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### [ESEA section 1117\(b\) Consultation](#)

(1) IN GENERAL.—To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency’s programs under this part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on 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, the proportion of funds that is allocated under subsection (a)(4)(A) for such services, and how that proportion of funds is determined;
- (F) the method or sources of data that are used under subsection (c) and section 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools;
- (G) how and when the agency 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 agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor;
- (I) whether the agency 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—



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(i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools; or

(ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools;

(K) when, including the approximate time of day, services will be provided; and

(L) whether to consolidate and use funds provided under subsection (a)(4) in coordination with eligible funds available for services to private school children under applicable programs, as defined in section 8501(b)(1) to provide services to eligible private school children participating in programs.

(2) DISAGREEMENT.—If a local educational agency disagrees with the views of private school officials with respect to an issue described in paragraph (1), the local educational agency shall provide in writing to such private school officials the reasons why the local educational agency disagrees.

(3) TIMING.—Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

(4) DISCUSSION.—Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

(5) DOCUMENTATION.—Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the meaningful consultation required by this section has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' 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 such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.

(6) COMPLIANCE.—

(A) IN GENERAL.—A private school official shall have the right to file a complaint with the State educational agency asserting that the local educational agency 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 the private school students equitably as required by this section.

(B) PROCEDURE.—If the private school official wishes to file a complaint, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

(C) STATE EDUCATIONAL AGENCIES.—A State educational agency shall provide services under this section directly or through contracts with public or private agencies, organizations, or institutions, if the appropriate private school officials have—



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- (i) requested that the State educational agency provide such services directly; and
- (ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

[34 C.F.R. Part 200 Participation of Eligible Children in Private Schools](#)

[§ 200.63 Consultation.](#)

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children, as well as their teachers and families under § 200.65. The goal of consultation is reaching agreement on how to provide equitable and effective programs for eligible private school children, and the results of that agreement must be transmitted to the ombudsman designated under § 200.68.

(b) At a minimum, the LEA must consult on the following:

- (1) How the LEA will identify the needs of eligible private school children.
- (2) What services the LEA will offer to eligible private school children.
- (3) How and when the LEA will make decisions about the delivery of services.
- (4) How, where, and by whom the LEA will provide services to eligible private school children.
- (5) How the LEA will assess academically the services to eligible private school children in accordance with § 200.10, and how the LEA will use the results of that assessment to improve Title I services.
- (6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64(a), the proportion of funds that the LEA will allocate for these services, and how the LEA determines that proportion of funds.
- (7) The method or sources of data that the LEA will use under § 200.64(a) to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.
- (8) Whether the LEA will provide services directly or through a separate government agency, consortium, entity, or third-party contractor.
- (9) Whether to provide equitable services to eligible private school children -
  - (i) By creating a pool or pools of funds with all of the funds allocated under § 200.64(a)(2) based on all the children from low-income families in a participating school attendance area who attend private schools; or
  - (ii) In a participating school attendance area who attend private schools with the proportion of funds allocated under § 200.64(a)(2) based on the number of children from low-income families who attend private schools.



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(10) When, including the approximate time of day, the LEA will provide services.

(11) Whether the LEA will consolidate and use funds under subpart A of this part with eligible funds available for services to private school children under applicable programs, as defined in section 8501(b)(1) of the ESEA, to provide services to eligible private school children.

(12) The equitable services the LEA will provide to teachers and families of participating private school children.

(c)

(1) Consultation by the LEA must -

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)

(1) Consultation must include -

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to eligible private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)

(1)

(i) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(ii) The LEA's 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.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f)

(1) An official of a private school has the right to complain to the SEA that the LEA did not -



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- (i) Engage in timely and meaningful consultation;
  - (ii) Consider the views of the official of the private school; or
  - (iii) Make a decision that treats the private school students equitably.
- (2) If a private school official wishes to file a complaint, the official must provide the basis of the noncompliance by the LEA to the SEA and the LEA must forward the appropriate documentation to the SEA.
- (3) An SEA must provide equitable services directly or through contracts with public or private agencies, organizations, or institutions if the appropriate private school officials have -
- (i) Requested that the SEA provide such services directly; and
  - (ii) Demonstrated that the LEA has not met the requirements of §§ 200.62 through 200.67 in accordance with the SEA's procedures for making such a request.

### Guidance Documents

- [ED – Equitable Services Consultation Checklist](#) (Missouri)
- [ED – IDEA “Equitable Services Determined” section 300.17](#)
- [BFEP: Equitable Services for Private School Students under Title I, Part A](#) (January 2021)
- [ED Non-Regulatory Guidance: Providing Equitable Services to Children, Teachers, and Families](#) (October 7, 2019)
- [FDOE Sample Affirmation of Consultation](#) (March 2018)
- [BFEP Q&A: Title I, Part A Equitable Services](#) (March 28, 2018)
- [ED Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under ESSA](#) (November 21, 2016)
- [FDOE Technical Assistance Paper: Providing Services to Eligible Private School Children](#) (April 27, 2012)
- [ED's Guidance on Third-Party Contractor's Invoice](#) (June 4, 2012)
- [ED Non-Regulatory Guidance: Title I Services to Eligible Private School Children](#) (October 17, 2003)

# Equitable Services Timelines

