

Title I, Part A Equitable Services Updated Non-Regulatory Guidance

February 4, 2020



Presenters

Michael Anderson

Attorney

Office of the General Counsel

Isadora Binder

Management and Program Analyst

Office of Non-Public Education

Kay Rigling

Attorney

Office of the General Counsel

Todd Stephenson

Management and Program Analyst

Office of Elementary and Secondary Education



Obligation of Funds and Carryover



Scenario

- ❖ After consultation with private school officials, the Hamilton School District determined that it will use a portion of Title I funds available for equitable services to provide a professional learning opportunity for teachers of Title I students attending private schools.
- ❖ Based on this consultation, the district provides a menu of activities available throughout the school year and the following summer from which private school teachers may choose based on their specific needs and schedules.



Scenario (continued)

- ❖ Under similar arrangements in the past, some private school teachers haven't taken advantage of these types of opportunities.
- ❖ As a result, district officials have concerns that they will not be able to meet the obligation of funds requirement under ESEA section 1117(a)(4)(B).



Statute and Regulations

- ❖ ESEA section 1117(a)(4)(B) requires an LEA to obligate funds for equitable services in the fiscal year for which the funds are received by the LEA.
- ❖ ESEA section 1127(a) prohibits an LEA from carrying over to the succeeding fiscal year more than 15 percent of the LEA's Title I allocation. Under ESEA section 1127(b), an SEA may waive this limitation once every three years if the SEA determines that the request of an LEA is reasonable and necessary or a supplemental Title I appropriation becomes available.
- ❖ 34 C.F.R. § 76.707 defines when an obligation occurs.



Discussion Questions

1. What steps can the LEA take to help ensure it meets the obligation of funds requirement?
2. What would a reasonable deadline look like?
3. What happens if, despite these efforts, one or more private school teachers do not participate in professional learning opportunities by the deadline?
4. What if the LEA is unable to obligate the remaining funds by the end of the fiscal year? May the LEA carry over the funds?
5. Title I limits carryover to 15 percent of an LEA's allocation. How does this requirement apply to equitable services carryover?



Non-Regulatory Guidance

- ❖ **B-26.** What is the purpose of the obligation of funds requirement given that an LEA may carry over funds from a given fiscal year and spend those funds in the succeeding fiscal year?
- ❖ **B-27.** May an LEA carry over unobligated funds despite the statutory requirement regarding obligation of funds?
- ❖ **B-28.** How does the 15 percent carryover limitation in ESEA section 1127(a) apply to equitable services carryover?
- ❖ **B-29.** When does an “obligation” occur?
- ❖ **B-30.** How long does an LEA have to meet the obligation of funds requirement in ESEA section 1117(a)(4)(B)?
- ❖ **B-31.** May an LEA impose reasonable deadlines on private school officials to facilitate meeting the obligation of funds requirement in ESEA section 1117(a)(4)(B)?



Pooling Title I Funds Across LEAs



Scenario

- ❖ Ten LEAs serve an urban area. Within the area, there are 20 private schools: 10 are Catholic schools under the auspices of one Archdiocese; 5 are Jewish schools that are members of a Consortium; and 5 are independent private schools.
- ❖ Each private school has children from low-income families who reside in a participating Title I public school attendance area in each of the 10 LEAs.
- ❖ As a result, children in each private school generate Title I funds that are available for Title I equitable services.
- ❖ Each private school has low-achieving children who reside in a participating Title I public school attendance area in each of the 10 LEAs.



Scenario (continued)

- ❖ The eligible children do not all have the same educational needs.
- ❖ Each private school wants its eligible students to receive equitable services under Title I.
- ❖ The Archdiocese represents each of the 10 schools under its auspices.
- ❖ The Jewish Consortium represents each of its 5 member schools.
- ❖ Each independent school represents the children in the respective school.
- ❖ The 10 LEAs wish to contract with a single educational service agency (Adams ESA) to provide equitable services to eligible students.



Statute and Regulations

- ❖ ESEA section 1117(b)(1)(J) authorizes an LEA, after consultation with, and the agreement of, appropriate private school officials, to
 - (1) Provide equitable services to eligible children in each private school with the Title I funds generated by the children from low-income families who reside in participating Title I public school attendance areas and attend that private school; or
 - (2) Create a pool or pools of Title I funds generated by children from low-income families who reside in participating Title I public school attendance areas and attend a private school in a group of schools and provide equitable services to eligible children in any school in the group.
- ❖ ESEA section 1117(b)(1)(I) requires an LEA to consult with appropriate private school officials regarding whether the LEA will provide services directly or through a separate government agency, consortium, entity, or third-party contractor.



Statute and Regulations (continued)

- ❖ After a decision is made regarding the option for providing services, ESEA section 1117(b)(1) generally requires the entity that will provide equitable services to consult with appropriate private school officials on topics such as:
 - How the children's needs will be identified,
 - What services will be offered,
 - How, where, and by whom the services will be provided,
 - The size and scope of the services to be provided,
 - The proportion of Title I funds allocated for such services and how that proportion of funds is determined,
 - The method or sources of data that are used to determine the number of children from low-income families who reside in participating Title I public school attendance areas and attend private schools.



Statute and Regulations (continued)

- ❖ ESEA section 1117(b)(1) requires private school officials and officials of the entity that will provide services to “have the goal of reaching agreement” on how to provide equitable and effective programs for eligible private school children.



Discussion Questions

1. What options does an LEA have to provide equitable services to eligible children?
2. Are there any steps the 10 LEAs need to take before they contract with Adams to provide equitable services?
3. May Adams pool Title I funds generated by children from low-income families in respective private schools?
4. May there be multiple pools?
5. Must all schools be part of a pool?
6. What must happen before Adams may pool Title I funds?
7. Assuming agreement between Adams and appropriate private school officials, how does Adams pool Title I funds?



Non-Regulatory Guidance

- ❖ **B-8.** What are the options available for providing equitable services to private school children?
- ❖ **B-9.** May an LEA make a unilateral decision to pool funds among several private schools to provide equitable services?
- ❖ **B-16.** If an LEA and appropriate private school officials agree to establish a pool or pools of Title I funds allocated for private school children and, later, one or more private schools in the pool decline services for eligible students enrolled in the school, what happens to the funds generated by children from low-income families in the private school(s)?



**Poverty Data to
Determine
Proportional Share:
LEA & Private School
Officials' Responsibilities**



Scenario

- ❖ An LEA has previously used free and reduced-price lunch (FRPL) counts from public and private school students to rank its schools by poverty for within-district Title I allocations and to determine the equitable services proportional share.
- ❖ The LEA, however, is planning to use counts of children eligible for free lunch only to determine its public school poverty count, as allowed under ESEA section 1113(a)(5), because it believes that free lunch data more accurately reflect the number of children in poverty who reside in the LEA.



Statute and Regulations

- ❖ ESEA section 1117(a)(4)(A) requires expenditures for equitable services to be equal to the proportion of Title I funds based on the number of children from low-income families who reside in a participating Title I public school attendance area and attend a private school. The proportional share must be determined based on an LEA's total Title I allocation prior to any allowable expenditures or transfers by the LEA.
- ❖ ESEA section (b)(1)(E) requires an LEA to consult with appropriate private school officials regarding the proportion of Title I funds that is allocated for equitable services and how that proportion of funds is determined.
- ❖ ESEA section (b)(1)(F) requires an LEA to consult with appropriate private school officials regarding the method or sources of data that are used to determine the number of children from low-income families who reside in a participating Title I public school attendance area and attend a private school.



Statute and Regulations (continued)

- ❖ ESEA section (b)(3) requires consultation between an LEA and appropriate private school officials to occur before the LEA makes any decision that affects the opportunities of eligible private school children to participate in Title I programs.
- ❖ ESEA section (c)(1) and 34 C.F.R. § 200.64(a)(3) list the methods an LEA may use to obtain a count of private school children from low-income families who reside in a participating Title I public school attendance area. ESEA section (c)(1) states that, after timely and meaningful consultation, an LEA has the final authority to calculate the number of private school children who reside in a participating Title I public school attendance area.



Discussion Questions

1. What must the LEA discuss with private school officials regarding this change?
2. Must an LEA use the same measure of poverty for counting public and private school children?
3. Must an LEA use the same measure of poverty for all private school children?
4. If, during consultation, private school officials express concern that using free lunch data only might undercount the number of private school students in poverty, what might an LEA do to address this concern, make consultation “timely and meaningful,” and help reach agreement?
5. What is the role of private school officials in collecting poverty data?



Non-Regulatory Guidance

- ❖ **B-11.** How does an LEA determine the number of children, ages 5 through 17, who are from low-income families, reside in participating Title I public school attendance areas, and attend private schools?
- ❖ **B-12.** How often must an LEA collect poverty data?
- ❖ **B-13.** May an LEA use more than one method of collecting poverty data on private school children?
- ❖ **B-14.** If private school officials assist an LEA in obtaining data necessary for the LEA to determine the proportional share, how do LEA officials or auditors determine the accuracy of information retained by the private school officials?
- ❖ **B-15.** If an LEA has poverty data for children in a private school, regardless of whether the private school participates in Title I, does the LEA include the poverty data in calculating the proportional share?



Disputes Regarding Equitable Services and How to Resolve Them



Scenario

- ❖ In determining the proportional share of funds available for Title I equitable services, the Washington School District (Washington) historically has used free and reduced-price lunch data to identify children from low-income families attending a group of private schools.
- ❖ However, those schools have decided to end their participation in the school lunch program.
- ❖ As a result, Washington has decided to switch to using a survey to identify children from low-income families attending these schools.
- ❖ Private school officials have objected to this change, however, because they believe that a survey will undercount the number of poverty children in the private schools.



Statute and Regulations

- ❖ ESEA section 1117(b)(1) and 34 C.F.R. § 200.63(a) require an LEA to consult with appropriate private school officials during the design and development of the LEA's Title I program. 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.
- ❖ Under ESEA section 1117(b)(1)(F) and 34 C.F.R. § 200.63(b)(7), such consultation must include the method or sources of data that the LEA will use to determine the number of private school children from low-income families residing in participating public school attendance areas.



Statute and Regulations (continued)

- ❖ ESEA section 1117(c)(1) provides that an LEA has the final authority to determine the method used to calculate the number of children from low-income families that attend private schools.
- ❖ Under ESEA section 1117(c)(1) and 34 C.F.R. § 200.64(3)(i) an LEA may use—
 - The same measure of poverty used to count public school children
 - Comparable poverty data from a survey
 - Comparable poverty data from a different source
 - Proportionality
 - An equated measure
- ❖ ESEA section 1117(b)(2) provides that, if an LEA disagrees with the views of private school officials regarding an issue subject to consultation, the LEA must provide a written explanation of the reasons it disagrees.



Statute and Regulations (continued)

- ❖ ESEA section 1117(a)(3)(B) and 200 C.F.R. § 200.68 require an SEA to designate an ombudsman to monitor and enforce Title I equitable services requirements to help ensure such services are equitable for eligible private school children, teachers and other educational personnel, and families.
- ❖ ESEA section 1117(b)(6)(A)) provides that a private school official shall have the right to file a complaint with the SEA if that official believes that the LEA has not engaged in consultation that was meaningful and timely, has not given due consideration to the views of the private school official, or has not made a decision that treats the private school students equitably.
- ❖ ESEA section 8503(b) provides that an interested party to a complaint may appeal an SEA's resolution to the Department within 30 days of such resolution.



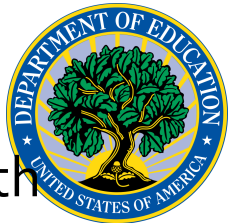
Discussion Questions

1. What are some steps the parties can take to resolve their differences?
2. What happens if, even after consultation, the parties cannot reach agreement?
3. If the ombudsman is unable to facilitate a resolution and private school officials believe that an LEA's actions are inconsistent with applicable statutory or regulatory requirements, what can they do?
4. If either private school officials or the LEA believe the SEA has not resolved the matter consistent with applicable statutory or regulatory requirements, what can they do?
5. Can the parties continue working to resolve the matter after an appeal has been filed?



Non-Regulatory Guidance

- ❖ **A-9.** What topics must an LEA address during consultation?
- ❖ **A-10.** What is entailed in achieving “the goal of reaching agreement” between an LEA and appropriate private school officials?
- ❖ **B-11.** How does an LEA determine the number of children, ages 5 through 17, who are from low-income families, reside in participating Title I public school attendance areas, and attend private schools?
- ❖ **B-13.** May an LEA use more than one method of collecting poverty data on private school children?
- ❖ **E-1.** What are the roles and responsibilities of an ombudsman?
- ❖ **F-1.** What information must a formal written complaint to an SEA include?
- ❖ **F-3.** If private school officials or another interested party are dissatisfied with an SEA’s resolution of a complaint, what recourse is available?



Resources

General ESEA Resources:

Webpages:

- ❖ OESE: <http://www2.ed.gov/policy/elsec/leg/essa/index.html>
- ❖ ONPE: <https://www2.ed.gov/about/inits/ed/non-public-education/index.html>

Resources includes:

- ❖ NEW: *[Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families – Updated Non-Regulatory Guidance \(October 7, 2019\)](#)*
- ❖ State Support Network Resources – ESEA State Ombudsman Community of Practice Resources and Summary of Promising Practices (PENDING)

[ONPE listserv](#): Sign up to receive announcements about publications and other updates.



Contact Information

Michael Anderson

Attorney

Office of the General Counsel

Michael.Anderson@ed.gov

Isadora Binder

Management and Program Analyst

Office of Non-Public Education

Isadora.Binder@ed.gov

Kay Rigling

Attorney

Office of the General Counsel

Kay.Rigling@ed.gov

Todd Stephenson

Management and Program Analyst

Office of Elementary and Secondary Education

Todd.Stephenson@ed.gov



oese.ed.gov