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NYS FIELD MEMO
01 – 2012

Date: May 23, 2012

To: District Superintendents of Schools
New York State Professional Standards and Practices Board for Teaching
New York State Committee of Practitioners
Nonpublic/Private School Administrators
Superintendents of Public Schools

From: Roberto Reyes, Director Title I School & Community Services
Office of Accountability

Subject: ESEA Title II, Part A – Adjustments to Equitable Participation for Non-Public/Private Schools

This guidance is being provided to LEAs that received ESEA Title II, Part A funds for all or any part of the 2007-08 through 2011-12 school years and relied on advisory allocations published by the New York State Education Department (NYSED) to provide equitable professional development services for Non-public/Private Schools. Adjustments may be required for the calculated level of equitable services and will result in one of three possible outcomes for individual non-public/private schools:

1. additional professional development equitable services funds must be set-aside to provide services to non-public/private school teachers and those services may be pro-rated over the next five fiscal years ending in FY 2016-17, or
2. no additional funds are required to be set-aside and therefore, no pro-rated adjustment will be applied into the future, or
3. delivery of professional development services to non-public/private school teachers exceeded the amount of services required as a result of the recalculated allocations and no attempt will be made to recover the excess and no pro-rated adjustment will be applied into the future.

This field memo provides guidance for LEAs that must recalculate the allocation for the provision of equitable services to non-public/private schools under Title II, Part A, for fiscal years 2007-08 through FY 2011-12. It will also provide guidance for each LEA that must provide additional services to Non-Public/Private Schools as a result of these five years of recalculation.

UPDATE

Since the inception of NCLB in 2001-02, NYSED provided a public list of Title II, Part A, advisory allocations for professional development services for teachers in each non-public/private school in NYS. These amounts may have been used by the LEA to determine the minimal amount required for the provision of equitable services by the LEA to non-public/private schools.

In mid-August 2011, NYSED was advised by the United States Department of Education (USDE) that the formula NYSED had used to calculate these advisory amounts was incorrect and did not reflect the requirements of Section 9501(b)(3) of the ESEA. Responsibility for recalculation now remains with the LEA because NYSED does not have access to the requisite data. NYSED will no longer provide advisory allocations. The USDE provided the NYSED with a template that LEAs may use to recalculate these allocations. The template and directions are posted on the NYSED Consolidated Application website at:

<http://www.p12.nysed.gov/nclb/allocations/1112/nonpubiia.html>.

The determination of equitable services for non-public/private school teachers is based on the ratio of student enrollment in private schools desiring equitable services to total student enrollment in those schools and the LEA's public schools, as applied to the amount of Title II, Part A, funds used by the LEA for professional development. Title II, Part A funds used by the LEA for allowable expenses other than professional development are not to be considered for these purposes. The calculation requires that equitable services be determined on the basis of the larger of two amounts: (1) the LEA's current year expenditures for professional development or (2) a hold harmless provision dating to FY 2001-2002 that reflects the total funds used for professional development taken from the former Eisenhower Professional Development allocation and the former Class Size Reduction allocation. NYSED has provided the dollar amounts for both 2001-02 Eisenhower and Class Size Reduction programs as part of the formula at the web site: <http://www.p12.nysed.gov/nclb/allocations/1112/nonpubiia.html>.

RECALCULATION

Please read through to the conclusion of this document before beginning the process of recalculation.

This change will require several operations:

- 1) Determining the amount for equitable services that was provided to non-public/private school staff during each fiscal year from 2007-08 through 2011-12;
- 2) If the calculation relied on the NYSED advisory allocations, recalculating a corrected amount for equitable services for each year from 2007-08 through 2011-12;
- 3) Calculating the difference between the original advisory amounts and the corrected amounts;
- 4) Determining if the original advisory amounts are equal to or are greater than the corrected amounts and, if so, making no changes;

5) Determining if the original advisory amounts are less than the corrected amounts and, if so, prorating those differences to be provided as equitable services within FY 2012-13 to FY 2016-17.

Process for Recalculation

Step 1: Review each Title II, Part A, budget from FY 2007-08 through FY 2011-12 and determine the actual amount that was provided for equitable services to non-public/private schools in each fiscal year. This may require a review of the FS-10F, records of budget code line items, and/or invoices for each fiscal year. This amount may or may not match the advisory allocations provided by NYSED as LEAs were not prohibited from providing additional services in consultation with the non-public/private school(s). However, the actual amount for services that were provided is to be used for the comparison to the recalculated amount.

Step 2: If the calculation relied on the NYSED advisory allocation, recalculate a corrected amount for each fiscal year from FY 2007-08 through FY 2011-12 (the USDE template and accompanying directions may be used for this purpose:

<http://www.p12.nysed.gov/nclb/allocations/1112/nonpubiia.html>). Note: Title II, Part A, carryover funds must be included in the calculation for the fiscal year in which the carryover funds were actually used by the LEA for professional development.

Step 3: Subtract the smaller amount from the larger amount in Steps 1 and 2. This action may result in the discovery that: 1) excess funds for services were provided or 2) a shortage of funds for services was provided.

Step 4: If the calculation indicates that the correct amount of funds (or an amount that exceeded the correct amount) were set-aside, no further action is required. There will be no attempt to recover funds for excess services because the original advisory allocations were minimal amounts, and it was and is allowable for LEAs to provide services in excess of the minimal amounts.

Step 5: If the calculation indicates a shortage of funds set aside for equitable services, the LEA must increase its current and/or future set-asides equal to the amount of the total shortfall. The LEA will total shortages from each applicable fiscal year and will prepare to collaborate with the non-public/private schools to determine how those shortages will be prorated among the fiscal years beginning in 2011-12 or 2012-13 and ending in FY 2016-17.

Step 6: The LEA must meet with each non-public/private school to determine how the shortage(s) may be prorated within the time period beginning in 2011-12 or 2012-13 through 2016-17.

Step 7: Maintain records of the collaboration process including meeting dates and the prorating decisions that resulted. These records will be necessary as supporting documentation in the completion of the Consolidated Application beginning in FY 2012-13.

Additional Considerations

Consultation and Collaboration

Within ESEA Title II, Part A, it is important that the provision of equitable services be determined in consultation and collaboration with the non-public/private schools. Decisions should represent fair and respectful choices that best meet the needs of teachers in both the LEA and the non-public/private schools. For additional guidance regarding the consultation process, see Title IX, Part E, Subpart 1 – Private Schools:

<http://www2.ed.gov/policy/elsec/guid/equitableseguidance.doc>

Calculation of Hold Harmless Amount

With regard to the calculation of the hold harmless section C.1 of the template, directions are indicated on the web page with clarification defined in the paragraphs below the template:

<http://www.p12.nysed.gov/nclb/allocations/1112/nonpubliia.html> . The LEA is instructed to determine how much money was used for professional development from both the Eisenhower Professional Development allocation and the Class Size Reduction allocation for FY 2001-02. If a district has maintained records of professional development budgeted within both the Eisenhower and Class Size Reduction allocations dating back to FY 2001-02, that combined total is to be used as the primary data source for recalculation.

If an LEA has not maintained detailed records dating back to FY 2001-02, it is recommended that the LEA use only the FY 2001-02 Eisenhower Professional Development allocation provided in the Excel table that accompanies the template and not use any portion of the FY 2001-02 Class Size Reduction allocation. This recommendation reflects the requirement that the Title II, Part A, equitable services portion is determined on the basis of LEA use of Title II, Part A, funds for professional development only. In the absence of detailed fiscal records from FY 2001-02, this recommendation is made based on the original intent and purpose of Eisenhower funds targeted for professional development as opposed to Class Size Reduction funds targeted to reduce class size.

If an LEA has not maintained detailed fiscal records dating back to FY 2001-02 and the recommended procedure for using the FY 2001-02 Eisenhower Professional Development allocation to calculate the hold harmless amount is not mutually agreeable between the LEA and the non-public/private school(s), the LEA must, under these circumstances, collaborate with the non-public/private school(s) to develop an alternative mutually agreeable procedure for the calculation of the hold harmless amount.

Adjustments that Differ

If an LEA overprovided services for four of the five years in question and underprovided in one year, and the aggregate sum indicates overprovision, the district will collaborate with the non-public/private school(s) to determine adjustments for the sole year in which additional services should have been provided. Equitable services are required based on the data for each fiscal year.

Closure of Non-Public/Private School(s)

If a non-public/private school was in operation from FY 2007-08 but is now closed, the LEA should not include that school in the updated calculations, even if the school existed at any time between FY 2007-08 and FY 2011-12.

Relocation of Non-Public/Private School(s)

If a non-public/private school moved from one LEA to another between FY 2007-08 and FY 2011-12, the LEA should include the school in the calculation for the fiscal year(s) in which the non-public/private school was represented on the “Private School Participation Form” originally included with the LEA Consolidated Application. This means that the LEA must include each non-public/private school that was in operation within the boundaries of the LEA on September 1 of each new fiscal year. Each LEA must recalculate for the year(s) in which the non-public/private school resided within its geographic boundaries dating back to FY 2007-08. If additional equitable services are required for a non-public/private school that has relocated to a new LEA, it is advised that collaboration take place between the former LEA(s), the current LEA, and the non-public/private school to determine the transfer of funds necessary to enable the current LEA to provide equitable services to the relocated non-public/private school.

Further questions may be directed to Anne DeFiglio or Robert Lutringer in the NYSED Office of Accountability, Title IIA, by phone at (518) 473-0295 or by email at adefigli@mail.nysed.gov or rlutring@mail.nysed.gov.

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