



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of P-12 Education

Office of Accountability
Title I School & Community Services
Room 365 EBA
Albany, New York 12234
Tel. (518) 473-0295 / Fax: (518) 486-1762

Every Student Succeeds Act (ESSA)

Section 1117 (Formerly Section 1120)

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

**What Has Stayed the Same and What Has
Changed Under the New Legislation**

(a) GENERAL REQUIREMENTS

- **Stays the Same:**
- Timely & Meaningful Consultation Continues Between Local Educational Agency (LEA) and Private School Officials
- **What's Different?**
- New Language for Services: *“(including evaluations to determine the progress being made in meeting such students’ academic needs), counseling, mentoring, one-on-one tutoring,…”*

(a) GENERAL REQUIREMENTS(a)

- **Stays the Same:**
- Instruction, Supplies, Materials & Equipment are to remain “SECULAR, NEUTRAL, & NONIDEOLOGICAL.”
- EQUITY remains the same but with new additional language:
- **NEW:** “(B) OMBUDSMAN- To help ensure equity for such private school children, teachers, and other educational personnel, the State educational agency involved shall designate an ‘**OMBUDSMAN**’ to monitor and enforce the requirements of this part.”
- NYSED is seeking further guidance on the role of the Ombudsman from the U.S. Department of Education (USDE).

(a) GENERAL REQUIREMENTS

- (4) EXPENDITURES – IN GENERAL (Minor Change in Language to (i)
- (i) Expenditures for educational services and other benefits to private school children shall be equal to the proportion of funds allocated to participating school attendance areas...”
- **Changed – (ii) PROPORTIONAL SHARE-** The proportional share of funds shall be determined based on the ***total amount of funds*** received by the LEA under this part ***prior to any allowable expenditures or transfers by the LEA.***
- **Changed – New Addition: (B) OBLIGATION OF FUNDS** – Funds shall be obligated in the fiscal year they are received by LEA.

(a) GENERAL REQUIREMENTS

- **NEW SEA Requirement – (C) NOTICE OF ALLOCATION-**
- SEA is to notify appropriate private school officials of their allocation of funds for services & benefits that have been determined (i.e. calculated) by the LEA.
- NYSED believes that it currently meets this requirement through the joint development of the Private School Participation Form (PSPF) of the annual Consolidated Application, between the LEA and private school officials. NYSED will seek additional advice from USDE on this issue.

(a) GENERAL REQUIREMENTS

- **(D) TERM OF DETERMINATION-** As before LEA can determine the equitable share annually or every two years.
- **(5) PROVISION OF SERVICES-** There is a major language change in that the SEA may provide the services to private school students under certain provisions. Otherwise, the LEA can provide services directly or through contracts with public or private agencies, organizations, and institutions.

(a) GENERAL REQUIREMENTS

- **(b) CONSULTATION- NEW:** The results of the consultation process, that is the services and benefits to be provided is to be forwarded to the State Ombudsman for review.
- NYSED is seeking additional guidance from USDE to determine if the PSPF fulfills this requirement.
- Subsections (A-H) which describe what the consultation should include remains basically the same.

(a) GENERAL REQUIREMENTS

- **(b) CONSULTATION CONTINUED - New additional Consultation item**
- (l) whether the agency shall provide services directly through a separate govt. agency, consortium, entity, or third party contractor
- **Not New:** (i) by creating a pool or pool of funds with all funds under subsection (a)(4)(A) based on the no. of children from low-income families 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) based on the No. of children from low-income families who attend private schools;

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- **NEW:** (K) when, including the approximate time of day, services will be provided; and
- **NEW:** (L) whether to consolidate and use funds provided under subsection (a) (4) in coordination with eligible funds available for private schools services under applicable programs, as defined in Section 8501(b)(1) to provide services to eligible private school children participating in programs. NYSED will be seeking further guidance from USDE on this issue.
- **Section 8501(b)(1) Programs:** (A) Part C of Title I- Education of Migrant Children; (B) Part A of Title II; (C) Part A of Title III, (D) – Part A of Title IV; (E) – Part B of Title IV.

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- (2) DISAGREEMENT –
- No change to requirement that an LEA must put in to writing to private school officials why it disagrees with the services and benefits to private school students that the private school desires.
- (3) TIMING –
- Such consultation shall take place before the LEA makes any decisions that affects the opportunities of private school students to participate in programs. ***Such meetings shall continue throughout implementation and assessment of services provided under this section.***

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- (4) DISCUSSION – No change to language:
“Such consultation shall include a discussion of service delivery mechanisms a LEA can use to provide equitable services to eligible private school children.
- (4) Documentation – LEAs must still maintain written affirmation signed by private school officials that the required consultation has taken place.
- Private school officials can still indicate that meaningful consultation has not taken place and that the services to be provided are not considered equitable by them.

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- As before, if private school officials do not provide the affirmation in a timely manner the LEA shall forward the documentation to the SEA that the consultation has, or attempts at consultation have, taken place. In NYS this is done through the submission of the Consolidated Application.

(5) COMPLIANCE – (A) IN GENERAL – Private school officials right to complain to the SEA remains with additional language that states: *“or did not make a decision that treats the private school students equitably as required by the section.”*

(B) PROCEDURE – No Change to the requirement that private school officials shall provide the basis of noncompliance by the LEA to the SEA and that the LEA must forward those comments to the SEA.

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- (C) STATE EDUCATIONAL AGENCY - This is a new section to “COMPLIANCE”. It directs SEAs to provide services directly or through contracts with public or private agencies, organizations, and institutions, if the appropriate private school officials have requested that the SEA provide those services directly and demonstrated that the LEA has not met the requirements of this section.

(c) ALLOCATION FOR EQUITABLE SERVICES TO PRIVATE SCHOOL STUDENTS – (1) CALCULATION - The (4) methods an LEA has to calculate the number of children, ages 5-17, who are from low-income families and attend private schools remains the same. They are:

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- (A) using the same measure of low income used to count public school children (Ex. FRPL);
- (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 (Ex. Survey comparing family income levels to a FRPL income chart) 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 (i.e. proportionality); or
- (D) using an equated measure of low-income correlated with the measure of low income used to count public school children.

(a) GENERAL REQUIREMENTS

(b) Consultation Continued...

- (2) COMPLAINT PROCESS – Any dispute regarding low-income data for private school students shall be subject to the complaint process in Section 8503 (Formerly Section 7883 and 9503). SEA must respond within (45) days of receiving the complaint. Private School Officials can complain to USDE within (30) days of receiving a final SEA decision, that they feel is not acceptable. The Secretary (of Education) has (90) days to render a decision.
- (d) PUBLIC CONTROL OF FUNDS - Remains the responsibility of the LEA to retain control of funds for all programs, services, benefits, supplies, materials, equipment and property.
- (2) PROVISION OF SERVICES – (A) PROVIDER – LEA retains control and supervision and is responsible whether providing services directly or through a contract with another agency, organization, 3rd party contract, or individual. Services are to be independent of the private school.