

Statute from ESEA as amended through ESSA, enacted December 10, 2015

Section 1117: Participation of Children Enrolled in Private Schools

(a) General Requirements

(1) **In General.** To the extent consistent with the number of eligible children identified under section 1115(c) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall:

(A) After timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis and individually or in combination, as requested by the officials to best meet the needs of such children, special educational services, instructional services (including evaluations to determine the progress being made in meeting such students' academic needs), counseling, mentoring, one-on-one tutoring, or other benefits under this part (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs; and

(B) Ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to section 1116.

(2) **Secular, neutral, nonideological.** Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

(3) **Equity.**

(A) **In General.** Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

(B) **Ombudsman.** To help ensure such equity for such private school children, teachers, and other educational personnel, the State educational agency involved shall designate an ombudsman to monitor and enforce the requirements of this part.

(4) **Expenditures.**

(A) **Determination.**

(i) **In General.** Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools.

(ii) **Proportional Share.** The proportional share of funds shall be determined based on the total amount of funds received by the local educational agency

under this part prior to any allowable expenditures or transfers by the local educational agency.

(B) **Obligation of Funds.** Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.

(C) **Notice of Allocation.** Each State educational agency shall provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under this part that the local educational agencies have determined are available for eligible private school children.

(D) **Term of Determination.** The local educational agency may determine the equitable share under subparagraph (A) each year or every 2 years.

(5) **Provision of Services.** The local educational agency, or, in a case described in subsection (b)(6)(C), the State educational agency involved, may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

(b) Consultation

(1) **In General.** To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on issues such as:

(A) how the children's needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated under subsection (a)(4)(A) for such services, and how that proportion of funds is determined;

(F) the method or sources of data that are used under subsection (c) and section 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools;

(G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers;

(H) 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;

(I) whether the agency shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(J) whether to provide equitable services to eligible private school children

(i) by creating a pool or pools of funds with all the funds allocated under subsection (a)(4)(A) based on all the children from low income families in a participating school attendance area who attend private schools; or

(ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools;

(K) when, including the approximate time of day, services will be provided; and

(L) whether to consolidate and use funds provided under subsection (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.

(2) **Disagreement.** If a local educational agency disagrees with the views of private school officials with respect to an issue described in paragraph (1), the local educational agency shall provide in writing to such private school officials the reasons why the local educational agency disagrees.

(3) **Timing.** Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

(4) **Discussion.** Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

(5) **Documentation.** Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved 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 such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.

(6) **Compliance.**

(A) In General. A private school official shall have the right to file a complaint with the State educational agency asserting that the local educational agency did not engage in consultation that was meaningful and timely, did not give due consideration to the views

of the private school official, or did not make a decision that treats the private school students equitably as required by this section.

- (B) Procedure. If the private school official wishes to file a complaint, the official shall provide the basis for the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.
- (C) State Educational Agencies. A state educational agency shall provide services under this section directly or through contracts with public or private agencies, organizations, or institutions, if the appropriate private school officials have:
 - (i) requested that the State educational agency provide such services directly; and
 - (ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

(c) Allocation for Equitable Services to Private School Students.

(1) **Calculation.** A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools by:

- (A) Using the same measure of low income used to count public school children;
- (B) Using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;
- (C) Applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or
- (D) Using an equated measure of low income correlated with the measure of low income used to count public school children.

(2) **Complaint Process.** Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 8503.

(d) Public Control of Funds.

(1) **In General.** The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

(2) **Provision of Services.**

- (A) Provider. The provision of services under this section shall be provided:
 - (i) by employees of a public agency; or

(ii) through contract by such public agency with an individual association, agency, or organization.

(B) Requirement. In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

(e) Standards for a Bypass.

If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall:

(1) **Waive the requirements** of this section for such local educational agency;

(2) **Arrange for the provision of services** to such children through arrangements that shall be subject to the requirements of this section and sections 8503 and 8504; and

(3) **In making the determination under this subsection**, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.