

GUIDANCE

EQUITABLE SERVICES TO NON-PUBLIC SCHOOLS CONSULTATION



New York State Education Department

Office of ESSA-Funded Programs

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Equitable Services to Non-Public Schools Consultation

INTRODUCTION

This guidance is intended to assist local education agencies (LEAs) and other entities [such as state education agencies (SEAs), educational service agencies, consortia of these agencies, non-profit organizations or institutions of higher education] receiving federal financial assistance to fulfill their consultation obligations, under Title I, Part A and Title VIII, Part F, of *ESSA*, to provide equitable services to eligible private school students, teachers, and other educational personnel, and, under some programs, to parents. This guidance does not create for or confer on any person any rights or impose any requirements beyond those set forth under applicable laws and regulations.

Consultation

Consultation involves communication and discussions between LEAs and private school officials on key issues that are relevant to the equitable participation of eligible private school students, teachers, and other education personnel in Every Student Succeeds Act (ESSA) programs.

Sections 1117(b) and 8501(c) of ESSA require that timely and meaningful consultation occur between the local education agency (LEA) and private school officials prior to any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs subject to equitable participation. ESSA requires that consultation continue throughout the implementation and assessment of activities in programs subject to equitable participation requirements.

Programs Requiring Consultation

The following ESSA program require consultation between LEA and private school representatives:

- Title I, Part A - Improving Basic Programs Operated by Local Educational Agencies
- Title I, Part C - Education of Migratory Children
- Title II, Part A – Supporting Effective Instruction Grants
- Title III, Part A - English Language Acquisition, Language Enhancement, and Academic Achievement
- Title IV, Part A - Student Support and Academic Enrichment Grants
- Title IV, Part B - 21st Century Community Learning Centers

Properties of Consultation

Meaningful consultation provides ample time and a genuine opportunity for all parties to express their views, to have their views seriously considered, and to discuss viable options for ensuring equitable participation of eligible private school students, teachers and other education personnel, and families.

Consultation for all programs must be conducted before the LEA has made any decisions that will impact the participation of private school students and teachers in applicable programs and shall continue throughout implementation and assessment of services provided. Additionally, with respect to Title I, Part A programs, consultation must also be conducted during the design and development of the LEA's Title I, Part A programs. An LEA should consult with private school officials about the timeline for consultation and provide adequate notice of such consultation to ensure meaningful consultation and the likelihood that those involved will be well prepared with the necessary information and data for decision-making.

Successful consultation begins well before the implementation of services, establishes positive and productive working relationships, makes planning effective, continues throughout implementation of equitable services, and serves to ensure that the services provided meet the needs of eligible students and teachers. In addition, consultation must be ongoing - not just a one-time conversation. Consultation starts with outreach initiated by the district. Consultation must continue throughout the school year whereby district personnel and private school representatives confer regarding the expenditure of funds and the continuing implementation of the services. Consultation is finalized with an evaluative conversation, which can serve as the springboard for services in the next school year.

Goal of Consultation

The goal of consultation is agreement between the LEA and appropriate private school officials on how to provide equitable and effective programs for eligible private school children. The "goal of reaching agreement" between an LEA and appropriate private school officials is grounded in timely, meaningful, and open communication between the LEA and the private school officials on key issues that are relevant to the equitable participation of eligible private school students, teachers and other education personnel, and families in ESSA programs.

Documentation of Consultation

Each local educational agency must maintain in the agency's records, and provide to the New York State Education Department (NYSED), 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 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 LEA shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the New York State Education Department.

Ombudsman

To ensure such equity for private school children, teachers, and other educational personnel, NYSED has designated an ombudsman to monitor and enforce the requirements of equitable services. Copies of all written affirmation forms will be provided to the ombudsman for the purposes of review, technical assistance, and monitoring related to the LEA's programmatic and fiscal obligations. Questions and/or concerns about the provision of equitable services may be directed to the NYSED Ombudsman at OMBUDSMAN@nysed.gov.

QUESTIONS AND ANSWERS

Q-1. Who is responsible for initiating the consultation process?

A-1. The obligation to initiate the consultation process lies with the LEA that is responsible for providing equitable services. In most cases, the LEA contacts officials of private schools located within its geographic boundaries to begin the consultation process on key issues that are relevant to the equitable participation of private school students, teachers and, in some cases, parents in ESSA programs. For Title I, Part A, the LEA must also contact officials of private schools located outside of its geographic boundaries who are serving district resident students from a Title I attendance area. If this does not occur, private school officials should contact the LEA in which their school is located and ask to speak to the individual(s) responsible for administering ESSA programs.

Q-2. Who participates in the consultation process?

A-2. The consultation process must include the LEA and appropriate private school officials during the design and development of the ESSA programs. Private school officials can facilitate consultation by providing the LEA the names of the private school officials who should be included in the consultation process along with their roles and levels of authority.

Q-3. Who is considered an “appropriate private school official” for the purposes of consultation?

A-3. In many cases, the principal or headmaster of the private school serves as the official or representative of the students and teachers in the school. At times, the principal or headmaster may designate someone else to participate in the consultation process on behalf of the students and teachers at the school.

One private school official may represent a group of private school officials in an LEA. In such a situation, the appointed private school official should inform the LEA of his or her intent to represent the group of school officials in the LEA and request that the LEA communicate directly with the appointed official.

In the case where a group of private school officials seeks to be represented by a central office administrator, that administrator should inform in writing the LEA superintendent that she/he will serve as the designated primary contact for such schools, and that any communication and correspondence regarding ESSA programs and the participation of those private school students and teachers should be directed to her/his attention. In addition, the administrator should provide a list of the private schools that she/he represents.

Q-4. When does consultation between public and private school officials occur?

A-4. ESSA requires that consultation between the LEA and private school officials occur before the LEA makes any decision (such as ordering materials or hiring staff) that affects the opportunities of private school children, teachers, and other educational personnel to participate in programs requiring their equitable participation. To facilitate timely consultation, LEAs should begin the consultation process early enough in the decision-making

process to allow for participation of private school students and teachers at the start of each school year. An LEA should engage in a process of timely and meaningful consultation with private school officials and provide them with information related to the projected and/or final funding amounts for programs and services, including on the process the LEA will use in preparing its consolidated application. LEAs should also develop a process for determining mutual expectations for implementation and assessment of programs. In order to meet the requirements for timely and meaningful consultation, many LEAs begin consultation for the following school year in mid- to late-winter of the school year prior to the year covered by the plan.

Q-5. How does an LEA begin the consultation process?

A-5. An LEA generally begins the consultation process each year by contacting private school officials representing the private schools located within its boundaries, or, in the case of Title I, Part A also private schools located outside of its boundaries who are serving district resident students residing in a Title I attendance area.

One common way to accomplish this is for the LEA to extend an invitation to officials of the private schools and convene a meeting with them during which LEA officials describe the ESSA programs and allowable activities available to private school students and teachers, explain the roles of public and private school officials, address the specific needs of private school students and teachers, and provide opportunities for the private school officials to ask questions and offer suggestions. Sending a letter to private school officials explaining the purpose of federal education programs and the LEA's intent to apply for funds is not adequate consultation. Likewise, sending a letter describing the services that an LEA intends to provide for private school students, without any prior consultation, is not sufficient to meet the consultation requirement.

Q-6. What is meant by “timely and meaningful” consultation?

A-6. Timely and meaningful consultation is required in order to ensure the equitable participation of private school students, teachers, and, in some programs, parents. Timely consultation begins early enough for the entire process of program design and development to be completed, for exploring the option of third-party providers, and for services to begin by the start of the school year.

Timely consultation requires that LEAs provide advance notice of consultation meetings to private school officials. Meaningful consultation covers all required topics (see question Q-7) and affords private school officials a genuine opportunity to express their views. Effective consultation is ongoing, two-way communication and discussion of the best ways to meet the needs of private school students and teachers under the provisions of the particular program. Consultation is significantly enhanced when public school officials provide an agenda of consultation topics, along with information about the amount of funds available for services, in advance of any consultation meeting, in order for private school officials to have the opportunity to adequately prepare for discussions.

Q-7. What topics should be discussed during the consultation process between public and private school officials?

A-7. ESSA requires that LEAs consult with appropriate private school officials on such issues as:

- how the children’s needs will be identified;
- what services will be offered;
- how, where, and by whom the services will be provided;
- how the services will be assessed and how the results of the assessment will be used to improve those services;
- the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated for such services, and how that proportion of funds is determined
- how and when the agency, consortium, or entity 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 contract services through potential third-party providers
- whether the agency, consortium, or entity shall provide services directly or through a separate government agency, consortium, or entity, or through a third-party contractor
- whether to provide equitable services to eligible private school children by creating a pool or pools of funds with all of the funds allocated under 8501(a)(4)(C) based on all the children from low-income families in a participating school attendance area who attend private schools or in the agency’s participating school attendance area who attend private schools with the proportion of funds allocated under subsection 8501(a)(4)(C) based on the number of children from low-income families who attend private schools.

In addition to the topics above, Title I, Part A requires the following topics to be included:

- how the services will be academically assessed and how the results of that assessment will be used to improve those services
- the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated for such services, and how that proportion of funds is determined
- the method or sources of data that are used under section 1117(c) and 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools
- 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
- whether to provide equitable services to eligible private school children by creating a pool or pools of funds with all of the funds allocated under section 1117(a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools or in the agency’s participating school attendance area who attend private schools with the proportion of funds allocated under section 1117(a)(4)(A) based on the number of children from low-income families who attend private schools
- when, including the approximate time of day, services will be provided

- whether to consolidate and use funds provided under 1117(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.

Q-8. Does an offer of services from an LEA meet the requirement of consultation?

A-8. No. An offer of services by an LEA, without an opportunity for timely and meaningful consultation, does not meet the requirement of the law. Only after discussing key issues relating to the provision of services, identifying the needs of the students and teachers to be served, and receiving input from the private school officials, should an LEA make its final decisions with respect to the services and benefits it will provide to meet the needs of eligible private school students and teachers.

Q-9. May an LEA request that private school officials provide relevant documentation in order to participate in ESSA programs?

A-9. Yes. LEAs may request documentation, as needed, from private school officials to identify students who are eligible under the applicable ESSA program and the appropriate services that meet the needs of those private school students and their teachers. Such documentation might include, but not be limited to, counts of eligible students, addresses of students identified as low-income (for the purposes of Title I, Part A), data indicating the academic needs of students, as well as the professional development needs of teachers. However, the LEA's requests for documentation should not create an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school students and teachers.

Q-10. How should an LEA verify that timely and meaningful consultation has occurred?

A-10. NYSED has developed an annual *Written Affirmation of LEA Consultation with Private School Officials* form that should be used by LEAs to document that appropriate consultation has occurred. The affirmation form includes topics of consultation and a place for signatures of the LEA and private school officials to verify that timely and meaningful consultation has occurred.

Q-11. What other processes and activities should an LEA document to verify that it has met the requirement for timely and meaningful consultation?

A-11. An LEA should document that it has:

- Informed private school officials of the various ESSA programs available to their students and teachers each year;
- Engaged in timely consultation, allowing for meaningful discussion between the LEA and the private school officials regarding services and benefits;
- Identified private school students' and teachers' needs;
- Allocated a per-pupil amount of funds for services to private school students and teachers that is equal to the per-pupil amount for services to public school students and teachers;

- Provided services, programs, materials, and resources;
- Evaluated programs and services for effectiveness; and
- Addressed adequately problems and formal complaints raised by private school officials.

Q-12. Should an LEA keep minutes or notes of consultation meetings?

A-12. Meeting notes and minutes are good ways of documenting that timely and meaningful consultation has occurred. Both LEA and private school officials are encouraged to keep notes of consultation meetings that include information about issues addressed and decisions made. Such meeting notes and minutes should be shared among all consultation participants.

Q-13. What is an “Intent to Participate” form?

A-13. An “Intent to Participate” form is a document that an LEA sends annually to private school officials inquiring to determine each private school official’s interest in having their students and teachers participate in ESSA programs. Such a form can assist the LEA in identifying, early in the planning process, those private school officials that are interested in ESSA programs. The NYSED-developed *Written Affirmation of LEA Consultation with Private School Officials* form includes an intent to participate section that provides a brief description of the programs requiring equitable participation as well as a sample list of allowable activities, services, and benefits.

Q-14. Should an LEA contact private school officials every year even if the private school officials have declined ESSA benefits and services in the past?

A-14. Yes. The LEA must contact private school officials on an annual basis and inquire as to whether the private school will participate in the ESSA programs available to them.

Q-15. In designing and developing programs for private school students and teachers, how should the needs of private school students and teachers be assessed?

A-15. The needs of the private school students and teachers to be served are the foundation for designing programs to serve such students and teachers, within the parameters of the particular program statute and regulations. During the consultation process, the LEA must discuss with private school officials the needs of their students and teachers as well as how best to meet those needs.

Q-16. Should consultation between the LEA and private school officials be ongoing?

A-16. Yes. In order to help ensure effective design, development, and implementation of programs, consultation between the LEA and private school officials should be ongoing throughout the school year. Issues often arise concerning service delivery and implementation, and ongoing consultation provides the means for adequately addressing them in a timely and efficient fashion.

Q-17. May an LEA develop a calendar for ongoing consultation?

A-17. Yes. To ensure timely consultation, LEAs in consultation with private school officials, should work to develop yearly consultation timelines and specific agenda topics.

Q-18. Are there requirements for private school officials in the consultation process?

A-18. ESSA does not include any requirements for private school officials. However, to ensure that consultation is timely and meaningful, private school officials should participate actively in the consultation meetings. By participating, the private school officials will have an opportunity to: provide input in the development of a timeline for consultation; provide data and information about the needs of their students and teachers; offer suggestions regarding program design, implementation, and evaluation; inquire about participation in any discretionary grant programs; address the use of third-party providers, if appropriate; and complete any appropriate forms needed by the LEA to ensure the delivery of equitable services.

Q-19. What administrative tasks and paperwork are required of private school officials whose students and teachers participate in ESSA programs?

A-19. ESSA does not impose any administrative or paperwork requirements on private school officials. However, LEAs may request information from private school officials in order to provide services that meet the needs of their students and teachers. Therefore, there may be some paperwork that private school officials will be asked to complete to assist the LEA in administering the program on behalf of private school students and teachers. Such paperwork should not impose an administrative burden on the private school official and should not include completing purchase orders or signing contracts.

Q-20. May an LEA set deadlines for submission of requests from private school officials for services and materials?

A-20. Yes. Assuming that the LEA has provided clear and sufficient notice of the deadlines, identified potential consequences for not meeting the deadlines, and given adequate time for private school officials to gather the data and respond, LEAs may set a time limit for submission of requests for services and materials by private school officials.

Q-21. If a private school official requests that certain services be delivered through a third party and the LEA chooses not to do so, what must the LEA do to explain the reasons why it chose not to grant that request?

A-21. ESSA requires an LEA to provide a written explanation of the reasons why it chose not to use a third party for services. An adequate explanation would address concerns expressed by private school officials about the LEA's direct services and fully explain the reasons why the LEA chose not to use a third party, such as any financial, administrative, regulatory, or statutory impediments, or the ability of the LEA to provide the services directly. The written explanation should not simply reiterate the LEA's decision but also provide reasons for the decision.

Q-22. Should an LEA provide a copy of its Consolidated Application if a private school official requests it?

A-22. Yes. The LEA should provide, in a timely manner, a copy of the Consolidated Application to private school officials upon request. Such applications are a matter of public record and, therefore, generally are accessible for public review. An application can provide private school representatives with information that enhances consultation and helps them understand the scope of program activities within the LEA and the equitable participation of private school students in programs authorized under ESSA.

Q-23. As part of the consultation process, are LEAs required to provide the amount of funds available for services for private school students and teachers?

A-23. Yes. LEAs must provide private school officials with the amount of funding available for services for private school students and teachers under the various ESSA programs requiring equitable participation.