using the same measure of low income used to count public school children;
(B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;
(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or
(D) using an equated measure of low income correlated with the measure of low income used to count public school children (Sec. 1117(c)(1)).

Any dispute regarding low-income data for private school students is subject to the complaint process authorized in Section 8503 (Sec. 1117(c)(2)).

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Control of Funds

The control of funds provided under Title I-A, and title to materials, equipment, and property purchased with such funds, must be in a public agency, and a public agency must administer such funds materials, equipment, and property (Sec. 1117(d)(1)).

Services must be provided by employees of a public agency, or through contract by such public agency with an individual, association, agency, or organization (Sec. 1117(d)(2)(A)). The employee, individual, association, agency, or organization must be independent of the private school and of any religious organization, and such employment or contract must be under the control and supervision of the public agency (Sec. 1117(d)(2)(B)).

Bypass

If a school district is prohibited by law from providing for the equitable participation of eligible children enrolled in private schools, or if the U.S. Secretary of Education determines that a school district has substantially failed, or is unwilling, to provide for such participation (considering factors such as the quality, size, scope, and location of the program and the opportunity of eligible children to participate (Sec. 1117(e)(3)), the Secretary must arrange for a bypass in accordance with Sections 8503 and 8504 (Sec. 1117(e)).

Schoolwide Programs

Under certain circumstances, a school district may consolidate and use funds under Title I-A and other titles for schoolwide programs in public schools, though not in private schools (Sec. 1114). However, if it establishes schoolwide programs, the district is not relieved of any requirements relating to equitable services to private school students (Sec. 1114(a)(3)(B)).

Advisory Committee

States that participate in Title I must create a committee of practicioners to advise the state in carrying out its responsibilities under the title (Sec. 1603(b)). The committee must include representatives of private school children (Sec. 1603(b)(2)(G)).

Title I, Part C: Education of Migratory Children

Purpose

The purposes of Title I-C are as follows:

(1) To assist states in supporting high-quality and comprehensive educational programs and services during the school year and, as applicable, during summer or intersession periods, that address the unique educational needs of migratory children.
(2) To ensure that migratory children who move among the states are not penalized in any manner by disparities among the states in curriculum, graduation requirements, and challenging state academic standards.
(3) To ensure that migratory children receive full and appropriate opportunities to meet the same challenging state academic standards that all children are expected to meet.
(4) To help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school.
(5) To help migratory children benefit from state and local systemic reforms (Sec. 1301).

Authorized Funding

ESSA authorizes $375 million for Title I-C for each of fiscal years 2017 through 2020 (Sec. 1002(c)).

Private School Participation

States and districts receiving funds under Title I-C must provide equitable services to eligible students and teachers in private schools that address their needs in accordance with the provisions of Sec. 8501.

Title I, Part F: Flexibility for Equitable Per-Pupil Funding

Purpose

The purposes of Title-I-F is to provide certain school districts with flexibility to consolidate eligible federal funds and state and local education funding in order to create a single school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students (Sec. 1501(a)).

Authorized Funding

No funds are authorized for this program since it merely provides authority to consolidate funds from other programs.

Key Provisions

Title I-F authorizes the U.S. Secretary of Education to enter into three-year local flexibility demonstration agreements with no more than 50 school districts (Sec. 1501(c)(1)) under which each district may consolidate federal, state, and local funds in order to develop and implement a school funding system based on weighted per pupil allocations for low-income and otherwise disadvantaged students.

Private School Participation

School districts consolidating funds under Title I-F must provide assurances in their application that they will continue to meet the requirements for equitable services to eligible students and teachers in private schools that address their needs in accordance with the provisions of Sections 1117 and 8501 (Sec. 1501(d)(1)(I)).

Title II, Part A: Preparing, Training, and Recruiting Teachers and School Leaders

Purpose

The purpose of Title II-A is to provide grants to state education departments and subgrants to school districts to:

(1) increase student achievement consistent with the challenging state academic standards;
(2) improve the quality and effectiveness of teachers, principals, and other school leaders;
(3) increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools; and
(4) provide low-income and minority students greater access to effective teachers, principals, and other school leaders (Sec. 2001).

Authorized Funding

ESSA authorizes $2.3 billion for Title II-A for each of fiscal years 2017 through 2020 (Sec. 2003).

Private School Participation

States and districts receiving funds under Title II-A must provide equitable services to eligible teachers and administrators in private schools that address their needs in accordance with the provisions of Sec. 8501.

Professional development activities may be carried out by state education departments or local school districts. In their applications to receive funding under this program from the U.S. Department of Education, state education departments must include an assurance that they will comply with Sec. 8501 regarding equitable services to private school children and teachers (Sec. 2101(d)(2(I). Similarly, in their applications to receive funding from the state, school districts must also include an assurance that they will comply with the equitability provisions found in Sec. 8501 (Sec. 2102(b)(2(E)).

Title III, Part A: Language Instruction for English Learners and Immigrant Students

Purpose

The purposes of Title III-A include the following:

(1) to help ensure that English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English;
(2) to assist all English learners, including immigrant children and youth, to achieve at high levels in academic subjects so that all English learners can meet the same challenging state academic standards that all children are expected to meet;
(3) to assist teachers (including preschool teachers), principals and other school leaders, state educational agencies, local educational agencies, and schools in establishing, implementing, and sustaining effective language instruction educational programs designed to assist in teaching English learners, including immigrant children and youth;
(4) to assist teachers (including preschool teachers), principals and other school leaders, state educational agencies, and local educational agencies to develop and enhance their capacity to provide effective instructional programs designed to prepare English learners, including immigrant children and youth, to enter all-English instructional settings; and
(5) to promote parental, family, and community participation in language instruction educational programs for (Sec. 3102).

Authorized Funding

ESSA authorizes $756 million for Title III in FY 2017, $770 million in FY 2018, $785million in FY 2019, and $885 million in FY 2020 (Sec. 3001).

Private School Participation

States and districts receiving funds under Title III-A must provide equitable services to students and teachers in private schools that address their needs in accordance with the provisions of Sec. 8501.

Title IV, Part A: Student Support and Academic Enrichment Grants

Purpose

The purpose of Title IV-A is to improve students' academic achievement by increasing the capacity of states, local educational agencies, schools, and local communities to—

(1) provide all students with access to a well-rounded education;
(2) improve school conditions for student learning; and
(3) improve the use of technology in order to improve the academic achievement and digital literacy of all students (Sec. 4110).

Authorized Funding

ESSA authorizes $1.65 billion for Title IV-A for FY 2017 and $1.6 billion for each of fiscal years 2018 through 2020 (Sec. 4112).

Key Provisions

This is a new comprehensive block grant program through which funds are distributed to states, which may use a small percentage for state-directed activities but then must distribute at least 95 percent of the funds to school districts (Sec. 4104).

In order to receive funds, school districts must conduct an assessment every three years to determine needs for improvement of

(A) access to, and opportunities for, a well-rounded education for all students;
(B) school conditions for student learning in order to create a healthy and safe school environment; and
(C) access to personalized learning experiences supported by technology and professional development for the effective use of data and technology (Sec. 4106(d)).

School districts may use their funds for an impressive array of activities. An unspecified portion of funds must to be used for activities to support well-rounded educational opportunities (Sec. 4107). Another portion must be used for activities to support safe and healthy students (Sec. 4108), and a third portion for activities to support the effective use of technology (Sec. 4109). A host of allowable activities are specified for each category, permitting districts to target the funds in accordance with local needs.

Private School Participation

States and districts receiving funds under Title IV-A must provide equitable services to students and teachers in private schools that address their needs in accordance with the provisions of Sec. 8501.

In their applications to receive funding under Title IV-A from the U.S. Department of Education, state education departments must include an assurance that they will provide for equitable access for all students in the activities supported under the program. (Sec. 4103(c)(2)(C)(iii)). Similarly, in their applications to receive funding from the state, school districts must include an assurance that they will comply with the equitability provisions found in Sec. 8501 (Sec. 4106(e)(2)(B)).

Title IV, Part B: 21st Century Community Learning Centers

Purpose

The purpose of Title IV-B is to provide opportunities for communities to establish or expand activities in community learning centers that:

(1) provide opportunities for academic enrichment, including providing tutorial services to help students, particularly students who attend low-performing schools, to meet the challenging state academic standards;
(2) offer students a broad array of additional services, programs, and activities, such as youth development activities, service learning, nutrition and health education, drug and violence prevention programs, counseling programs, arts, music, physical fitness and wellness programs, technology education programs, financial literacy programs, environmental literacy programs, mathematics, science, career and technical programs, internship or apprenticeship programs, and other ties to an in-demand industry sector or occupation for high school students that are designed to reinforce and complement the regular academic program of participating students; and
(3) offer families of students served by community learning centers opportunities for active and meaningful engagement in their children's education, including opportunities for literacy and related educational development (Sec. 4201(a)).

Authorized Funding

ESSA authorizes $1.0 billion for Title IV-A for FY 2017 and $1.1 billion for each of fiscal years 2018 through 2020 (Sec. 4206).

Key Provisions

The statute defines a community learning center as an entity that (A) assists students to meet the challenging state academic standards by providing the students with academic enrichment activities and a broad array of other activities during nonschool hours or periods when school is not in session (such as before and after school or during summer recess) that reinforce and complement the regular academic programs of the schools attended by the students served and are targeted to the students' academic needs and aligned with the instruction students receive during the school day, and (B) offers families of students served by such center opportunities for active and meaningful engagement in their children's education, including opportunities for literacy and related educational development.(Sec. 4201(b)(1)).

Eligible applicants for grants to run community learning centers include a public school district, community-based organization, Indian tribe of tribal organization, another public or private entity, or a consortium of two or more of such agencies, organizations, or entities (Sec. 4201(b)(3)).

Private School Participation

Programs funded under Title IV-B must provide equitable services to students and teachers in private schools that address their needs in accordance with the provisions of Sec. 8501.

Title IV, Part F, Subpart 4, Sec. 4644: Supporting High-Ability Learners and Learning

Purpose

The purpose of this section is to promote and initiate a coordinated program, to be known as the "Jacob K. Javits Gifted and Talented Students Education Program" of evidence-based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary schools and secondary schools nationwide to identify gifted and talented students and meet their special educational needs (Sec. 4206)(a)).

Authorized Funding

ESSA authorizes for all of Part F, which includes a variety of programs and activities beyond those authorized in Sec. 4644, $201 million for each of fiscal years 2017 and 2018, and $221 million for each of fiscal years 2019 and 2020.

Private School Participation

ESSA provides that in making grants and entering into contracts under this section, the U.S. Secretary of Education shall ensure, where appropriate, that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools, including the participation of teachers and other personnel in professional development programs serving such students (Sec. 4644(g)).

Title V, Part A: Funding Transferability for State and Local Educational Agencies

Purpose

The purpose of Title V-A is to allow states and school districts the flexibility to target federal funds to programs that most effectively address the unique needs of states and localities (Sec. 5102).

Authorized Funding

No funds are authorized, since Title V-A merely allows states and school districts the flexibility to transfer a portion of federal funds from one program to another.

Key Provisions

Like its predecessor, ESSA allows states and school districts to transfer funds from certain specified ESSA programs into certain other specified ESSA programs. Specifically, states may transfer up to 100 percent of funds *out of* Title II-A (professional development), Title IV-A (block grant), or the 21st Century Community Learning Centers program and *into* any one of those same programs or into Title I-A, Title I-C (migratory children), Title I-D (neglected and delinquent children), Title III-A (English language learners), and Part B of a title that is currently unspecified in the act (Sec. 5103(a)).

School districts may transfer up to 100 percent of funds *out of* Title II-A (professional development) or Title IV-A (block grant) and *into* any one of those same programs or into Title I-A, Title I-C (migratory children), Title I-D (neglected and delinquent children), Title III-A (English language learners), and Part B of a title that is currently unspecified in the act (Sec. 5103(b)).

States and school districts are *prohibited* from transferring funds *out of* Title I-A, Title I-C (migratory children), Title I-D (neglected and delinquent children), Title III-A (English language learners), and Part B of the unspecified title (Sec. 5103(c))

Private School Participation

As noted above, states and school districts may transfer funds out of certain programs that provide for equitable services to private school teachers or students. However, Title V-A specifies the following: "Each State educational agency or school district that transfers funds under this section shall conduct consultations in accordance with section 8501, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools" (Sec. 5103(e)(2)).

Moreover, Title V-A does not suspend any requirements throughout ESSA relating to equitable services to students and teachers in private schools.

Also, current guidance from the U.S. Department of Education on similar provisions concerning transferability under the *No Child Left Behind Act* make clear that private school students and teachers must receive equitable services from the state or school district under the programs to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer. (Questions I-C-3 and II-C-3, "Guidance on the Transferability Authority," USDE, June 8, 2004)

Title VIII, Sections 8501: Participation by Private School Children and Teachers

Purpose

The purpose of Title VIII, Sec. 8501 is to ensure equitable services to private school students, teachers, and other educational personnel. The section describes the conditions that state education departments, school districts, or other service providers must meet in order to provide equitable services. The section applies to the following programs:

Title I-C, Education of Migratory Children
Title II-A, Preparing, Training, and Recruiting Teachers and School Leaders
Title III-A, Language Instruction for English Learners and Immigrant Students
Title IV-A, Student Support and Academic Enrichment Grants
Title IV-B, 21st Century Community Learning Centers

Authorized Funding

No funds are authorized, since Sec. 8501simply sets conditions that apply to other funded programs.

Private School Participation

To the extent consistent with the number of eligible children in areas served by programs covered by this section, a state education department, school district, educational service agency, consortium of those agencies, or another entity receiving financial assistance under the program shall, after timely and meaningful consultation with appropriate private school officials, provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program (Sec. 8501(a)(1)).

The term "eligible children" means children eligible for services under a program covered by this section (Sec. 8501(b)(2)).

Equitable Services

Services and other benefits to private school students must be secular, neutral, and non-ideological (Sec. 8501(a)(2)), must be provided in a timely manner, and must be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel (Sec. 8501(a)(3)(A)). To help ensure such equity, the state education agency must designate an ombudsman to monitor and enforce the requirements relating to the participation of children in private schools (Sec. 8501(a)(3)(B)).

Expenditures

Expenditures for services to private school children, their teachers, and other educational personnel must be equal to the expenditures for participating public school children, taking into consideration the number and educational needs of the children to be served (Sec. 8501(a)(4)(A)).

States and school districts must obligate the funds reserved for services to private school students in the fiscal year for which the funds are received (Sec. 8501(a)(4)(B)). State education departments must provide timely notice to private school officials of how much funds have been allocated for services to private school students based on information provided by school districts (Sec. 8501(a)(4)(C)).

States and school districts may provide services directly or through contracts with public and private agencies, organizations, and institutions (Sec. 8501(a)(5)).

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Consultation

State education departments and school districts must consult with appropriate private school officials during the design and development of the agency's programs. The goal of such consultation must be to reach agreement on how to provide equitable and effective programs for eligible private school children. Further, the results of the agreement must be transmitted to the ombudsmen designated by the state to monitor private school student participation (Sec. 8501(c)(1)).

Consultation must cover issues such as:

(A) how the children's needs will be identified;
(B) what services will be offered;
(C) how, where, and by whom the services will be provided;
(D) how the services will be assessed and how the results of that assessment will be used to improve those services;
(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel, and the amount of funds available for such services, and how that amount is determined;
(F) how and when the state education department or school district will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers;
(G) whether the public agency shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor;
(H) whether to provide equitable services to eligible private school children by combining the funds generated by private school children into one or more pools of funds (Sec. 8501(c)(1)).

The consultation must also include a discussion of service delivery mechanisms that a state education department or school district can use to provide equitable services to eligible private school children, teachers, or other educational personnel (Sec. 8501(c)(4)).

Timing

Consultation must occur before the public agency makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs covered by the section. Such meetings must continue throughout the implementation and assessment of the services provided (Sec. 8501(c)(3)).

Documentation

Each school district must maintain in its records, and provide to the state education department involved, a written affirmation, signed by officials of each participating private school, that the meaningful consultation required has occurred. The written affirmation must provide the option for private school officials to indicate their belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If private school officials do not provide such affirmation within a reasonable period of time, the school district shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the state education department (Sec. 8501(c)(5)).

Disagreement

If the public agency disagrees with the views of private school officials regarding the provision of services through a contract, it must provide in writing to such private school officials the reasons why it has chosen not to use a contractor (Sec. 8501(c)(2)).

Ensuring Compliance

A private school official has the right to file a complaint with the state education department asserting that the school district did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats private school students equitably (Sec. 8501(c)(6)(A)).

If the private school official wishes to file a complaint, he/she must provide the basis of the noncompliance with the law by the school district to the state education department,

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and all parties shall provide appropriate documentation to the appropriate officials (Sec. 8501(c)(6)(B)).

A state education department must provide services under this section directly or through contracts with public or private agencies, organizations, and institutions, if the appropriate private school officials have requested that it do so and have demonstrated that the school district involved has not met the requirements of law, according to the procedures for making such a request, as prescribed by the state education department (Sec. 8501(c)(6)(C)).

Control of Funds

The control of funds to provide services under the programs covered by this section, and title to materials, equipment, and property purchased with such funds, must be in a public agency, and a public agency must administer such funds materials, equipment, and property (Sec. 8501(d)(1)).

Services must be provided by employees of a public agency, or through contract by such public agency with an individual, association, agency, or organization (Sec. 8501(d)(2)(A)). The employee, individual, association, agency, or organization must be independent of the private school and of any religious organization, and such employment or contract must be under the control and supervision of the public agency (Sec. 8501(d)(2)(B)).

Funds used to provide services under this section must not be commingled with non-federal funds (Sec. 8501(d)(2)(C)).

Sec. 8502 Bypass

If a state education department or school district is prohibited by law from providing for the equitable participation of eligible children, teachers, or other educational personnel in private schools, or if the U.S. Secretary of Education determines that an agency has substantially failed, or is unwilling, to provide for such participation, the Secretary must arrange for a bypass in accordance with Sections 8501, 8502, 8503 and 8504 (Sec. 8502(a)).

Sec. 8303 Complaints

The U.S. Secretary of Education shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 8501 by a state education department or school district. The individual or organization shall submit the complaint to the state education department for a written resolution by within 45 days (Sec. 8503(a)).

The above resolution may be appealed by an interested party to the U.S. Secretary of Education not later than 30 days after the state education department resolves the complaint or fails to resolve the complaint within the 45-day time limit. The appeal shall be accompanied by a copy of the state education department's resolution, and, if there is one, a complete statement of the reasons supporting the appeal. The secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal Sec. 8503(b)).

Title IX, Sec. 9212: Preschool Development Grants

Purpose

Section 9212 authorizes preschool development grants to states—

(1) to assist states to develop, update, or implement a strategic plan that facilitates collaboration and coordination among existing programs of early childhood care and education in a mixed delivery system across the state designed to prepare low-income and disadvantaged children to enter kindergarten and to improve transitions from such system into the school district or elementary school that enrolls such children
(2) to encourage partnerships among Head Start providers, state and local governments, Indian tribes and tribal organizations, private entities (including faith- and community-based entities), and local educational agencies, to improve coordination, program quality, and delivery of services; and
(3) to maximize parental choice among a mixed delivery system of early childhood education program providers (Sec. 9212(a)).

The term "mixed delivery system" means a system of early childhood education services that are delivered through a combination of programs, providers, and settings (such as Head Start, licensed family and center-based child care programs, public schools, and community-based organizations) and that is supported with a combination of public funds and private funds (Sec. 9212(b)(5)).

Authorized Funding

ESSA authorizes $250 million for Sec. 9212 for each of fiscal years 2017 through 2020 (Sec. 9212(k)). The program will be administered jointly by the U.S. Department of Health and Human Services and the U.S. Department of Education. Grants to states are awarded competitively for a one-year period and are renewable (Sec. 9212(c)).

Private School Participation

Although the program has no explicit private school provisions, there is a recognition that funds will be used to support a "mixed delivery system" of early education services. Specifically, states shall use the grant funds for all of the following activities:

(1) Conducting a periodic statewide needs assessment.
(2) Developing a strategic plan that recommends collaboration, coordination, and quality improvement activities. The plan must recommend partnership opportunities among Head Start providers, local educational agencies, state and local governments, Indian tribes and tribal organizations, and private entities (including faith- and community-based entities) that would improve coordination, program quality, and delivery of services.
(3) Maximizing parental choice and knowledge about the state's mixed delivery system of existing programs and providers.
(4) Sharing best practices among early childhood education program providers in the state to increase collaboration and efficiency of services, including to improve transitions from such programs to elementary school.
(5) After activities described in paragraphs (1) and (2) have been completed, improving the overall quality of early childhood education programs in the state (Sec. 9212(f)).

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