



***OMBUDSMEN AND ESEA EQUITABLE  
SERVICES: BUILDING PARTNERSHIPS BETWEEN  
SEAS, LEAS, AND PRIVATE SCHOOL OFFICIALS***

**NATIONAL TITLE I CONFERENCE**

**FEBRUARY 2018 | PHILADELPHIA, PENNSYLVANIA**

# PRESENTERS

## **U.S. Department of Education (ED):**

- Isadora Binder, Office of Non-Public Education (ONPE)
- Todd Stephenson, Office of State Support

## **Ombudsman Panel:**

- Christopher Kelly, Virginia Department of Education
- Shaun Owen, Georgia Department of Education



# OBJECTIVES

Participants will gain information about:

- Recent questions posed to ED on equitable services.
- The role of the State ombudsman position in facilitating partnerships between State educational agencies (SEAs), local educational agencies (LEAs), and private school officials, as required under the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA).
- Available resources to support your implementation of equitable services.

# AGENDA

- Overview of the ESEA Equitable Services Requirements
- New Information: Responses to Recent Questions
- Ombudsman Requirements
- A Conversation with State Ombudsmen
- Available Resources





# **Overview: ESEA Equitable Services Requirements**

# ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (ESEA)

Since the passage of the ESEA in 1965, the law has required LEAs to provide equitable services to private school students, teachers, and, in some cases, other education personnel and parents under a number of ESEA programs, including the Title I, Part A (Title I) program.



# TITLE I, PART A

## OVERVIEW

- The purpose of Title I is to provide all children served by the program significant opportunity to receive a fair, equitable, and high-quality education and close educational achievement gaps.
- Consistent with this purpose, services provided under Title I are intended to improve the academic achievement of students who are failing or most at risk of failing to meet challenging academic standards and reside in public school attendance areas with high concentrations of students from low-income families.
- The ESEA requires an LEA to provide equitable services to eligible private school students, their teachers, and their families from schools that choose to participate in the program.



# TITLE VIII UNIFORM PROVISIONS

Under Title VIII, Part F of the equitable services must be provided under the following programs.

- Title I, Part C - Education of migratory children
- Title II, Part A - Supporting Effective Instruction
- 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
- Title IV, Part F, Section 4631 – Project SERV

*ESEA Section 8501 (b)*





# WHERE TO FIND THE PROVISIONS

- The ESSA was signed into law on December 10, 2015.
- Many equitable services requirements remain unchanged. However, ESSA made a number of significant changes to ESEA equitable services requirements.
- Visit the ONPE website to see a [comparison chart](#) of the equitable services provisions.

<p><b><u>ESEA, as amended by NCLB*</u></b>  <i>Was in effect through 2016-2017 school year.</i></p>	<p><b><u>ESEA, as amended by ESSA</u></b>  <i>ESSA equitable services provisions went into effect in 2017-2018 school year.</i></p>
<p>Equitable services provisions found in <b>Section 1120</b></p>	<p>Equitable services provisions found in <b>Section 1117</b></p>
<p>Title IX (Uniform Provisions) found under <b>Sections 9501-9504</b>            * No Child Left Behind Act</p>	<p>Equitable services provisions found under <b>Sections 8501-8504</b> (Title VIII Uniform Provisions)</p>





# **New Information: Responses to Recent Questions**

# TRANSFERABILITY

## TO WHAT EXTENT DO EQUITABLE SERVICES REQUIREMENTS APPLY TO FUNDS TRANSFERRED INTO TITLE I?

- The ESEA provides that funds transferred into a program are subject to the rules and requirements applicable to the funds under the program to which they are transferred.
- If, after consultation with private school officials, an LEA transfers funds from another ESEA program into Title I, the LEA must use a proportionate share of those funds to provide equitable services consistent with applicable statutory and regulatory requirements under Title I.

*ESEA sections 1117 and 5103(e)(1)*



# TRANSFERABILITY

IF AN LEA DECIDES TO TRANSFER FUNDS FROM ANOTHER ESEA PROGRAM INTO TITLE I, MAY THE LEA RETAIN FUNDS UNDER THAT PROGRAM SOLELY TO PROVIDE EQUITABLE SERVICES?

- No. If an LEA chooses not to transfer all of a program's funds to Title I, Part A, the ESEA provides that the rules and requirements of that program apply to the non-transferred funds.
- If the LEA does not transfer all of the funds from another program to Title I, the ESEA requires the LEA to use the non-transferred funds for services to public and private school students.

*ESEA sections 1117 and 5103*



# EQUITABLE SERVICES COMPLAINTS

MAY AN SEA REQUIRE A PRIVATE SCHOOL OFFICIAL TO FILE A FORMAL COMPLAINT WITH THE LEA AND AWAIT THE LEA'S RESOLUTION BEFORE FILING A COMPLAINT WITH THE SEA?

- The ESEA requires an SEA to resolve equitable services complaints within 45 days.
- As part of its ESEA complaint procedures, an SEA may require an intermediate step (e.g., first filing a complaint with the LEA) prior to the SEA addressing the complaint.
- With respect to equitable services complaints, however, those procedures must result in a final resolution within 45 days of the initial filing of the complaint.

*ESEA section 8503; 34 CFR 299.10-299.12*



# INDIRECT COSTS

MAY AN LEA CHARGE INDIRECT COSTS ASSOCIATED WITH PROVIDING EQUITABLE SERVICES TO THE PROPORTIONATE SHARE OF TITLE I, PART A FUNDS AVAILABLE FOR EQUITABLE SERVICES?

- Indirect costs: Incurred for a common or joint purpose that benefit more than one cost objective.
- Programs, such as Title I, Part A, use a restricted indirect cost rate.

# INDIRECT COSTS

MAY AN LEA CHARGE INDIRECT COSTS ASSOCIATED WITH PROVIDING EQUITABLE SERVICES TO THE PROPORTIONATE SHARE OF TITLE I, PART A FUNDS AVAILABLE FOR EQUITABLE SERVICES?

- Yes: 2 CFR § 200 authorizes the charging of indirect costs by a recipient of Federal funds, including an LEA, based on the LEA's restricted indirect cost rate.
- Consultation topic because indirect costs affects the size and scope of equitable services.
- Use of third-party provider by an LEA limits the charging of indirect costs to the first \$25,000 of a contract.





# Ombudsman Requirements



# OMBUDSMAN

## STATUTE – NEW REQUIREMENT

To help ensure that private school children, teachers, and other educational personnel receive services equitable to those in public schools, State educational agencies (SEAs) must designate an ombudsman to monitor and enforce Title I and Title VIII equitable services requirements.

*ESEA sections 1117(a)(3)(B) and 8501(a)(3)(B)*

[ESSA Fiscal Guidance, FAQs N-1 through N-5](#)



# ROLES AND RESPONSIBILITIES

Primary Point  
of Contact

Monitoring  
and  
Enforcement

Communication  
and  
Engagement

Respond to &  
Resolve  
Complaints

# QUALIFICATIONS

- An SEA has discretion in determining who to designate as an ombudsman.
- In determining the relevant qualifications of the ombudsman position, an SEA should consult with appropriate private school officials.
- An SEA should consider the following factors in determining who will serve as an ombudsman:
  - Knowledge,
  - Capacity, and
  - Impartiality



# FUNDS TO SUPPORT

- If an SEA consolidates State administrative funds under ESEA section 8201, it may support its ombudsman using those funds.
- If an SEA does not consolidate State administrative funds, it nonetheless may support its ombudsman using funds reserved for State administration under Title I and the covered programs under ESEA section 8501(b).
  - Under these circumstances, however, the SEA must ensure that the ombudsman's salary is charged to each program based on the relative benefit received. (2 CFR § 200.405(a)).



# FORMAL COMPLAINT

- A private school official has the right to complain to the SEA that the LEA did not engage in timely and meaningful consultation or did not give due consideration to the views of the private school official.
- The ombudsman is positioned to assist the LEA and private school officials to resolve a concern before it becomes an official complaint.
- The ombudsman should serve as the primary point of contact for responding to and resolving any complaints regarding equitable services that the SEA receives under its ESEA complaint procedures.

*ESEA Sections 1117(a)(3)(B), 8501(a)(3)(B), and 8503  
[ESSA Fiscal Guidance](#), FAQs N-1 through N-5*





# **A Conversation with State Ombudsmen**



# OMBUDSMAN PANEL

FORGING STRONG RELATIONSHIPS TO SUPPORT PRIVATE SCHOOL STUDENTS



**Shaun Owen** is the state ombudsman Director of Consolidated Federal in the Georgia Department of Education's Office of Federal Programs. She is the primary liaison for private schools and local educational agencies regarding issues related to equitable services under Titles I and VIII and she heads a new initiative combining federal, state and local funds to gain greater flexibility.

# OMBUDSMAN PANEL

FORGING STRONG RELATIONSHIPS TO SUPPORT PRIVATE SCHOOL STUDENTS



**Dr. Christopher Kelly** is an Education Coordinator for the Virginia Department of Education. As the state ombudsman, he provides technical assistance on interpreting, understanding, and implementing equitable services under Titles I and VIII. He leads Virginia's Equitable Services Workgroup to enhance collaboration with private schools.





# Available Resources

# Office of Non-Public Education

Liaison to the nonpublic school community for the U.S. Department of Education

## ONPE Mission and Activities

ONPE fosters maximum participation of nonpublic school students and teachers in federal education programs and initiatives. Since the initial passage of the *Elementary and Secondary Education Act (ESEA)* in 1965, private school students and teachers have been eligible to participate in certain federal education programs. ONPE's activities reflect this mission and direction by:

- Representing the U.S. Department of Education to the nonpublic school community;
- Offering advice and guidance within the Department on all matters affecting nonpublic education;
- Communicating with national, state and local education agencies and associations on nonpublic education topics;
- Communicating the interests and concerns of the nonpublic school community to the Department;
- Providing parents with information regarding education options for their children; and
- Providing technical assistance, workshops and publications.

### More Resources

[Every Student Succeeds Act \(ESSA\) Page](#) ←

[Join Our Listserv](#) ←

[Emergency Management](#)

## Office of Non-Public Education Contents

- [About ONPE](#)
- [Equitable Services Implementation Plan](#)
- [FAQs - General Issues Related to Nonpublic Education](#)
- [Federal Education Laws and Programs Affecting Nonpublic Education](#)
  - [Elementary and Secondary Education Act \(ESEA\)](#)
    - [As Reauthorized by the No Child Left Behind Act of 2001](#)
    - [As Reauthorized by the Every Student Succeeds Act of 2015](#) ←



# NON-REGULATORY GUIDANCE

## NEW AND EXISTING

- The Department issued non-regulatory guidance on equitable services requirements under the ESEA, as amended by the ESSA, on November 21, 2016, and available at:  
<https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>.
- Except as otherwise provided in the 2016 guidance, the existing non-regulatory guidance documents remain applicable:
  - *Title I Services to Eligible Private School Children*, issued on October 17, 2003, and available at:  
<http://www2.ed.gov/programs/titleiparta/psguidance.doc>;  
and
  - *Title IX, Part E Uniform Provisions, Subpart 1—Private Schools*, revised on March 2009 and available at:  
<http://www2.ed.gov/policy/elsec/guid/equitableserguidance.doc>.



# ESSA GUIDANCE

READ IN CONJUNCTION WITH NCLB GUIDANCE

- ESSA Webpage:  
<https://www2.ed.gov/policy/elsec/leg/essa/index.html>
- [Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements](#)
- [Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading](#)
- [Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act](#)
- [Non-Regulatory Guidance Student Support and Academic Enrichment Grants \(Title IV, Part A\)](#)
- Key ESSA Resources available at:  
<http://www2.ed.gov/policy/elsec/leg/essa/index.html>
- [Ombudsman Update](#) – Quarterly Newsletter for Ombudsmen



# NCLB GUIDANCE

- Title I Services to Eligible Private School Students (October 2003)
- Title III, Part A Equitable Services to Private School Students, Teachers, and Other Educational Personnel Non-Regulatory Guidance (July 2015)
- Title IX, Part E Uniform Provisions Equitable Services for Eligible Private School Students, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 2009)



# THANK YOU FOR JOINING US!

## CONTACT INFORMATION

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