

U.S. Department of Education

OMBUDSMAN UPDATE

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From the Desk of the Office of Non-Public Education Director

Dear Colleague:

With spring consultation meetings in progress, I would like to share with you important information about disaster relief that local education agencies (LEAs) should be prepared to discuss with private school officials during consultation. Project SERV (section 4631 of the *Elementary and Secondary Education Act of 1965 [ESEA]*, as amended by the *Every Student Succeeds Act [ESSA]*) provides funding for education-related services for LEAs and institutions of higher education (IHEs) to help them recover from a violent or traumatic event that disrupted the learning environment. Although the *ESEA*, as amended by the *ESSA*, initially did not include Project SERV as one of the applicable programs covered by the *Title VIII* equitable services provisions (section 8501 of the *ESEA*), Congress later amended the *ESEA* to include Project SERV. Thus, an LEA that receives Project SERV funds is required to consult with those nonpublic schools located within the LEA whose learning environments have been disrupted by the violent or traumatic crisis in response to which the Project SERV funds were awarded. That LEA is also required to provide equitable services under this program for such eligible nonpublic schools.

In the wake of hurricanes Harvey, Irma, and Maria, and the wildfires in California, Congress enacted the *Bipartisan Budget Act of 2018* (Act). It includes \$2.7 billion to help state education agencies (SEAs), LEAs, K–12 public and private schools, and IHEs in Alabama, California, Florida, Georgia, Louisiana, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands in their recovery efforts. The Act authorizes two programs that pertain to private elementary and secondary schools: Immediate Aid to Restart School Operations (Restart) and Emergency Impact Aid for Displaced Students. While these programs do not fall under the ombudsman's monitoring and enforcement responsibilities, we want to alert you to them. We also encourage private school officials to sign up for the [ONPE listserv](#) and to consult the U.S. Department of Education's (ED's) [Hurricane Help webpage](#) for additional information. Over the coming weeks ED will provide FAQs to assist with program implementation. The Office of Non-Public Education (ONPE) will alert its stakeholders about this guidance via its listserv.

Know that ONPE stands ready to assist should you need technical assistance on the participation of private school students and teachers in these programs.

Sincerely,

//s//

Maureen Dowling

Director,

Office of Non-Public Education

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Ombudsman Spotlight

By Colleen Brooks, J.D., Colorado Ombudsman

Fostering Relationships

The Colorado Nonpublic School Working Group (Working Group) resulted from an informal meeting hosted by the Colorado Department of Education (CDE) for the nonpublic school community in fall 2016 to address changes under the *ESEA*, as amended by the *ESSA*. The interest generated during this initial meeting compelled the creation of a formal group that strengthens communication between CDE, LEAs, and nonpublic school officials. Membership comprises representation from these stakeholders and is driven by interest and the goal to provide equitable services. The co-founder of the Colorado Association of Private Schools serves as a member and helps to build rapport in this capacity. Ultimately, the Working Group's effort to maintain transparency and support the needs of each constituency promotes an outlook that prioritizes equally the needs of *all* students in the state of Colorado.

Vision and Responsibilities

With a clear vision to serve the needs of the nonpublic school community, the Working Group established a [purpose statement](#), meeting expectations, goals for the 2017–18 academic year, and a commitment to ensure that membership reflects the geographic and substantive needs of the state. Agenda items for each meeting are based on established goals and informed by the evolving needs of the field. Members convene in person quarterly, with a call-in option beginning in the 2019 academic year. Meeting location hosts consist of foundations and non-profit associations throughout the Denver and Colorado Springs metro areas, and rotate to ease the travelling burden.

Members of the Working Group have a number of responsibilities critical to successful implementation of equitable services: The Ombudsman facilitates meetings and serves as policy expert and point of contact for LEAs and nonpublic school officials regarding equitable services; CDE representatives provide updates on federal program administrative issues that impact equitable services; nonpublic school representatives provide feedback on meaningful consultation and issues related to *ESEA* programming in their schools; and LEA representatives provide updates on the consultation process, program implementation, and best practices concerning equitable services.

Current Work and Challenges Overcome

Currently, the Working Group is developing guidance regarding handling carryover for extenuating circumstances, implementing an effective *Title IV*, Part A program, and improving the process for developing and implementing a memorandum of understanding for LEAs serving nonpublic schools on behalf of surrounding districts. One of the goals for 2017–18 is to develop an updated, comprehensive *ESEA* guidance document including equitable services requirements, best practices, as well as monitoring processes and indicators.

The new requirement for calculating the proportionate share for *Title I*, Part A equitable services was an early hurdle. CDE and LEA data privacy experts worked with private school officials to provide state and local contexts regarding best practices in data collection. Such collaboration impacted the calculation process positively and informed the development of a step-by-step guidance document produced by the ombudsman for LEAs and private schools. The Working Group has also addressed misconceptions regarding the roles of colleagues in the public and nonpublic school systems. As a forum for discussion, the Working Group helps members overcome barriers of misinformation and frustration, and fosters relationships in an effort to provide equitable services to eligible nonpublic school students in Colorado.

Resources

CDE's guidance and resources regarding equitable services, including the Nonpublic School Working Group agendas and meeting information, may be found on the CDE [website](#).

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From the Field

Updates From the Collaborative of State Ombudsmen (Collaborative)*

Webinars

Collaborative webinars are scheduled for the last Thursday of every month at 1 p.m. EST. Please look out for invitations, submit discussion topic recommendations, and consider volunteering to facilitate. If you missed a webinar or would like to revisit a topic, visit the webinar archive on the OneDrive (see additional information below).

OneDrive

The Collaborative maintains an online platform for communicating, submitting inquiries, and archiving webinars. Note that only ombudsmen and state departments of education staff will be given access to the OneDrive.

Steering Committee

The following individuals serve on the Collaborative steering committee:

- [Colleen Brooks](#), Colorado Department of Education
- [Cory Green](#), Texas Education Agency
- [Christopher \(Chris\) Kelly](#), Virginia Department of Education
- [Shaun Owen](#), Georgia Department of Education

Contact the Collaborative

For information on joining the Collaborative, accessing the OneDrive, as well as participating in and recommending topics for upcoming webinars, please send an email to [Shaun Owen](#).

*The Collaborative of State Ombudsmen (Collaborative) is a state-led initiative spearheaded by a steering committee of state ombudsmen for state ombudsmen. ED is not part of the Collaborative, nor does ED endorse the Collaborative.

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Answers From ED

Question: What does it mean to obligate funds?

Answer: The *ESEA* requires an LEA to obligate the funds allocated for equitable services under all applicable programs in the year for which they are appropriated. Under 34 CFR §76.707, certain funding purposes govern when an obligation of federal funds by an SEA or LEA must occur, as shown in the following chart:

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee	When the services are performed.
(c) Personal services by a contractor who is not an	On the date on which the State or subgrantee makes a binding

employee of the State or subgrantee	written commitment to obtain the services.
(d) Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles	On the first day of the grant or subgrant performance period.

Question: May an LEA continue to obligate funds generated for equitable services for the previous school year during the summer after the school year ends and at the start of the next school year as a means to meet the *ESEA* requirement to obligate the funds during the initial year of availability?

Answer: Yes. An LEA may do so as long as the obligations occur by Sept. 30 (i.e., the end of the federal fiscal year). Note that the *ESEA* requires LEA officials to consult with private school officials about this matter.

Question: How does an LEA determine allocations for equitable services under *ESEA* programs for private school students, teachers, and families?

Answer: Under *Title I*, Part A, an LEA must determine the amount of funds available for equitable services based on the proportion of children from low-income families who reside in a participating *Title I* public school attendance areas.

Once an LEA has established the participating public school attendance areas (see sections B-1 and B-2 of [Title I Services to Eligible Private School Children, Non-Regulatory Guidance \[Oct. 17, 2003\]](#)), it would first determine the number of children from low-income families residing in each participating public school’s attendance area who attend public schools and private schools. The LEA would then determine the overall proportion of children from low-income families who reside in participating public school attendance areas and who attend public schools and private schools. Using the proportion of children from low-income families who attend private schools, the LEA would determine the amount of funds available for equitable services based on that proportionate share of the LEA’s total *Title I* allocation. See [Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\) \(Nov. 21, 2016\)](#), Section O-2 for more information.

For *Title VIII*-covered programs, expenditures for equitable services must be equal to expenditures for the public school program, taking into account the number of children to be served and their educational needs. Many LEAs determine funding for equitable services strictly on the basis of relative enrollments of public and private school students. However, an LEA also may take into account other factors relating to need.

For example, an LEA might choose poverty as an additional factor in determining equal expenditures and consider the relative poverty of the two groups of students. However, it would not be proper to base the determination solely on poverty (or any other factor relating only to educational need) because the statute requires that both the number and the educational needs of the public and private school students be taken into account. As with other decisions affecting services to private school students, an LEA should consult with private school officials on the method for determining equal expenditures. The resulting methodology should reasonably reflect the relative numbers and educational needs of the public and private school students. See [Title IX, Part E, Uniform Provisions, Subpart 1—Private Schools, Equitable Services for Eligible Private School Students, Teachers, and Other Educational Personnel, Non-Regulatory Guidance \(Rev. March 2009\)](#), Section F for more information.

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Tools You Can Use

[U.S. Department of Education ESSA Webpage](#)

[Office of Non-Public Education ESSA Webpage](#)

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We Want to Hear From You!

If you have something to share, let us know! Please tell us how we can showcase the work you are doing and how we can support you. In each newsletter we will seek to spotlight a state ombudsman. Topics that we would like to highlight in the “From the Field” section include methods to establish productive relationships between the ombudsman and private school officials; notable, replicable practices; and challenges faced and overcome. We also invite you to share information about technical assistance opportunities that could be of value to the ombudsman community for inclusion in the next newsletter. All submissions should be sent to ONPE@ed.gov. **To receive future publications of the *Ombudsman Update*, please subscribe [here](#).**

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Disclaimer

U.S. Department of Education—*Ombudsman Update*

The *Ombudsman Update* is the U.S. Department of Education’s effort to communicate with ombudsmen on matters relating to equitable services under the *Elementary and Secondary Education Act of 1965 (ESEA)*, as amended by the *Every Student Succeeds Act (ESSA)* of 2015. This newsletter contains links to other websites and news articles. These links represent just a few examples of the many education reference materials currently available to ombudsmen and the public. The opinions expressed in any articles or webpages do not necessarily reflect the positions or policies of the U.S. Department of Education. The inclusion of resources should not be construed or interpreted as an endorsement by the U.S. Department of Education of any private organization or business listed herein. This newsletter provides a platform for ombudsmen to share lessons learned. However, it does not request information per the *Federal Paperwork Reduction Act*.

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