



Submitted Electronically

Hilary Malawer, Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW, Room 6E231
Washington, DC 20202

Response: Docket ID: ED-2017-OS-0074

Dear Ms. Malawer:

The National Catholic Educational Association (NCEA) is submitting the following in response to the U.S. Department of Education's request for comments (82 Fed. Reg. 2843) regarding regulations that may be considered for repeal, replacement, or modification.

Our comments seek to bolster the ESSA requirements for equitable participation of eligible students and their teachers in non-public schools.

Catholic school students and teachers have participated in ESEA since it was first enacted in 1965. Results of a survey conducted a few years by the Office of Non-Public Education, U. S. Department of Education, indicated that more than 80% of Catholic schools had students and teachers that participated in one or more programs available under ESEA. As an association representing more than 6,000 Catholic schools with almost 2 million students and more than 150,000 teachers, we have a great interest in assuring that the opportunity for receiving the equitable benefits available for all of our constituents is promoted and assured.

ESSA's provisions contain several clearly articulated changes that provide equity, clarity, timeliness, assurances, and overall improvements to the delivery of services to private school children and their teachers. However, in its implementation we have been hearing of ambiguity and misinformation about the interpretation of some ESSA provisions that require clarification in guidance documents.

1. Retain and consolidate applicable guidance documents pertaining to equitable services

- a. The Department's guidance document pertaining to equitable services, *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965* (November 2016) contains clear and specific details pertaining to implementation of ESSA and should be retained and actively promoted.

b. However, in some cases this document is seen as the only guidance and the important note on page 23 of that document is missed. It reads: “Please note that, except as otherwise provided in this guidance, the existing non-regulatory guidance documents, guidance documents, *Title I Services to Eligible Private School Children* [available at: <http://www2.ed.gov/programs/titleiparta/psguidance.doc>] and issued on Oct. 17, 2003 and *Title IX, Part E Uniform Provisions, Subpart 1—Private Schools* [available at: <http://www2.ed.gov/policy/elsec/guid/equitablesguidance.doc>] and revised on Mar. 2009, remain applicable.”

c. It is critical to the successful implementation of ESSA that all applicable guidance documents pertaining to equitable services be consolidated into one document that can be easily referenced during consultation meetings of the LEA and private school officials. These are the documents we recommend be consolidated:

- Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 (2016);
- Title I Services to Eligible Private School Children Non-Regulatory Guidance (2003);
Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit (2006)
- Title I Regulations (including the Participation of Eligible Children in Private Schools);
- The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended.

Combining these separate documents into one comprehensive ESSA guidance source will be most helpful in promoting understanding and agreement during the consultation process.

2. Specify Equitable Services Implementation Requirements in State Applications

There is need for specific language to clarify the state’s responsibilities to ensure equitable services in their interpretation of implementation requirements in two specific areas:

a. State applications: these should include a section that details how the state will fulfill its responsibilities to assure equitable services by its monitoring and effective enforcement of requirements.

b. Ombudsman: the requirement for the state to appoint an ombudsman to monitor and enforce the equitable services provisions of Titles I and VIII contains no specific guidance as to how the SEA is to approach that role. We recommend that Department guidance be developed that instructs SEAs to include in their application details pertaining to the state’s implementation process regarding the appointment, role and responsibilities of the ombudsman.

3. Expenditure of Funds and Carry-over Provisions

There are two areas in which clarification of the guidance is needed:

a. Extenuating circumstances: Although the new law requires that funds be obligated for equitable services in the fiscal year in which they are received, there is provision for carry-over of funds if “extenuating circumstances” exist. This is not defined in the guidance and experience is showing that districts wait to inform the private school officials of the total amount of funds intended for equitable services very late in school year. Informing the private school officials of the additional availability of funds when they cannot use them responsibly, as required by statute, effectively means they lose the use of the funds.

b. Fiscal Year Disparities: Experience has shown that when state and/or school district fiscal year calendars differ from that of the federal government, private school officials are informed they must use all of the funds, particularly for professional development, by the time the LEA office decides to close its books, usually before the end of June. Since the statute and guidance clearly state that federal funds cannot be used to pay for substitute teachers in private schools, as they may be for public schools, most professional development activities teachers pursue are held in the summer months and district will not approve use of funds during those times. Likewise, requests to use available Title I funds to serve disadvantaged students in summer school programs are denied.

Guidance clarification should indicate that if the funds generated by private school students are not fully expended for the private school program during the course of the year in which they were allocated because of fiscal year disparities, those funds should be carried over and made available for use at the start of the LEA’s next fiscal year to provide benefits to private school students and their teachers.

4. Clarify the understanding of supplement/supplant as it applies to private schools

Since private schools receive only good and services, not dollars, the understanding of applicability of supplement/supplant provisions has been open to various interpretations by LEAs as well as the Department itself regarding the participation of private school teachers in professional development activities.

a. Value-added: While private schools should be able to demonstrate added value with the use of federal dollars, it should be clarified that federal law does not require any specific level of expenditures by private schools before requests are considered supplemental. Demonstrating the improved quality of the professional development activities that would be available if federal dollars are used to enhance the scope of the program should be sufficient to meet the supplement requirement.

5. Clarify the use of multiple allowable measures of obtaining poverty data

The guidance document should emphasize the legitimacy of all allowable methods for counting poverty that are stipulated in the statute:

a. Methods of collecting poverty data: encourage selection of the method most appropriate to obtain the most robust counts of students in poverty. These options are: A) using the same measure of low income used to count public school children; (B) using the results of a survey and allowing the results to be extrapolated; (C) using the low-

income percentage of each participating public school attendance area; (D) using an equated measure of low-income correlated with the measure of low income used to count public school children

b. Suggested language: “Any of the available options that are permitted under the statute and regulations may be used, allowing parties in consultation to select the method most appropriate to the local situation.”

c. Use of Community Eligibility Option: The provisions pertaining to equitable services in the guidance titled “The Community Eligibility Provision and Selected Requirements under Title I, Part A of the Elementary and Secondary Education Act Of 1965, As Amended” should be included in the consolidated guidance so as to ensure practitioners incorporate this guidance into consultations about measures to be used to obtain poverty data. Proportionality should be strongly encouraged when districts use the CEP program because without proportionality for the private school count when used to determine the public school count, private school students are losing a significant percentage of their proportionate share of Title I funds.

6. U.S. Department of Education Monitoring of Equitable Services Implementation

a. Monitoring: ESSA guidance should contain a provision directing the Department to continue its monitoring processes of programs requiring equitable services and use the findings to provide policy guidance and technical assistance, particularly regarding effective consultation processes, timely notification of allocations, transparency of information regarding determination of allocations and number of formal complaints or appeals to the SEA or ombudsman.

7. Title IV-A Funding and Private School Participation

a. Discretionary and Formula grants: Since the Department has granted an exemption to states and districts to choose to allocate funds using a discretionary grant process, guidance is needed to determine how private schools will be included equitably when funds are awarded competitively to an LEA instead of by formula as stipulated in the statute.

Thank you for the opportunity to provide to your request for comments as the Department review regulations and guidance that may be considered for repeal, replacement, or modification. Please give consideration to our input on these critical issues that need to be addressed in order to more effectively implement the ESSA requirements for equitable participation of eligible students and their teachers in religious and private schools.

If we can be of further assistance, please contact us.

Sincerely



Dale McDonald, PBVM, PhD
Director of Public Policy