

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

Section 8501: Participation by Private School Children and Teachers

(a) Private School Participation

(1) **In General.** Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

(2) **Secular, Neutral, and Non-ideological Services or Benefits.** Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and non-ideological.

(3) **Special Rule.**

(A) **In General.** Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(B) **Ombudsman.** To help ensure equitable services are provided to private school children, teachers, and other educational personnel under this section, the State educational agency involved shall direct the ombudsman designated by the agency under section 1117 to monitor and enforce the requirements of this section.

(4) **Expenditures.**

(A) **In General.** Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(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 subpart that the local educational agencies have determined are available for eligible private school children.

(5) **Provision of Services.** An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

(b) Applicability.

(1) **In General.** This section applies to programs under:

- (A) Part C of Title I;
- (B) Part A of Title II;
- (C) Part A of Title III;
- (D) Part A of Title IV; and
- (E) Part B of Title IV.

(2) **Definition.** For the purpose of this section, the term “eligible children” means children eligible for services under a program described in paragraph (1).

(c) Consultation.

(1) **In General.** To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials. 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, 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 shall be provided;
- (D) How the services will be assessed and how the results of the 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, teachers, and other educational personnel, the amount of funds available for those services, and how that amount is determined;
- (F) How and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through potential third-party providers; and

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

(H) Whether to provide equitable services to eligible private school children:

(i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(C) 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)(C) based on the number of children from low-income families who attend private schools.

(2) **Disagreement.** If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) **Timing.** The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

(4) **Discussion Required.** The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(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. If the consultation required under this section is with a local educational agency or educational service agency, a private school official shall have the right to file a complaint with the State educational agency that the consultation required under this section was not 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 or its students equitably as required by this section.

- (B) Procedure. If the private school official wishes to file a complaint, the private school official shall provide the basis of the noncompliance and all parties shall provide the appropriate documentation to the appropriate officials.
- (C) Services. A State educational agency shall provide services under this section directly or through contracts with public and private agencies, organizations, and 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.

(d) Public Control of Funds.

(1) **In General.** The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

(2) **Provision of Services.**

- (A) In General. The Provision of services under this section shall be provided:
 - (i) by employees of a public agency; or
 - (ii) through contract by the public agency with an individual, association, agency, organization, or other entity.
- (B) Independence; Public Agency. In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.
- (C) Commingling of Funds Prohibited. Funds used to provide services under this section shall not be commingled with non-Federal funds.

Section 8502: Standards for ByPass

(a) In General.

If, by reason of any provision of law, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or other entity is prohibited from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary schools and secondary schools, on an equitable basis, or if the Secretary determines that the agency, consortium, or entity has substantially failed or is unwilling to provide for that participation, as required by section 8501, the Secretary shall:

(1) Waive the requirements of that section for the agency, consortium, or entity; and
(2) Arrange for the provision of equitable services to those children, teachers, or other educational personnel through arrangements that shall be subject to the requirements of this section and of sections 8501, 8503, and 8504.

(b) Determination.

In making the determination under subsection (a), the Secretary shall consider one or more factors, including the quality, size, scope, and location of the program, and the opportunity of private school children, teachers, and other educational personnel to participate in the program.

Section 8503: Complaint Process for Participation of Private School Children

(a) Complaint Process for Participation of Private School Children.

The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 8501 by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within 45 days.

(b) Appeals to Secretary.

The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within the 45-day time limit. The appeal shall be accompanied by a copy of the State educational agency's resolution, and, if there is one, a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal.

Section 8504: Bypass Determination Process

(a) Review.

(1) **In General.**

(A) Written Objections. The Secretary shall not take any final action under section 8502 until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary to show cause why that action should not be taken.

(B) Prior to Reduction. Pending final resolution of any investigation or complaint that could result in a determination under this section, the Secretary may withhold from the allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

(2) Petition for Review.

(A) Petition. If the affected agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), the agency, consortium, or entity may, within 60 days after notice of that action, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action.

(B) Transmission. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary.

(C) Filing. The Secretary, upon receipt of the copy of the petition, shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

(3) Findings of Fact.

(A) In General. The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may then make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings.

(B) New or Modified Findings. Any new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(4) Jurisdiction.

(A) In General. Upon the filing of a petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part.

(B) Judgment. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) Determination.

Any determination by the Secretary under this section shall continue in effect until the Secretary determines, in consultation with that agency, consortium, or entity and representatives of the affected private school children, teachers, or other educational personnel, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the applicable requirements of section 8501 or any other provision this Act.

(c) Payment From State Allotment.

When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of those

services, including the administrative costs of arranging for those services, from the appropriate allocation or allocations under this Act.

(d) Prior Determination.

Any bypass determination by the Secretary under this Act as in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001 shall remain in effect to the extent the Secretary determines that that determination is consistent with the purpose of this section.

Section 8505: Prohibition Against Funds for Religious Worship or Instruction

Nothing in this Act shall be construed to authorize the making of any payment under this Act for religious worship or instruction.

Section 8506: Private, Religious, and Home Schools

(a) Applicability to Non-recipient Private Schools.

Nothing in this Act shall be construed to affect any private school that does not receive funds or services under this Act, nor shall any student who attends a private school that does not receive funds or services under this Act be required in any assessment referenced in this Act.

(b) Applicability to Home Schools.

Nothing in this Act shall be construed to affect a home school, whether or not a home school is treated as a home school or private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this Act.

(c) Rule of Construction on Prohibition of Federal Control over Nonpublic Schools.

Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this Act.

(d) Rule of Construction on State and Local Educational Agency Mandates.

Nothing in this Act shall be construed to require any State educational agency or local educational agency that receives funds under this Act to mandate, direct, or control the curriculum of a private or home school, regardless of whether or not a home school is treated as a private school under state law, nor shall any funds under this Act be used for this purpose.