Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act:

Providing Equitable Services to Eligible Private School Children, Teachers, and Families

Updated Non-Regulatory Guidance

October 7, 2019

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PURPOSE OF THE GUIDANCE

Since the initial passage of the Elementary and Secondary Education Act of 1965 (ESEA), private school students and teachers have been eligible to participate in the Title I, Part A (Title I) program. The reauthorization of the ESEA by the Every Student Succeeds Act (ESSA) continues the requirement that a local educational agency (LEA) that receives Title I funds provide equitable services to eligible private school students, their teachers, and their families.[1] This guidance is intended to be used in conjunction with the Title I statute and applicable regulations by both public and private school officials.[2]

This guidance supersedes the U.S. Department of Education (Department) guidance entitled *Title I Services to Eligible Private School Children, Non-Regulatory Guidance* (October 17, 2003); *Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit* (September 2006); and the equitable services guidance contained in *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)* (November 21, 2016).

This guidance document only addresses Title I equitable services to eligible private school children, their teachers, and their families. The ESEA also includes other programs that require State educational agencies (SEAs) and LEAs to provide for the equitable participation of eligible private school students and their teachers and other educational personnel, including those programs governed by the Title VIII, Part F, Uniform Provisions,[3] which the Department will address in separate updated guidance.

The Department has determined that this guidance is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (2007). See https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-07.pdf. Significant guidance is non-binding and does not create or impose new legal requirements. Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this guidance as a "major rule," as defined by 5 U.S.C. § 804(2).

The Department provided a 32-day opportunity for the public to comment on a draft of this document and received over 500 comments. The Department has taken those comments into consideration in revising the draft document. If you are interested in commenting further on this guidance, please email your comments to EquitableServices@ed.gov or write to us at the following address: Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Washington,

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[1] Unless otherwise noted, references and citations in this document to the ESEA are to the ESEA, as amended by the ESSA.

[2] This Title I, Part A non-regulatory guidance does not affect the requirements for providing equitable services to eligible parentally placed private school children with disabilities in accordance with section 612(a)(10)(A) of the Individuals with Disabilities Education Act (IDEA) and 34 C.F.R. §§ 300.130 through 300.144 of the IDEA, Part B regulations.

[3] Title VIII covers 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); and Title IV, Part F, section 4631 (Project SERV). In addition, although not subject to the Title VIII equitable services provisions, Title IV, Part F, section 4644 (Supporting High-Ability Learners and Learning) requires, where appropriate, that the Department make provision for the equitable participation of private school students and teachers.

DC 20202. For further information about the Department's guidance processes, please visit www2.ed.gov/policy/gen/guid/significant-guidance.html.

INTRODUCTION

The purpose of Title I of the ESEA is to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps. (ESEA section 1001). Each LEA that receives Title I funds identifies public school attendance areas and schools that have high concentrations of children from low-income families as eligible to participate in Title I programs. (ESEA section 1113).

ESEA section 1117 requires participating LEAs, in consultation with appropriate private school officials, to provide eligible children attending private non-profit elementary and secondary schools, their teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public school children, their teachers, and their families. Eligible private school children are children who reside in a participating Title I public school attendance area and are low achieving.

A. CONSULTATION

CONSULTATION IN GENERAL

An LEA must consult with appropriate private school officials during the design and development of the LEA's Title I program. The goal of consultation is agreement between the LEA and appropriate private school officials on how to provide equitable and effective programs for eligible private school children. (ESEA section 1117(b)(1)).

A-1. What is consultation?

Timely and meaningful consultation with appropriate private school officials is an essential requirement in an LEA's implementation of an effective Title I program for eligible private school children, their teachers, and their families. Consultation involves discussions between public and private school officials on key topics that affect the ability of eligible private school students to participate equitably in Title I programs. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered. Successful consultation establishes positive and productive working relationships, makes planning effective, continues throughout implementation of equitable services, and serves to ensure that the services provided meet the needs of eligible students and teachers. A unilateral offer of services by an LEA with no opportunity for discussion, or the application of a blanket rule, is not adequate consultation. Only after discussing key topics relating to the provision of Title I equitable services should an LEA make its final decisions with respect to those services.

Roles for private school officials during the consultation process include participating in consultation; assisting the LEA in obtaining information necessary to identify children from low-income families who reside in a participating Title I public school attendance area, including providing addresses, grade levels, and ages of such children; providing names, addresses, and grade levels of children who meet the criteria for participation eligibility; and suggesting ideas, program

designs, and modifications that meet the needs of their eligible children, their teachers, and their families. (See A-15).

A-2. Who is responsible for initiating contact with private school officials regarding participation in the Title I program?
An LEA must annually contact officials of each private school with children who might reside in the LEA to determine whether those officials would like for their eligible students to participate in equitable services under Title I. (ESEA section 1117(b)(1); see A-5). If this does not occur, private school officials should contact the LEA and ask to speak with the individual(s) responsible for administering the Title I program. If a private school official contacts an LEA but receives no response, that official may also contact the State ombudsman for assistance. (See Section E).

A-3. What is an "Intent to Participate" form?
An "Intent to Participate" form is a document that some LEAs send annually to private school officials to determine their interest in participating in Title I equitable services. The form might include a brief description of the programs for which equitable services are available as well as a list of allowable activities, services, and benefits. Some LEAs send this form by registered mail in order to document receipt of the form by private school officials. An LEA might also send such form by email with read receipt.

A-4. May an LEA set a deadline for private school officials to indicate their intent to participate?
Yes. An LEA may set a reasonable deadline, taking into consideration private school schedules, for private school officials to indicate their intent to participate. An LEA should provide clear and sufficient notice of the deadline, identify potential consequences for not meeting the deadline, and give adequate time for private school officials to respond.

A-5. How does an LEA determine which private schools to contact?
An LEA has a responsibility to contact all private schools within the district that might have students eligible to participate in Title I programs—i.e., students who live in a participating Title I public school attendance area in the LEA. An LEA also has a responsibility to contact private schools outside the district if the LEA has reason to believe students who reside in a participating Title I public school attendance area attend those schools. An LEA may not be aware, however, of every instance in which a student who resides in a participating Title I public school attendance area attends a private school outside of the district. Thus, if a private school has students it believes may be eligible for Title I services because they reside in a participating Title I public school attendance area in another LEA and the private school has not been contacted by that LEA, it would be prudent for private school officials to contact the LEA directly in order to ensure that their eligible students are considered for Title I services.

A-6. Who is responsible for initiating consultation?
An LEA must initiate the consultation process. (ESEA section 1117(b)(1)). One way to accomplish this is for the LEA to extend an invitation to officials of each private school that indicates an intent to participate and to convene a meeting at a time and place determined in consultation with private school officials.

A-7. When and how often does an LEA consult with private school officials?
Consultation between an LEA and private school officials must include early discussions to prepare

for the next school year so that there is a timely start of the Title I program. (ESEA section 1117(a)(3)(A), (b)(3)). To be timely and meaningful, consultation must occur during the design and development of such agency's programs and before the LEA makes any decision that affects the opportunity for eligible private school children, their teachers, and their families to participate in Title I programs. (ESEA section 1117(b)(3)). Consultation must also be ongoing throughout the school year to help ensure effective implementation, service delivery, and assessment of equitable services. (ESEA section 1117(b)(3)).

A-8. May a group of private school officials designate a single private school official to represent their interests?

Yes. If a group of private schools will be represented by a single official, that representative should inform the LEA in writing that she/he will serve as the designated primary contact for such schools and provide a list of the private schools that she/he represents.

A-9. What topics must an LEA address during consultation?

The ESEA requires an LEA to consult with private school officials on the following topics:

- How the children's needs will be identified;
- What services will be offered;
- How, where, and by whom the services will be provided;
- How the services will be academically assessed and how the results of that assessment will be used to improve those services;
- The size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated for such services, and how that proportion of funds is determined;
- The method or sources of data that are used to determine the number of children from low-income families in participating school attendance areas who attend private schools, including whether the LEA will extrapolate data if it uses a survey;
- How and when the LEA will make decisions about the delivery of services to eligible 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;
- How, if the LEA disagrees with the views of the private school officials on the provision of services through a contract, it will provide in writing to such private school officials an analysis of the reasons why it has chosen not to use a contractor;
- Whether the LEA will provide services directly or through a separate government agency, consortium, entity, or third-party contractor;
- Whether to provide equitable services to eligible private school children by creating a pool or pools of funds with all of the funds allocated based on all the children from low-income families in a participating school attendance area who attend private schools or based on the children in the LEA's participating school attendance area who attend private schools with the proportion of funds allocated based on the number of children from low-income families who attend private schools (see B-8 and B-9);
- When, including the approximate time of day, services will be provided; and
- Whether to consolidate and use funds in coordination with eligible funds available for services to private school children under applicable programs, as defined in ESEA section 8501(b)(1), to provide services to eligible private school children participating in those programs (see C-13).

(ESEA section 1117(b)(1); 34 C.F.R. § 200.63).

Because an LEA must consult with appropriate private school officials during the design and development of the LEA's Title I program and before the LEA makes any decision that affects the opportunities of eligible private school students to participate (ESEA section 1117(b)(1), (3)), other topics of consultation must include, as appropriate:

- Administrative costs of providing equitable services (see B-36);
- Indirect costs (see B-40);
- Services and activities for teachers of participating private school students (see C-36);
- Family engagement activities (see C-34);
- Any funds available for carryover (see B-27); and
- Transferring funds from Title II, Part A or Title IV, Part A into Title I, Part A (see B-23 through B-25).

A-10. What is entailed in achieving "the goal of reaching agreement" between an LEA and appropriate private school officials?

The "goal of reaching agreement" (ESEA section 1117(b)(1)) between an LEA and appropriate private school officials is predicated on the good faith efforts of all parties to reach agreement regarding the provision of equitable services. Meaningful consultation that results in agreement begins well before the decisions are made or services are implemented and provides a genuine opportunity for all parties to express their views, to have their views given serious, due consideration, and to discuss viable options for ensuring equitable participation of eligible private school students, teachers and other education personnel, and families. In the event of disagreement during the consultation process, an LEA and/or the appropriate private school officials may wish to contact the State ombudsman to help facilitate agreement.

A-11. What documentation of consultation must an LEA maintain?

The ESEA requires an LEA to maintain, and provide to the appropriate entity, the following documentation about the consultation process:

- **Written Affirmation**: Private school officials must affirm in writing that consultation has occurred. Written affirmation also must provide the option for private school officials to indicate their 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 private school officials do not provide such affirmation within a reasonable period, the LEA must forward the documentation that consultation has, or attempts at consultation have, taken place to the SEA. (ESEA section 1117(b)(5)).
- **Results of Agreement**: The LEA must document if consultation resulted in agreement between the LEA and appropriate private school officials, which may be reflected as part of the written affirmation described above, and provide evidence of such agreement, or lack thereof, to the ombudsman. (ESEA section 1117(b)(1)).
- **Reason for Disagreement** (if applicable): If the LEA disagrees with the views of the private school officials with respect to an issue discussed during consultation, the LEA must provide in writing to such private school officials the reasons why the LEA disagrees. (ESEA section 1117(b)(2)).

A-12. Is other documentation that meaningful consultation has occurred helpful?

Yes. In addition to the required documentation discussed in A-11, it is also good practice for an LEA and appropriate private school officials to maintain a record of notes about topics addressed

and decisions made during consultation meetings. Retaining meeting agendas and sign-in sheets is also good practice. In order to verify that it has met the requirement for timely and meaningful consultation and has provided equitable services, as a best practice, an LEA may want to document that it has:

- Annually informed the private school officials of the opportunity to participate in the Title I program and the various services available;
- Engaged in timely consultation, allowing for meaningful discussion between the LEA and appropriate private school officials regarding services and other benefits;
- Identified the needs of private school students, teachers, and families;
- Allocated a per-pupil amount of funds for services to private school students, teachers, and families that is calculated from the proportional share in accordance with ESEA section 1117(a)(4)(A);
- Provided services, programs, materials, and resources;
- Evaluated programs and services for effectiveness; and
- Adequately addressed problems and formal complaints raised by private school officials.

A-13. Is there a specific time by which an LEA must obtain the signature of appropriate private school officials regarding written affirmation/results of agreement?

No. The affirmation of consultation and results of agreement documents are generally signed when consultation on the planning and design of the next year's program has been completed. An SEA has the flexibility to require LEAs to submit the written affirmations and results of agreement at a specified time, so long as that specified time provides adequate opportunity for LEAs to engage in timely and meaningful consultation.

A-14. What should an SEA do when an LEA has not provided it with written affirmations from private school officials?

If an LEA has not obtained a written affirmation signed by appropriate private school officials, an SEA may request that the LEA provide a reason for the lack of affirmation. In some cases, the reason may be that the private school officials did not want Title I services. However, if the reason is that there is a disagreement between the LEA and private school officials, the SEA may facilitate resolution of the differences.

A-15. What assistance might an LEA need from private school officials to obtain information necessary to provide Title I services to eligible students in private schools?

An LEA is responsible for providing equitable services. Because an LEA may not have all necessary information available to do so, however, the LEA may need to request assistance from private school officials to obtain information or documentation that enables the LEA to meet its responsibilities. For example, to calculate the proportional share of funds available to provide equitable services, an LEA may need assistance from private school officials regarding which private school students are from low-income families and their addresses so the LEA can determine whether these students reside in a participating Title I public school attendance area. Similarly, to identify students who are eligible for equitable services (i.e., they reside in a participating Title I public school attendance area and are low-achieving), an LEA may need assistance in obtaining information on the academic performance of low-achieving private school students as well as their names, addresses, and grades to determine, in consultation with appropriate private school officials, what services will be provided. (See A-1). Private school officials may also need to identify eligible students who reside in an LEA different from the one in which the private school is located and

alert the relevant LEA of the students' potential eligibility. (See A-5).

A-16. What is an LEA's obligation to consult with, and provide services to eligible students attending, a new private school that opens after the LEA's deadline for indicating an intent to participate?

An LEA is generally responsible for contacting a new private school, along with all private schools, to determine its intent to participate. An LEA is not required to provide equitable services in the current year to eligible students who attend a new private school if the school opens after the LEA's deadline for indicating an intent to participate in Title I equitable services, but the LEA may do so.

A-17. What is an LEA's obligation to provide equitable services under Title I if a private school declines to participate or does not respond to the LEA's request to consult?

An LEA must be able to demonstrate that it made a good faith effort to contact all the private schools in the district and those outside the district that may enroll eligible private school students who reside in the district. (See A-2 through A-5). If a private school declines to participate in Title I programs or does not respond to an LEA's request to consult in the given timeframe regarding the provision of services in a particular year, the LEA has no further responsibility to provide equitable services to students in that school during that school year. The LEA must contact each private school every year, however, to determine the private school's intent to participate in Title I programs.

A-18. May a private school official request a copy of an LEA's Title I application?

Yes. Such an application is a matter of public record and is available for public review. An application can provide private school representatives with information that enhances consultation and helps them understand the scope of program activities within the LEA. An LEA should therefore make its Title I application available if a private school official requests it.

A-19. How might an SEA help foster positive working relationships between an LEA and private school officials to assist with consultation and program implementation?

There are a number of ways an SEA might help foster positive working relationships between an LEA and private school officials. The SEA's ombudsman, required under ESEA section 1117(a)(3)(B), is a valuable resource for fostering positive working relationships. The ombudsman serves as an SEA's primary point of contact for addressing questions and concerns from private school officials and LEAs regarding the provision of equitable services. (See Section E).

ESEA section 1603(b) also requires an SEA that receives Title I funds to create a State committee of practitioners (COP) to advise the SEA in carrying out its responsibilities under Title I. The COP must include representatives from LEAs as a majority of its members and must also include representatives of private school children. Thus, to assist with consultation and overall program implementation, an SEA can consider the advice it receives from its COP concerning equitable services to help foster positive working relationships between an LEA and private school officials.

An SEA might also consider establishing a private school working group comprised of SEA, LEA, and private school representatives to provide an organized forum for facilitating technical assistance, promoting promising practices for implementing equitable services, and addressing issues of mutual concern to public and nonpublic school communities. Although this is a best practice, unlike the COP or ombudsman, the ESEA does not require an SEA to establish such a working group.

B. EQUITABLE SERVICES ALLOCATIONS AND NOTICE, TIMEFRAME FOR OBLIGATIONS, AND ADMINISTRATIVE AND OTHER EXPENDITURES

Allocations

ALLOCATING FUNDS FOR EQUITABLE SERVICES – IN GENERAL

The ESEA requires an LEA to:

- Ensure that its expenditures for equitable services are equal to the proportion of funds generated by children from low-income families who reside in participating Title I public school attendance areas and attend private schools; and
- Determine the proportional share of Title I funds available for equitable services for eligible private school children based on the total amount of Title I funds received by the LEA prior to any allowable expenditures or transfers of funds.

(ESEA section 1117(a)(4)(A); 34 C.F.R. § 200.64(a)(1)-(2)).

B-1. May an LEA reserve funds off the top of its Title I allocation before it determines the proportional share for equitable services?

No. The ESEA requires an LEA to determine the proportional share of Title I funds available for providing equitable services prior to any expenditures or transfers of funds. (ESEA section 1117(a)(4)(A)(ii)).[4]

B-2. What does it mean for an LEA to determine the proportional share of Title I funds available for equitable services based on the total amount of Title I funds received by the LEA prior to any allowable expenditures or transfers of funds?

An LEA must apply the proportion used to calculate the proportional share to its entire Title I allocation (including any Title II, Part A or Title IV, Part A funds that an LEA transfers into Title I, Part A) before it reserves any funds for other purposes, including all reservations the ESEA requires or authorizes an LEA to take off the top of its Title I allocation, such as reservations for administration, parent and family engagement, children in institutions for neglected or delinquent children, homeless children and youth, and district-wide initiatives.

The following example illustrates how the equitable services proportional share and the reservations to serve homeless children and youth and children in local institutions for neglected children are based on an LEA's total Title I allocation.

As a first step, the LEA determines the amount of Title I funds that it must allocate for equitable services to eligible private school students and reserve for homeless children and youth and children in local institutions for neglected children based on the LEA's total Title I allocation. With respect to the equitable services allocation, in this example 10 percent of children from low-income families who reside in the LEA's participating Title I public school attendance areas attend private schools

[4] The ESEA also requires an LEA to base the required reservations to serve homeless children and youth and children in local institutions for neglected children, as well as the optional reservation to serve children in local institutions for delinquent children, on the LEA's total Title I allocation prior to any allowable expenditures or transfers. (ESEA section 1113(c)(3)(A)-(B)).

(proportional share); therefore, the LEA must allocate 10 percent of its total allocation for equitable services (Row 1 of the following table). Based on needs assessments and considering its total Title I allocation, the LEA also determines the reservation amounts for homeless children and youth and children in local institutions for neglected children (Rows 2 and 3). The LEA then determines the amount it is required to reserve for parent and family engagement under ESEA section 1116(a)(3)(A) and, based on the proportional share of that amount for public school students (i.e., 90 percent), reserves funds from the amount remaining after Step 1 for public school parent and family engagement (Row 4). Finally, from its remaining funds, the LEA makes any other optional reservations for public school Title I students and then allocates funds to schools in accordance with section 1113 of the ESEA.

EXAMPLE: DETERMINING THE EQUITABLE SERVICES PROPORTIONAL SHARE AND REQUIRED TITLE I RESERVATIONS BASED ON AN LEA'S TOTAL TITLE I ALLOCATION OF $1,000,000				
Row	**Activity**	**Amount**	**Basis**	**Amount of Allocation Remaining After Reservation**
1	Equitable services	$100,000 (includes $1,000 to reflect the proportional share of parent and family engagement reservation)	Equitable share calculation based on the LEA's total Title I allocation ($1,000,000 * 10 percent)	$900,000
2	Homeless children and youth	$105,000	Needs assessment and the LEA's total Title I allocation	$795,000
3	Children in local institutions for neglected children	$65,000	Needs assessment and the LEA's total Title I allocation	$730,000
4	Public school parent and family engagement reservation	$9,000 (based on proportional share of reservation)	Statutory requirement that an LEA with an allocation of at least $500,000 reserve one percent or more of the LEA's total Title I allocation	$721,000
5	Optional reservations and required allocations to public school attendance areas	$721,000	Statutory and regulatory requirements for optional reservations and allocations to schools and the funds remaining after the required reservations	$0

B-3. What information does an LEA need to calculate the proportional share under ESEA section 1117(a)(4)(A)?

An LEA needs the amount of its total Title I allocation and poverty data on children residing in participating Title I public school attendance areas who attend public and private schools.

B-4. How does an LEA calculate the proportional share of Title I funds available for equitable services in the next school year?

If not all participating Title I public school attendance areas are known for the next year:

Some LEAs, particularly those with public school attendance areas that may not receive Title I

funds each year, may not be able to determine their participating Title I public school attendance areas prior to calculating the equitable share. Such an LEA may determine the number of children from low-income families residing in each participating Title I public school attendance area who attend public schools and private schools in the current year and use these data to calculate the proportional share. For example, in planning for school year 2019-2020 allocations, to determine the proportional share, an LEA would use its school year 2018-2019 participating Title I public school attendance areas and the number of children from low-income families residing in those attendance areas using poverty data collected during the 2018-2019 school year. When actual participating Title I public school attendance areas are known for the 2019-2020 school year, the LEA would recalculate the proportional share and notify appropriate private school officials of any differences in the amount of funds generated by children from low-income families in each private school. Through consultation, the LEA may need to adjust the services it will provide to eligible private school students accordingly.

<u>If all participating Title I public school attendance areas are known for the next year:</u>
If an LEA has established its participating Title I public school attendance areas for the next school year, it would first determine the number of children from low-income families residing in each of these areas who attend public schools and private schools. For example, in planning for school year 2019-2020, if the LEA has determined the public school attendance areas that will receive Title I funds in the 2019-2020 school year, then it can also determine the number of children from low-income families residing in those attendance areas using poverty data collected during the 2018-2019 school year. (ESEA section 1117(a)(4)(A), (c)(1)).

To calculate the proportional share for equitable services, the LEA would determine the overall number of children from low-income families who reside in participating Title I 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 proportional share of the LEA's total Title I allocation. For example, an LEA with four Title I public school attendance areas and a total Title I allocation of $1,000,000 would determine the proportional share as follows:

EXAMPLE – DETERMINING THE PROPORTIONAL SHARE			
Public School Attendance Area	**# of Public School Low-Income Children**	**# of Private School Low-Income Children**	**Total # of Low-Income Children**
A	500	120	620
B	300	9	309
C	200	6	206
D	350	15	365
TOTAL	**1,350**	**150**	**1,500**
PROPORTIONAL SHARE	90%	10%	
	$900,000	$100,000	

B-5. How does an LEA determine participating Title I public school attendance areas?
ESEA section 1113(a) requires an LEA to allocate Title I funds to public school attendance areas or schools, identified as eligible and selected to participate, in rank order of poverty percentage based on the number of public school children from low-income families residing in each attendance area or school. An LEA first annually ranks its public school attendance areas or schools by poverty

percentage and then selects, in rank order, those areas that the LEA will serve. For areas or schools that exceed 75 percent poverty, the ESEA requires an LEA to serve those areas in rank order without regard to grade-span before serving any attendance area with a poverty percentage of 75 percent or below. If an LEA has sufficient funds to serve all areas or schools above 75 percent poverty and has Title I funds remaining, the ESEA permits the LEA to serve its other areas or schools in rank order of poverty by the LEA as a whole or by grade-span groupings. Among areas or schools with less than 75 percent poverty, this gives an LEA the flexibility to focus resources on certain grades.

B-6. What data does an LEA use when determining eligible Title I public school attendance areas?

In identifying and ranking eligible Title I public school attendance areas, ESEA section 1113(a)(5)(A) requires an LEA to use one (or a combination) of four sources of school-level poverty data: census; free or reduced-price lunch (FRPL), including FRPL data used to implement the Community Eligibility Provision (CEP); Temporary Assistance for Needy Families (TANF); and Medicaid.

B-7. How does an LEA determine the amount of Title I funds to be used for parent and family engagement activities for participating private school students?

ESEA section 1116(a)(3)(A) requires an LEA to reserve and spend at least one percent of its Title I allocation to carry out mandatory Title I parent and family engagement activities if the LEA's Title I allocation exceeds $500,000. This means that the ESEA requires such an LEA to reserve at least one percent from the proportional share allocated for equitable services and at least one percent of the total remaining amount for Title I activities in public schools. For example, an LEA's total Title I allocation is $1,000,000. From that amount, $100,000 (10 percent) is allocated for all Title I equitable services activities and $900,000 (90 percent) for all Title I activities in public schools. Therefore, with respect to equitable services, the LEA must spend at least one percent ($1,000 from the $100,000 proportional share) to provide engagement activities for the parents and families of participating private school students (leaving $99,000 for other equitable services activities).

If an LEA's Title I allocation does not exceed $500,000, the LEA may still reserve a portion of the proportional share to provide engagement activities for the parents and families of participating private school students. The amount reserved by the LEA would be based on timely and meaningful consultation with private school officials.

B-8. What are the options available for providing equitable services to private school children?

Consistent with ESEA section 1117(b)(1)(J), following consultation with, and the agreement of, private school officials (see B-9), an LEA may choose one or more of the following options for providing equitable services to eligible private school children with Title I funds:

1. School-by-School: Provide equitable services to eligible children in each private school with the Title I funds generated by the children from low-income families who reside in participating Title I public school attendance areas and attend that private school.
2. Pooling within an LEA: Provide equitable services to eligible children attending a private school that is part of a group of private schools (such as a group of schools under the authority of a single organization) by pooling the Title I funds generated by children from low-income families who reside in participating Title I public school attendance areas and attend a private school in the group. The LEA, in consultation with appropriate private

school officials, must establish criteria to determine the eligible private school students in greatest educational need to receive services. The services provided to eligible children attending a particular private school do not depend on the amount of funds generated by children from low-income families in that school; rather, the services are based on educational need. If private school officials representing different groups of private schools request pooling, the LEA may establish a separate pool for each requesting group.

3. Pooling across LEAs**:** Because eligibility for Title I services is based on a child's residence and not where the child attends school, it is common that multiple LEAs have a responsibility to provide services to eligible children who attend the same private school, making provision of those services through pooling across LEAs potentially more educationally effective and efficient than by each individual LEA providing services to eligible students in the same private school. Thus, multiple LEAs may pool the Title I funds generated by their private school children from low-income families who reside in a participating Title I public school attendance area to serve eligible low-achieving private school children who reside in those LEAs. In other words, low-achieving private school children in greatest need who reside in a participating Title I public school attendance area in any of the applicable LEAs may be served with the pooled funds. The LEAs, in consultation with appropriate private school officials, must establish criteria to determine the eligible private school students in greatest educational need to receive services.

The following example shows the differences among the school-by-school approach, pooling within an LEA, and pooling across LEAs. In this example:

- LEA A and LEA B have a responsibility to provide equitable services to low-achieving children who reside in a participating Title I public school attendance area within their boundary and attend Private Schools 1 and 2.
- Private school children from low-income families who reside in a participating Title I public school attendance area in LEA A generate $50,000 for equitable services in Private School 1 and $25,000 for equitable services in Private School 2.
- Private school children from low-income families who reside in a participating Title I public school attendance area in LEA B generate $5,000 for equitable services in Private School 1 and $1,000 for equitable services in Private School 2.

Scenario 1: No pooling

Eligible low-achieving private school children receive services based on the amount of Title I funds generated by children from low-income families in their school as determined by the LEA in which they live. For example, eligible private school children in Private School 1 who live in LEA A receive $50,000 in services while their Title I eligible classmates who live in LEA B receive only $5,000 in services. This is true even if there are more low-achieving students who reside in LEA B.

Scenario 2: Pooling Title I funds among private schools within a single LEA

Appropriate private school and LEA officials agree after consultation to pool Title I funds within LEA A and LEA B individually. There is $75,000 available to serve low-achieving private school children in both Private School 1 and Private School 2 who live in LEA A and $6,000 available to serve low-achieving private school children in both private schools who live in LEA B. Even if

there are more low-achieving children who reside in LEA B than LEA A, there is only $6,000 available to serve these students.

Scenario 3: Pooling Title I funds among private schools across LEAs

Appropriate private school and LEA officials agree after consultation to pool Title I funds across both LEA A and LEA B. There is then $81,000 available to serve, based on uniform criteria of educational need, the lowest-achieving eligible private school children who attend Private Schools 1 and 2 regardless of whether they reside in LEA A or LEA B and without regard to how much funds children from low-income families within their private school generate towards the pool. Eligible low-achieving children may receive Title I services even if their school has few or no children from low-income families who generate Title I funds.

B-9. May an LEA make a unilateral decision to pool funds among several private schools to provide equitable services?

No. As a general rule, ESEA section 1117 and 34 C.F.R. § 200.62 require an LEA to provide equitable services to eligible students who attend a private school (i.e., students who are low-achieving and reside in a participating Title I public school attendance area) with Title I funds generated by students from low-income families who reside in a participating Title I public school attendance area and who attend the school. In other words, an LEA must provide equitable services to eligible low-achieving students in a given school commensurate with the Title I funds generated by students from low-income families in the school.

Pooling is an alternative to this general rule (compare section 1117(b)(1)(J)(i) with 1117(b)(1)(J)(ii)) and permits an LEA, after timely and meaningful consultation with appropriate private school officials, to provide services to eligible low-achieving students among a group of schools with Title I funds generated by students from low-income families who reside in participating Title I public school attendance areas and who attend those schools. Which students to serve is determined, in consultation with appropriate private school officials, among all schools in the pool. Thus, students in a given school may not receive services commensurate with the funds generated by students from low-income families in the school; some may receive more services, and some may receive less. Because pooling is an alternative to the general rule, despite an LEA's authority to make the final decisions with respect to the services it will provide to eligible private school students (34 C.F.R. § 200.64(b)(4)), LEA and appropriate private school officials must agree through consultation for the LEA to pool Title I funds among a group of private schools because it impacts the services eligible students in a given private school would otherwise receive. Without such agreement, an LEA must follow the general rule in section 1117(b)(1)(J)(ii) and provide equitable services to eligible low-achieving students in each school commensurate with the funds generated by students from low-income families in that school.

B-10. After an LEA determines the proportional share, the administrative and indirect cost (if any) amounts (see B-36 and B-40) and, if applicable, the parent and family engagement activities amount (see B-7), how does the LEA allocate the remainder of the proportional share to provide equitable services?

An LEA subtracts from the proportional share the amounts needed for administration, indirect costs (if any), and parent and family engagement, if applicable, and divides the remainder by the total number of private school students from low-income families in participating Title I public school attendance areas to establish a per-pupil amount. The LEA then multiplies this per-pupil amount by

the number of private school students from low-income families that attend a participating private school (or a group of schools) to determine the amount available to serve eligible students in the school or, as applicable, group. This per-pupil amount will likely vary from the per-pupil amount the LEA uses to allocate its Title I funds to public schools under ESEA section 1113(c). This is primarily because, as discussed above in B-2, the ESEA requires an LEA to reserve funds for activities such as providing Title I services to homeless children and youth before allocating Title I funds to eligible public schools. In addition, in allocating Title I funds to public schools, an LEA may use different per-pupil amounts, consistent with ESEA section 1113(c) and 34 C.F.R. § 200.78(c).

Using the above examples, of the total $100,000 proportional share, the LEA has $99,000 for equitable services remaining after the $1,000 parent and family engagement reservation. The LEA then determines, after consultation with private school officials, to reserve three percent ($3,000) from the equitable share for administration and charges one percent ($1,000) for indirect costs, which results in $95,000 remaining and a per-child amount of $633.33 ($95,000/150 private school children from low-income families). Assuming that there are three participating private schools (Private Schools 1, 2, and 3) from which the 150 low-income children come and the LEA, after consultation, decides to provide services on a school-by-school basis, the following table shows the calculation to determine the amounts available from the $95,000 to serve eligible students in each school.

Private school	**Number of private school low-income children**	**Per-child amount ($95,000/150 low-income children)**	**Allocation for services in private school**
1	75	$633.33	$47,500
2	50	$633.33	$31,667
3	25	$633.33	$15,833
Total	**150**	**$633.33**	**$95,000**

On the other hand, if the LEA and appropriate private school officials agree to pool funds for the three schools, the LEA would combine the funds generated by low-income private school students in each of the three schools to create the pool. This would result in the availability of $95,000 to serve eligible children in greatest educational need in the three schools without regard to the specific amount of funds generated by low-income children in a particular school.

B-11. How does an LEA determine the number of children, ages 5 through 17, who are from low-income families, reside in participating Title I public school attendance areas, and attend private schools?

The ESEA requires an LEA to determine an accurate count of children from low-income families who attend public and private schools and reside in participating Title I public school attendance areas in order to allocate the proportional share. With respect to private school students, the ESEA permits an LEA, based on timely and meaningful consultation, to use:

1. The same measure of poverty used to count public school children. If the same measure of poverty used to count public school children is available for private school students (e.g., FRPL data) and an LEA concludes, after consultation with appropriate private school officials, that the data will yield an accurate count of private school students, the Department recommends that the LEA use the same measure.

2. Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable. An LEA may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. (ESEA section 1117(c)(1)(B)). An LEA should not require that the private school officials give the names of low-income families. The only information necessary for an LEA to collect from such a survey of private school children is—
    (1) verification of residence in a participating Title I public school attendance area;
    (2) grade level and age of each child; and
    (3) income level of parents.

    If, based on consultation with private school officials (see A-9), an LEA chooses to extrapolate the survey results to the private school's entire enrollment, the LEA will also need the private school's enrollment. For example, in a private school with an enrollment of 400, if an LEA receives survey data for 300 children that indicate that 150 children are from low-income families (50 percent), to extrapolate the results the LEA would multiply 400 by 0.5 to determine that there are 200 children in the school from low-income families.
3. Comparable poverty data from a different source. An LEA may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same. For example, an LEA uses FRPL data, but private school children do not participate in the free and reduced-price lunch program; however, private school officials are able to provide an LEA with a count of children who are from low-income families using other comparable sources of poverty data such as eligibility for means-tested tuition scholarship programs.
4. Proportionality. An LEA may apply the low-income percentage of each participating Title I public school attendance area to the number of private school children who reside in that school attendance area to derive the number of private school children from low-income families. To do this, an LEA will need the addresses, grade levels, and ages of those students attending private schools. For example, if the percentage of poverty in a public school attendance area is 60 percent and there are 50 private school children residing in the public school attendance area, the LEA would derive 30 private school children from low-income families who reside in the attendance area.
5. An equated measure. An LEA may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, an LEA uses FRPL data, but those data are not available for private school students. However, if TANF data are available, the LEA could determine an equated measure of poor children in private schools based on FRPL data by correlating the two sets of data as follows:

$$\frac{\text{TANF (public)}}{\text{FRPL (public)}} = \frac{\text{TANF (private)}}{\text{X (private)}}$$

    In this example, the LEA may then use the equated number of private school children based on FRPL data ("X") as the number of private school children from low-income families.

(ESEA section 1117(c)(1); 34 C.F.R. § 200.64(a)(3)(i)).

After consultation with private school officials occurs, an LEA has the final authority to decide which method it will use to calculate the number of children who are from low-income families and attend private schools. (ESEA section 1117(c)(1)).

B-12. How often must an LEA collect poverty data?

ESEA section 1117(a)(4)(D) permits an LEA to determine the number of children from low-income families who attend private schools every year or every two years. Section 1117(b)(1)(F) requires an LEA to consult with appropriate private school officials about the availability of poverty data on private school children, and an LEA can determine whether it would be more feasible to collect biennially. This may reduce the burden of annually collecting poverty data from private schools, particularly if data are not readily available for students in a private school. It is also not necessary that an LEA use the same timeframe with regard to all private schools. For example, if some private schools have FRPL data available, the LEA could collect those data annually. For other private schools that rely on a survey, the LEA could collect data biennially.

B-13. May an LEA use more than one method of collecting poverty data on private school children?

Yes. Although the preferred measure for obtaining poverty data on children in private schools is the same measure the LEA uses for public school children (e.g., school lunch data such as direct certification data), these data may not be available for each private school (e.g., if a private school does not participate in the school lunch program). Thus, it may be necessary for an LEA, after consultation with appropriate private school officials, to use more than one method of collecting data on children living in poverty among private schools or within a single school. However, the LEA must ensure that there are no duplicate counts and that the methods used have comparable income levels.

B-14. If private school officials assist an LEA in obtaining data necessary for the LEA to determine the proportional share, how do LEA officials or auditors determine the accuracy of information retained by the private school officials?

If private school officials assist an LEA in obtaining data necessary for the LEA to determine the proportional share—e.g., by providing data on children from low-income families who reside in a participating Title I public school attendance area and attend the private school—they must maintain relevant data not provided to the LEA in their files. If LEA officials or auditors, as appropriate, wish to review the data, they may do so at the private school. The type of data will depend on the method an LEA decides to use, after timely and meaningful consultation with private school officials, to determine the poverty count of private school children. Examples of data might include student addresses, survey forms completed by families, or scholarship information.

B-15. If an LEA has poverty data for children in a private school, regardless of whether the private school participates in Title I, does the LEA include the poverty data in calculating the proportional share?

Yes. The ESEA requires an LEA to base the proportional share on the number of children from low-income families who reside in participating Title I public school attendance areas. (ESEA section 1117(a)(4)(A)). Therefore, an LEA must include children from low-income families who attend any private school for which the LEA has poverty data (including private schools that participate in Title I and non-participating schools) and reside in participating Title I public school attendance areas in calculating the proportional share. The funds generated for equitable services by these children would be available to serve eligible children in participating private schools. (See B-10).

If an LEA does not have poverty data on children in non-participating private schools, then there is no obligation on the LEA to obtain these data to include in calculating the proportional share.

B-16. If an LEA and appropriate private school officials agree to establish a pool or pools of Title I funds allocated for private school children and, later, one or more private schools in the pool decline services for eligible students enrolled in the school, what happens to the funds generated by children from low-income families in the private school(s)?

The ESEA requires that an LEA consult with private school officials regarding the size and scope of equitable services to be provided to eligible private school children in a single school or pool of schools, the proportion of funds that is allocated for such services, and how that proportion of funds is determined. (ESEA section 1117(b)(1)(E)). Consistent with this requirement, if a private school that initially is part of a pool later declines services, an LEA must consult with appropriate private school officials regarding how funds generated by students in the school will be used. Generally, the funds generated remain within the pool, such as where a private school in a pool elects not to receive services because only one or two students in the school are eligible for services. However, after consultation with private school officials, an LEA might determine that the amount generated by children from low-income families who attend schools declining services results in a total amount for the pool that substantially exceeds the amount needed to provide equitable services to eligible children in the pool's participating schools (e.g., where a significant amount of funds is generated by students in schools declining services, but only a small number of eligible students attend other schools in the pool). In this situation, the LEA may allocate the excess funds to provide equitable services to eligible children in private schools that are not part of the pool. (Note that, unless there are no other participating private schools in the LEA, the LEA would not allocate any of the excess funds for services to public school students because the ESEA requires that all funds generated for equitable services remain a part of the overall private school proportional share. (ESEA section 1117(a)(4)(A)).)

B-17. When an LEA elects not to serve an eligible public school attendance area, as permitted under ESEA section 1113(b)(1)(D), what are the procedures for serving the private school children who reside in that attendance area?

An LEA may elect not to serve ("skip") an eligible public school attendance area or school that has a higher percentage of children from low-income families than other schools it elects to serve in certain circumstances. In implementing this provision, therefore, an LEA must determine which school attendance areas would have received Title I funds absent any skipping, include children from low-income families who reside in these attendance areas and attend private schools in calculating the proportional share under ESEA section 1117(a)(4)(A), and, from the proportional share, determine the amount of these funds that are available for services for eligible private school children residing in the skipped public school attendance areas. If the LEA skips one or more of its higher-ranked school attendance areas, enabling the LEA to use Title I funds to serve a public school with a lower poverty percentage than the skipped school, ESEA section 1117(b)(1)(E) requires the LEA to consult with private school officials about whether eligible private school children residing in the additional served attendance area will receive services. The LEA is not required, however, to include private school students from low-income families who reside in the additional served attendance areas in calculating the proportional share.

B-18. How are private school children identified as residing in a participating Title I public school attendance area if an LEA is operating under an open enrollment, desegregation, or magnet plan?
If an LEA identifies a public school as eligible on the basis of enrollment, rather than serving an eligible school attendance area, the LEA must, in consultation with private school officials throughout the district, determine an equitable way to identify eligible private school children. For example, the LEA may assign a private school child to the public school attendance area in which the child resides or to the public school that the child would have attended.

Special Consideration: Community Eligibility Provision
Detailed information regarding the Community Eligibility Provision (CEP) and the use of direct certification data in Title I is available in guidance issued by the Department in 2013 and revised in 2015 (available at https://www2.ed.gov/programs/titleiparta/15-0011.doc).

B-19. What is CEP?
To be eligible for CEP, an LEA and/or school must meet a minimum level of "identified students" for free meals in the year prior to implementing CEP; agree to serve free breakfasts and lunches to all students; and agree to cover with non-Federal funds any costs of providing free meals to students above the amounts provided by Federal assistance.

B-20. If a private school is a CEP school, does every child in the private school automatically generate Title I funds for equitable services?
No. Title I funds are generated to provide equitable services to eligible private school students on the basis of private school students from low-income families who reside in participating Title I public school attendance areas and not on the basis of all students in a private school. Accordingly, even if a private school is a CEP school and all students in the school are from low-income families, only those students who reside in a participating Title I public school attendance area would generate funds for Title I equitable services.

B-21. Is an LEA's collection of poverty data on private school students affected by CEP data?
Possibly. As noted above, it is an LEA's responsibility, after consultation with private school officials, to identify the method it will use to determine the number of private school children from low-income families who reside in participating Title I public school attendance areas.

If an LEA uses National School Lunch Program (NSLP) data that include a mix of CEP data and FRPL data to allocate Title I funds to public school attendance areas and schools, and such data are also available for private school students, then the LEA would most likely use the NSLP data as the poverty measure it uses when calculating the amount of funds available for equitable services. If the same measures (e.g., CEP data and FRPL data) are not available for private school students, the LEA must use another measure of poverty. (See B-11 for options). If an LEA allocates Title I funds to its public schools based on their direct certification counts multiplied by 1.6,[5] the LEA may use a poverty measure with a poverty threshold for private school students equal to the CEP threshold it is using for public school students and multiplied by 1.6.

[5] The 1.6 multiplier in the CEP statute provides an estimate of the percentage of students eligible for FRPL in participating CEP schools, groups of schools, or LEAs that is comparable to the poverty percentage that would be obtained in a non-CEP school.

B-22. How does an LEA determine the number of low-income private school children in participating Title I public school attendance areas if a private school participates in CEP?
If a private school participates in CEP, and an LEA uses NSLP data to allocate Title I funds to public schools but has no public CEP schools, the LEA would most likely determine the number of low-income private school students by multiplying the number of directly certified students who live in a Title I participating public school attendance area and are enrolled in the private school by the 1.6 multiplier.

If, however, a private school participates in CEP and the LEA uses NSLP data to allocate Title I funds to public schools, with some or all public schools participating in CEP, the method for determining the number of low-income private school students would vary depending upon the specific method used to determine the number of low-income public school students. For example, if an LEA uses direct certification data multiplied by 1.6 for its public schools, it would use the same method for private CEP schools. Similarly, if an LEA uses direct certification data alone to determine the number of low-income students in its public schools, it would do the same to determine the number of low-income students in private CEP schools.

Under any of the above scenarios, if providing direct certification data is administratively burdensome for a CEP private school or, based on consultation, the LEA determines that it would not be appropriate for other reasons to use CEP data for private school students, the LEA instead could obtain comparable data on private school students through other means, such as a survey. (See B-11 for information on methods for determining the number of low-income students in private schools.)

Transferability and Title I Equitable Services

ESEA section 5103 gives LEAs flexibility to transfer some or all of their funds under certain ESEA programs to other eligible ESEA programs. Under the transferability authority, LEAs can transfer funds received under Title II, Part A and Title IV, Part A into, for example, Title I, Part A. LEAs may not, however, transfer funds out of Title I, Part A. LEAs do not need prior approval from the Department to exercise the transferability authority, but before an LEA can transfer funds from a program subject to equitable services requirements, it must engage in timely and meaningful consultation with appropriate private school officials. (ESEA section 5103(e)(2)).

For more information, see the "Transferability" section in the *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)* (November 21, 2016), available at https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf, and the *Guidance on the Transferability Authority*, which is based on the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), but remains mostly applicable, except as modified by the Fiscal Changes guidance, available at www2.ed.gov/programs/transferability/finalsummary04.doc.

CONSULTATION AND TRANSFERABILITY

The ESEA requires an LEA, before transferring any funds, to engage in timely and meaningful consultation with appropriate private school officials and give due consideration to the views of these officials prior to making decisions regarding transfers. (ESEA section 5103(e)(2)).

B-23. If, after timely and meaningful consultation, an LEA transfers funds into Title I under ESEA section 5103(b), are those funds subject to the proportional share in order to provide equitable services?
Yes. ESEA section 5103(e)(1) requires that transferred funds be subject to the rules and requirements applicable to the funds under the provision to which the funds are transferred. Therefore, an LEA must apply the proportional share calculation in ESEA section 1117(a)(4)(A) (see B-2) to any funds transferred into Title I. For example, if an LEA's initial Title I allocation is $1,000,000 and, after consultation, the LEA decides to transfer $50,000 from Title IV, Part A to Title I, the LEA will calculate the Title I proportional share based on its Title I allocation after the transfer ($1,050,000).

B-24. Under ESEA section 5103(b), after timely and meaningful consultation, may an LEA transfer funds into the Title I program solely to provide services for private school students?
No. The ESEA does not authorize an LEA to transfer to the Title I program only the portion of funds available for services for private school students from one or more of the programs whose funds may be transferred. If an LEA decides to transfer funds, it must provide services to public and private school students and teachers in accordance with all of the requirements of the program(s) to which the funds are transferred. (ESEA section 5103(e)(1)).

B-25. May an LEA, after timely and meaningful consultation, retain funds in a program from which it transfers funds to Title I solely to provide equitable services under that program?
No. Just as an LEA may not transfer funds to a particular program solely to provide equitable services, it may not retain funds solely for this purpose. Thus, if an LEA chooses to transfer its Title II, Part A or Title IV, Part A funds to Title I, it may not retain a portion of those funds solely to provide equitable services under Title II, Part A or Title IV, Part A. Rather, if an LEA decides to transfer funds into Title I, it must provide services to public and private school students, their teachers, and their families in accordance with all Title I requirements. (ESEA section 5103(e)(1)).

Timeframe for Obligations

OBLIGATION OF FUNDS

Funds allocated to an LEA for educational services and other benefits to eligible private school children, their teachers, and their families must be obligated in the fiscal year for which the funds are received by the LEA. (ESEA section 1117(a)(4)(B)).

B-26. What is the purpose of the obligation of funds requirement given that an LEA may carry over funds from a given fiscal year and spend those funds in the succeeding fiscal year?
The purpose of this requirement is to ensure that an LEA obligates the funds available under Title I to provide equitable services in the fiscal year for which the funds are appropriated so that eligible students, teachers and other educational personnel, and families receive the services to which they are entitled in a timely manner. This provision reinforces the requirement that an LEA conduct timely consultation with private school officials to design appropriate equitable services so that those services can begin at the beginning of the school year for which the funds are appropriated.

B-27. May an LEA carry over unobligated funds despite the statutory requirement regarding obligation of funds?

If an LEA is providing equitable services as required and meeting the obligation of funds requirement in ESEA section 1117(a)(4)(B), it generally should not have any, and certainly not significant, carryover. The ESEA, however, does not prohibit carryover of funds for equitable services and, in most cases, requires it. The following are examples of circumstances that could result in carryover of equitable services funds and how an LEA would use such carryover:

Reason for Carryover	Use of Carryover
Services for eligible children in one or more private schools are delayed (e.g., based on a natural disaster, delayed consultation, inability to employ qualified personnel, or unexpected procurement challenges). As a result, the LEA is unable to fully provide required equitable services, and some funds are unobligated at the end of the Federal fiscal year.	The LEA must use the funds to provide equitable services to eligible children in the affected private schools the following year.
An LEA uses a third-party contractor to provide equitable services, and the invoiced amount for services in one of the private schools is $1,000 less than anticipated. Because this occurs late in the summer, the LEA is unable to responsibly obligate the funds prior to the end of the Federal fiscal year.	The LEA, in consultation with private school officials, must use these funds the following year to provide equitable services to students in the affected private school. If, after consultation, those private school officials decline such services, the LEA must add the funds to the proportional share available for equitable services to other participating private schools. If there are no other participating private schools, the funds may be used to provide Title I services in public schools.

B-28. How does the 15 percent carryover limitation in ESEA section 1127(a) apply to equitable services carryover?

The 15 percent carryover limitation in ESEA section 1127(a) is calculated based on an LEA's total Title I allocation, including the portion allocated for equitable services. However, because an LEA generally must carry over any equitable services funds not obligated in accordance with ESEA section 1117(a)(4)(B), if an LEA exceeds the carryover limitation, and an SEA reduces the LEA's allocation as a result, such reduction may not come from the portion of carryover funds used to provide equitable services. An exception would be if one or more private schools declines all or a portion of services, and there are no other participating private schools. In this case, the SEA would consider the funds generated for the declined services when making a reduction to an LEA's allocation.

B-29. When does an "obligation" occur?

34 C.F.R. § 76.707 governs when an obligation of Federal funds by an SEA or LEA occurs.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

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 employee of the State or subgrantee	On the date on which the State or subgrantee makes a binding 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 C.F.R. Part 200, Subpart E—Cost Principles	On the first day of the grant or subgrant performance period.

B-30. How long does an LEA have to meet the obligation of funds requirement in ESEA section 1117(a)(4)(B)?

The applicable fiscal year is the Federal fiscal year, which ends on September 30 of each year. Although the State in which an LEA is located may operate on a different fiscal year (e.g., July 1 through June 30), September 30 is the date by which an LEA must obligate funds for equitable services to meet ESEA section 1117(a)(4)(B). For example, with respect to fiscal year 2017 Title I funds that an LEA received for the 2017-2018 school year, the ESEA requires an LEA to have obligated all of the funds generated for equitable services by September 30, 2018. In other words, the obligation period does not end with the end of the school year or the State's fiscal year.

B-31. May an LEA impose reasonable deadlines on private school officials to facilitate meeting the obligation of funds requirement in ESEA section 1117(a)(4)(B)?

Yes. An LEA—not private school officials—is responsible for ensuring that Title I funds are obligated in a timely manner. In some cases, however, action by private school officials is necessary for the LEA to meet this obligation. For example, if an LEA plans to reimburse private school teachers for the cost of Title I professional development selected by private school teachers from a menu of approved courses, during consultation it could establish a reasonable deadline by which private school staff must participate in applicable courses (e.g., by September 1 so that the LEA has time to process reimbursement requests before the end of the Federal fiscal year).

If a deadline is established in consultation and in the context of the requirement to obligate funds generated for equitable services in the current fiscal year, it would be reasonable for the LEA to inform private school officials that, if the deadline is not met and the private school officials have not notified the LEA of obstacles to meeting the deadline in a timely manner, the LEA may consider the private school to have declined services. Generally, however, the ongoing consultation required by the ESEA (ESEA section 1117(b)(3)) will help prevent this situation from occurring because consultation throughout the year provides an established forum for private school officials to alert the LEA if there are obstacles to meeting a deadline (e.g., a private school participant was unable to attend professional development due to an illness).

Notice of Allocations

NOTICE OF ALLOCATION

An SEA must provide notice in a timely manner to appropriate private school officials in the State of the allocation of funds for educational services and other benefits under Title I that an LEA has determined are available for eligible private school children, their teachers, and their families. (ESEA section 1117(a)(4)(C)).

B-32. What information must an SEA include in the notice of allocation that the SEA must provide to private school officials?
The ESEA requires an SEA to annually provide information on the amount of funds allocated for equitable services under Title I that each LEA responsible for providing equitable services has determined is available for eligible private school students, their teachers, and their families. (ESEA section 1117(a)(4)(C)).

B-33. Is an SEA required to use a particular method to disseminate the notice of allocation?
No. An SEA has flexibility to determine, in consultation with appropriate private school officials, an effective manner for disseminating the notice of allocation. An SEA may consider methods such as publicly posting this information on the SEA's website, using an email distribution list of private school officials, and other methods.

B-34. Is there a specific timeline for the SEA to disseminate the notice of allocation?
No. An SEA has flexibility to determine, in consultation with appropriate private school officials, a reasonable timeline for providing the notice of allocation. To ensure that the notice is provided in a timely manner, dissemination would generally occur prior to the beginning of the school year.

B-35. Is an LEA required to provide private school officials with the amount of funds available for equitable services for private school students in a specific private school or pool of schools?
Yes. As noted in A-9, the ESEA requires an LEA to consult with private school officials regarding the size and scope of the equitable services to be provided, the proportion of funds that is allocated for equitable services, and how that proportion is determined. (ESEA section 1117(b)(1)(E)). Given that consultation must occur well before allocations are finalized, it is likely that the initial discussions of this topic will be based on estimated allocations for the coming school year, which may be based on the prior year's allocations or preliminary allocations for the coming school year.

Once final allocations are available, the ESEA requires an LEA to provide this information to private school officials. In addition to addressing this topic during consultation, some LEAs provide this information through their website or in some other written form. This requirement is distinct from the notice of allocation requirement applicable to an SEA that is described in B-32.

Administrative and Other Expenditures

B-36. How does an LEA reserve Title I funds for its administration of the Title I program to provide equitable services for private school students?

After consultation with private school officials, an LEA may reserve an amount from the proportional share that is reasonable and necessary for the LEA's administration of equitable services. (2 C.F.R. §§ 200.403(a) and 200.404[6]). (This term refers to administrative activities that are directly attributable to the equitable services program, such as the time an LEA's Federal programs director spends on equitable services; it does not refer to indirect costs, discussed below in B-40.) An LEA determines this amount separately from the amount of funds needed for the administration of the Title I program for students in public schools. ESEA section 1117(b)(1)(E) requires the LEA to consult with appropriate private school officials about the size and scope of the equitable services for eligible private school children. Therefore, because the amount of the proportional share used for administration directly affects the size and scope of equitable services, the LEA must consult with private school officials regarding the administrative costs for implementing equitable services before it decides the amount to reserve for this purpose. (See A-9). If an LEA is considering charging indirect costs to the proportional share, as discussed below in B-40, this would also be a topic during consultation in addition to discussing administrative costs. (See A-9).

B-37. May a third-party contractor hired by an LEA incur administrative costs?

Yes. A third-party contractor hired by an LEA to provide services to private school participants may incur administrative costs, which must come from the proportional share. The LEA and third-party contractor should identify in the contract the portion of the costs that are administrative.

B-38. For a Title I classroom in a private school, may Title I funds be used to purchase furniture?

Yes. From the proportional share, following consultation with private school officials, an LEA may use Title I funds to purchase furniture for a Title I classroom in a private school if that cost is reasonable and necessary to provide equitable services. (2 C.F.R. § 200.403). If an LEA purchases furniture with Title I funds, only Title I participants may use it. (2 C.F.R. § 200.403). Furthermore, ESEA section 1117(d)(1) requires that title to materials, equipment, and property purchased with Title I funds be in a public agency and that a public agency administer the resources.

B-39. If eligible private school children need transportation from the private school to another site in order to be served by the Title I program, who is responsible for providing this transportation?

If private school children eligible to receive equitable Title I services need to be transported from their private school to another site, the LEA, as the provider of equitable services, is responsible for

[6] 2 C.F.R. Part 200 is the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

providing that transportation. It is not the responsibility of the private school or the participants' parents to provide the necessary transportation. The cost of such transportation is an administrative cost and is therefore paid from the proportional share. Thus, it is often beneficial for LEAs and private school officials to work together to facilitate the provision of Title I services at the private school site in order to reduce administrative costs and time away from the student's general course of instruction at the private school.

B-40. May an LEA charge indirect costs associated with providing equitable services to the proportional share of Title I funds available for equitable services?

Yes. The Uniform Guidance authorizes the charging of indirect costs by a recipient of Federal funds, including an LEA.[7] LEA officials must discuss indirect costs with private school officials during consultation because these costs affect the amount of the proportional share that is available to provide Title I services to eligible students, their teachers, and their families. (ESEA section 1117(b)(1)(E); A-9). In addition, a program that has a supplement not supplant requirement, like Title I, must use a restricted indirect cost rate.[8] Generally, an LEA with an approved restricted indirect cost rate may apply that rate to all its modified total direct costs,[9] including those it incurs to provide equitable services.

C. DELIVERY OF EQUITABLE SERVICES

ELIGIBLE CHILDREN

An LEA must provide equitable services to the extent consistent with the number of eligible children identified under ESEA section 1115(c) in the school district served by an LEA who are enrolled in private elementary and secondary schools. (ESEA section 1117(a)(1)(A)).

C-1. What private school students are eligible for Title I services?

In general, to be eligible for Title I services, a private school child must reside in a participating Title I public school attendance area and must be identified by the LEA as low achieving on the basis of multiple, educationally related, objective criteria. (ESEA sections 1115(c)(1)(B) and 1117(a)(1)). In addition, children may be identified as eligible solely by virtue of their status as follows: homeless children; children who in the preceding two years had participated in Head Start, a literacy program under Title II, Part B, Subpart 2, a Title I preschool program, or a Title I, Part C (Migrant Education) program; and children in a local institution for neglected or delinquent children and youth or attending a community day program for such children. (ESEA section 1115(c)(2)(B)-(E)). Poverty is not a criterion for eligibility for services.

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[7] The following Department website provides more information on indirect costs: https://www2.ed.gov/about/offices/list/ocfo/fipao/icgindex.html.
Indirect costs are costs incurred for a common or joint purpose that benefit more than one cost objective. Unlike costs for activities such as instruction to private school students supported by Title I, indirect costs cannot be readily identified with a particular activity without effort disproportionate to the results achieved.

[8] Information on a restricted indirect cost rate is available in the Uniform Guidance at: https://www.ecfr.gov/cgi-bin/text-idx?SID=589d821879191a0b6c36d1ce6ba3213a&mc=true&node=ap2.1.200_1521.vii&rgn=div9.

[9] The definition in the Uniform Guidance of modified total direct costs is available at: https://www.ecfr.gov/cgi-bin/text-idx?SID=7ea87d867721067872a6ab1f4b7a5834&mc=true&node=se2.1.200_168&rgn=div8.

C-2. Are preschool children in a private school eligible to receive equitable services under Title I?
ESEA section 1117 requires an LEA to provide equitable services to eligible elementary school children. As a result, unless State law considers preschool to be part of elementary education, an LEA is not required to provide equitable services to preschool children in a private school and low-income preschool children do not generate funds for such services. At the same time, if preschool children reside in a participating Title I public school attendance area and attend a private elementary school that is participating in the Title I program, the preschool children and their teachers and families may receive Title I services based on timely and meaningful consultation between the LEA and private school officials, taking into consideration the needs of the preschool children and other eligible children in the private school and the amount of funds available to provide services.

C-3. How are the criteria for identifying eligible children determined?
In consultation with private school officials, an LEA must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I services, and, within the eligible group, identify those children in greatest academic need who will be served. (ESEA section 1115(a), (c)(1)(B)).

C-4. What are some of the educationally related criteria that an LEA may use to identify private school children who are most in need of Title I services?
An LEA, in consultation with appropriate private school officials, may use criteria such as achievement tests, teacher referrals and recommendations based on objective, educationally related criteria, grades, and more to identify private school children who are most in need of Title I services. (These criteria may differ from the criteria an LEA uses to identify public school students for services.)

C-5. What are criteria an LEA may use for identifying private school children from preschool through grade 2 for Title I services?
An LEA, in consultation with appropriate private school officials, may identify children from preschool through grade 2 for Title I services solely on the basis of criteria such as teacher judgment, interviews with parents, and developmentally appropriate measures. (ESEA section 1115(c)(1)(B)).

C-6. May Title I funds be used to identify eligible private school students?
Title I funds may not be used to identify private school children who are eligible to participate. These funds may, however, be used to select participants from among those who are eligible and to determine the specific educational needs of those children.

C-7. How does an LEA determine what services to provide to participating private school children?
An LEA, in consultation with appropriate private school officials, determines the appropriate Title I services based on the academic needs of the private school students. (ESEA section 1117(a)(1)(A); 34 C.F.R. § 299.64(b)(2)(i)). Title I services may be provided in subject areas or at grade levels that are different from those provided to public school students. These services must hold reasonable promise that the academic performance of private school participants will improve. (34 C.F.R. § 200.64(b)(2)(ii)(B)).

C-8. May an LEA implement a schoolwide program in a private school?
No. The provision of equitable services may not benefit a private school or the general needs of children in the private school and must be provided by employees of an LEA or through a contract by an LEA with an individual, association, agency, or organization that is independent of a private school. (ESEA section 1117(d); 34 C.F.R. § 200.66(b)(2)). Therefore, an LEA could not realistically operate a schoolwide program, which is designed to upgrade the entire educational program in a school, in a private school.

C-9. If, after receiving an offer of equitable services, private school officials or parents choose to have participating children receive only some services, may an LEA provide only those services?
Yes. The ESEA requires that an LEA offer equitable services to private school children (ESEA section 1117(a)), but not that private school children accept or participate in all those services. An LEA meets its responsibility to provide services even if the services are wholly or partially refused by private school officials or parents. Please note, however, that if an LEA includes other participating private schools, a private school's refusal of services does not reduce the proportional share of funds an LEA must use to provide equitable services. Additionally, the LEA must continue to offer equitable services each year and cannot presume to reduce the services offered based on what was accepted in the past.

C-10. When an eligible child resides in a participating Title I public school attendance area in one LEA and attends a private school in another LEA, which LEA is responsible for serving the child?
34 C.F.R. § 200.62(b)(1)(i) defines, in part, Title I eligible private school children as those who reside in a participating Title I public school attendance area of an LEA, regardless of whether the private school they attend is located in the LEA. Thus, the LEA in which a child resides is responsible for providing services to the child, but it may arrange to have services provided by the LEA in which the private school is located and reimburse that LEA for costs. The resident LEA, however, may not know the whereabouts of students who reside within its boundaries but attend a private school outside the LEA. Thus, private school officials may need to notify the resident LEA about the presence of eligible students who reside outside the boundaries of the LEA in which the private school is located. (See A-5).

C-11. May an LEA establish a minimum number of participating students in order to establish a Title I program in a private school? If so, what is the LEA's responsibility to serve children attending private schools with fewer than that minimum number?
ESEA section 1117(a) requires that an LEA provide for the participation, on an equitable basis, of eligible children enrolled in private schools. The requirement applies regardless of the number of children attending a private school; there is no minimum number. However, when the number of eligible children at one location is very small, the cost of establishing certain types of programs to serve them may be prohibitive, especially when these children may be from different grades or have different educational needs. In this case, an LEA, in consultation with private school officials, may consider other options. An LEA might adopt methods that are cost-effective for serving small numbers of students, such as take-home computer programs, individual tutoring programs, services and activities with the classroom teachers of low-achieving children who otherwise would receive Title I equitable services, or other strategies.

C-12. Who is responsible for planning and designing equitable services?
After meaningful consultation with appropriate private school officials, an LEA is responsible for planning, designing, and implementing Title I equitable services for private school children and may not delegate that responsibility to the private schools or their officials. (ESEA section 1117(a)(1)(A), (b)(1), and (d); 34 C.F.R. § 200.64(b)(4)).

C-13. What does it mean to consolidate and use Title I funds in coordination with eligible funds available for equitable services under programs covered under ESEA section 8501(b) to provide services to eligible private school children in participating programs?
In consultation with appropriate private school officials, an LEA must consider whether to consolidate and use Title I funds to provide equitable services to eligible private school children participating under Title I in coordination with funds for equitable services from programs covered under ESEA section 8501(b). (ESEA section 1117(b)(1)(L)). To coordinate the use of funds across programs does not mean that LEAs are able to consolidate funds across programs, through which the funds lose their program identity. LEAs are, however, able to use funds more efficiently.

Too often, the amount of funds available under Title I or Title VIII programs is not sufficient to provide robust equitable services under each program alone. If an LEA coordinates the use of funds from a variety of programs, however, the LEA can maximize the services it can provide and use all the funds more efficiently and effectively. Coordinating the use of Title I funds with the use of funds available from programs covered under Title VIII could greatly improve the equitable services available to Title I participating private school students. Such coordination would eliminate the silo approach in which an LEA consults with private school officials on each program individually and separately, without regard to whether the services could be more effective were they coordinated. Instead, through coordination, an LEA can provide a more cohesive delivery of equitable services.

For example, through coordination, an LEA with limited available funds might use Title I funds to provide instructional services to Title I-eligible participating private school students; use Title II funds to provide professional development to those students' teachers (as opposed to all teachers in a given school); use Title III funds to improve the English proficiency of English learners among the participating students; and use Title IV funds to provide necessary counseling services to the most-at-risk eligible students. Funds under each program would be used for allowable activities under each program; yet, through a coordinated effort, they could better serve in a comprehensive manner the needs of the most at-risk private school students.

C-14. How does the principle of supplement not supplant apply to equitable services under Title I?
With respect to equitable services, 34 C.F.R. § 200.66 requires that an LEA use Title I funds to provide equitable services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children. The regulations make clear that an LEA must use Title I funds to meet the identified educational needs of participating private school children and not to meet the needs of the private school or the general needs of children in the private school. An LEA must also ensure that the equitable services it provides under Title I supplement services a private school would otherwise provide and may not replace the education for participating students that the private school provides all students.

C-15. What types of services are available for private school participants?
Services to improve the academic achievement for participating private school children may include, but are not limited to, the following:

- Instructional services provided by public school employees or third-party contractors;
- Expanded learning time, including before- and after-school programs;
- One-on-one tutoring;
- Summer school programs;
- Family literacy programs;
- Counseling programs;
- Mentoring programs;
- Computer-assisted instruction;
- Home tutoring;
- Instruction using take-home computers; and
- Any combination of the above.

In addition, teachers and families of participating private school students may participate, on an equitable basis, in services and activities provided with Title I funds. (ESEA section 1117(a)(1)(B)).

Title I services or other benefits, including materials and equipment, must be secular, neutral, and nonideological. (ESEA section 1117(a)(2)).

C-16. Must the LEA always use the funds allocated for private school children to provide instructional services?
No. After consultation with private school officials, an LEA may provide Title I services other than direct instruction if the provision of services—such as counseling, activities for staff to improve instruction, and parent engagement activities beyond what are otherwise required—is appropriate to assist those children identified as low achieving. This may be particularly appropriate in situations in which the funds allocated for private school children are not sufficient to provide instructional services. Regardless of the services provided, the LEA must measure the effect of the services on the academic achievement of participating children. (ESEA section 1117(a)(1)(A), (b)(1)(D)).

C-17. In what subjects may an LEA provide services to participating students?
In general, Title I services for public school students must be focused on helping eligible students meet challenging State academic standards in reading/language arts, mathematics, and science, proficiency in which is generally considered necessary for success in other subjects. (ESEA sections 1111(b)(1)(C) and 1115(b)(2)(A)). Private school students are not subject to a State's academic standards. However, the purpose of Title I equitable services is the same: to ensure that low-achieving private school students have the necessary skills to be successful in school. Accordingly, an LEA must focus services on helping to improve the academic achievement of eligible private school children who are most in need of those services (ESEA sections 1115(a), (c)(1)(B) and 1117(a)(3)(A)), which, in most cases, would mean providing services in reading/language arts, mathematics, and science. Services in other subjects are not prohibited; for example, where foreign language instruction is integral to a private school's academic program (e.g., a language immersion program), an LEA might integrate instruction in the foreign language as part of an overall strategy to improve academic achievement for eligible children.

C-18. How might a Title I teacher coordinate Title I services with private school teachers for the benefit of participating private school students?
To facilitate the delivery of well-coordinated and high-quality services, a Title I teacher would likely meet and discuss the design of the Title I program with private school teachers of participating students to ensure that the Title I program supplements and is coordinated with the regular classroom instruction received by the private school participants. Such coordination should continue regularly throughout the provision of Title I services. For example, a private school classroom teacher could provide the Title I teacher with a copy of the weekly lesson plan in relevant subjects so that Title I instruction supports regular classroom instruction. On a weekly basis, for example, a regular classroom teacher could also provide the Title I teacher with a simple form indicating a child's individual needs and the content and skills being taught in the regular classroom, so that Title I services better meet the participating child's individual needs.

C-19. To meet the equitable services requirements under Title I, may an LEA just provide a private school with instructional materials and supplies paid for with Title I funds?
No. Simply providing a private school with instructional materials and supplies does not meet the LEA's obligation to provide equitable services because it is neither a proper Title I program implemented by the LEA nor does it meet the requirement that services be equitable. (ESEA section 1117(a)(1)(A), (a)(3)(A)).

C-20. When must Title I services for private school participants start?
The ESEA requires that the Title I program for private school participants be equitable and provided in a timely manner. (ESEA section 1117(a)(3)(A)). Therefore, the required consultation should begin early enough for the Title I program to start at the same time as the Title I program for public school participants, meaning generally at or near the beginning of each school year.

C-21. Where may Title I services take place?
Title I services for private school participants may be provided at various locations, including the private school, neutral sites, or public schools. The ESEA requires LEA officials to consult with private school officials before any decision is made that affects the opportunities of private school students to participate in Title I services, such as the location of those services. (ESEA section 1117(b)(1)(C)). If appropriate space is available, services should be in the least disruptive and least expensive location, which is most times the private school that the participating children attend.

C-22. May Title I services be provided in religiously affiliated private schools?
Yes. In the 1997 case of *Agostini v. Felton*, 521 U.S. 203 (1997), the U.S. Supreme Court held that Title I instructional services may be provided by public school employees in religiously affiliated private schools without violating the Establishment Clause of the United States Constitution. In doing so, however, an LEA must implement sufficient safeguards to ensure that its employees or contractors do not promote religion in the course of providing Title I services. For example, an LEA might provide Title I personnel with detailed instructions noting that Title I personnel are public employees and accountable only to their public school supervisors; that they may teach only students determined to be eligible by public school officials; that their materials and equipment may only be used in the Title I program; and that they may not introduce any religious matter into their teaching or become involved in the religious activities of the private school.

C-23. Must an LEA require the removal of religious symbols in private school classrooms in which Title I services are provided?
No. An LEA may use space in a private school to provide equitable services without requiring the removal or alteration of religious icons, scriptures, or other symbols.

C-24. Are private schools required to make space available for Title I services?
No. If space is not available, or if the private school chooses not to make its facilities available, the LEA must provide Title I services in another location. The extra costs of providing services at a location outside the private school would come from the proportional share of the LEA's Title I allocation available for equitable services.

C-25. May a Title I teacher use the same textbooks as those used by the private school students in their regular classroom?
Yes. A Title I teacher may use the same textbooks and materials as those used in the regular private school classroom so long as the textbooks and materials are secular, neutral, and nonideological, and the instructional services supplement and do not replace the instructional program in the participants' regular classrooms. (ESEA section 1117(a)(2); 34 C.F.R. § 200.66(a)).

C-26. May private school officials order or purchase materials and supplies needed for the Title I program and be reimbursed by an LEA?
No. Private school officials have no authority to obligate or receive Title I funds. The ESEA requires an LEA to maintain control of Title I funds, materials, equipment, and property. (ESEA section 1117(d)(1)). Thus, no Title I funds may be paid to a private school, even as reimbursement.

C-27. May an LEA use a third-party contractor to provide equitable services?
Yes. Following consultation, an LEA may provide Title I services directly or indirectly through contracts with individuals and public and private agencies, organizations, and institutions so long as those entities are independent of the private school in the provision of those services. (ESEA section 1117(d)(2)). The LEA remains responsible, however, for the oversight of the Title I program.

C-28. May an LEA contract with a religious organization to provide equitable services?
Yes. An LEA may enter into a contract with a religious organization to provide equitable services on the same basis as any other private entity. Although ESEA section 1117(d)(2)(B) currently indicates that a third-party contractor must be "independent…of any religious organization," the Department has determined that the specific requirement is unconstitutional in light of the U.S. Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and has so informed Congress in a letter dated March 11, 2019, available at https://www2.ed.gov/policy/elsec/guid/secletter/190311.html. Accordingly, the Department will no longer enforce, apply, or administer the specific requirement in ESEA section 1117(d)(2)(B) that an equitable services provider be "independent . . . of any religious organization."

The Department will, however, continue to enforce all other provisions of ESEA section 1117, including the requirement that a contractor is independent of the private school for which it is providing services and that the educational services and other benefits being provided by the contractor are "secular, neutral, and nonideological." (ESEA section 1117(a)(2), (d)(2)(B)). In addition, as with all procurements using Title I funds, an LEA must continue to follow the procurement requirements under the Uniform Guidance at 2 C.F.R. §§ 200.317-200.326 and 3474.15. Furthermore, the control of funds and title to materials, equipment, and property purchased

with Title I funds must be with the LEA, and the LEA must administer such funds, materials, equipment, and property. (ESEA section 1117(d)(1)).

C-29. What does it mean for a contractor to be independent of the private school in which it is providing equitable services?

In general, whether a contractor is independent of a private school in the provision of equitable services depends on the extent to which the contractor has administrative or fiscal direction and control over the private school. For example, an administrative body that oversees a group of affiliated private schools and has control over the schools' curriculum and hiring policies would not be independent of a private school subject to its authority. As a result, an LEA would be prohibited from entering into a contract with the administrative body for the provision of equitable services to its affiliated schools. In contrast, a membership organization with no authority over the operations of its member schools likely would be considered independent of such schools.

C-30. May an LEA or a third-party contractor employ a private school teacher to provide Title I services to private school participants?

Yes, provided certain conditions are met. An LEA may hire a private school teacher to provide Title I services only if the teacher is independent of the private school in the provision of Title I services. The private school teacher must be employed by the LEA for Title I purposes outside of the time he or she is employed by the private school, and the private school teacher must be under the direct supervision of the LEA with respect to all Title I activities. (ESEA section 1117(d)(2)).

C-31. Must teachers and paraprofessionals employed by an LEA to deliver or support the delivery of Title I equitable services meet any qualification requirements?

Yes. The ESEA requires that teachers working in a Title I program must meet applicable State certification and licensure requirements. (ESEA section 1111(g)(2)(J)). In addition, ESEA section 1111(g)(2)(M) requires each State to ensure that its LEAs and schools continue to comply with the paraprofessional requirements in place on December 9, 2015, including those requirements under 34 C.F.R. § 200.58 and any State-specific requirements that were in place on that date.

C-32. If an LEA contracts with a third-party provider, must the third-party provider employ Title I teachers and paraprofessionals who meet the State's qualification requirements?

ESEA section 1111(g)(2)(J) requires that teachers working in a Title I program meet *applicable* State certification and licensure requirements. Thus, State law would govern whether teachers or paraprofessionals hired by a contractor to provide Title I equitable services must meet a State's certification and licensure requirements. An LEA would apply any qualification requirements to a contract for equitable services that it applies to a contract for services for public school students.

C-33. Must a paraprofessional employed by an LEA to provide equitable services work under the direct supervision of a public school teacher?

Under ESEA section 1119(g)(3)(A), as amended by NCLB, a paraprofessional working in a Title I program was not permitted to provide any instructional services to a student unless the paraprofessional was working under the direct supervision of a highly qualified public school teacher. That prohibition is not specifically included in the ESEA as amended by ESSA. However, the purpose of Title I remains the same: to improve the achievement of the lowest-achieving students and to close achievement gaps. Fulfilling that promise requires the most qualified personnel available. Accordingly, an LEA, in consultation with appropriate private school officials, must determine by whom equitable services will be provided in order to succeed in raising the

achievement of eligible private school students. Moreover, ESEA section 1111(g)(2)(M) requires each State to have professional standards for paraprofessionals working in a Tile I program. Those standards might include requirements regarding the responsibilities of paraprofessionals, such as what their duties may be and by whom they must be supervised.

C-34. How does an LEA provide equitable services for parents and families of private school students participating in the Title I program?

An LEA must ensure that parents and families of participating children participate, on an equitable basis, in services and activities developed pursuant to ESEA section 1116. (ESEA section 1117(a)(1)(B)). (See B-7). Activities for parents and families of private school participants must be planned and implemented after meaningful consultation with private school officials and parents and families. Examples of parent and family engagement include parent meetings; parent-teacher conferences; communication between the Title I teachers and parents on students' academic progress; parent education; parent training activities on how to work at home with children on content and skills; reasonable access to Title I staff to receive information about their child's progress; and private school parent representation on a district-wide private school working group. As appropriate, these activities may include light refreshments for parents and families at Title I meetings in order to facilitate attendance at those meetings.

C-35. May an LEA use more than one percent of the proportional share for parental and family engagement?

Yes. Based on consultation with private school officials, an LEA may use more than the one percent of the proportional share for parent and family engagement activities. (See B-7).

C-36. What are an LEA's responsibilities regarding Title I equitable services for teachers of private school participants?

An LEA must ensure that teachers of participating private school students have the opportunity to participate, on an equitable basis, in Title I services and activities. (ESEA section 1117(a)(1)(B)). Unlike under NCLB, an LEA is not required to set aside a specific percentage of its Title I allocation for professional development and, thus, there is no required percentage that must be spent for services and activities for private school teachers. Rather, an LEA must determine, in consultation with appropriate private school officials, the needs of private school instructional staff who teach Title I participating private school students in order to improve the academic outcomes for those students and use funds from the proportional share to provide appropriate services and activities, if needed. Such services and activities might include, for example, information on research-based reading and mathematics instruction, or effective instructional approaches to improving students' writing skills. Coaching in the private school classroom is also permissible as long as the coaching is focused on assisting private school instructional staff who provide instruction to Title I participating private school students with strategies designed to improve the academic achievement of those students and is done during a time when secular, neutral, and non-ideological subjects are being taught. For example, an academic coach might model strategies on how to target or differentiate instruction for Title I students. In providing Title I services and activities, an LEA must ensure that they are focused on improving the academic achievement of participating private school students and do not benefit the general instructional program of the private school. (34 C.F.R. § 200.66(b)).

C-37. May private school officials arrange for Title I services and activities for staff who provide instruction to Title I participants and submit an invoice to the LEA for reimbursement?
No. Private school officials are not authorized to obligate or receive Title I funds.

C-38. May Title I funds be used to pay stipends to private school instructional staff who participate in Title I services and activities?
Yes. Title I funds may be used to pay for stipends for private school instructional staff, if reasonable and necessary (e.g., time outside regular employment hours). An LEA must pay such stipends directly to the private school instructional staff and not to the private school.

C-39. May an LEA provide services and activities, such as professional development, to staff employed by an LEA who provide equitable services?
Yes. An LEA may provide Title I services and activities, such as professional development, to LEA staff who provide instruction to eligible private school children. To the extent that an LEA is considering paying for such services and activities from the proportional share, it must consult with private school officials. In addition, if only a portion of the cost of such services is paid from the proportional share, the costs must be in proportion to the amount of time the teacher provides services to private school students compared to other instruction the teacher may provide.

D. PROGRAM EVALUATION AND MODIFICATION

An LEA must annually evaluate the Title I equitable services it provides to determine the progress being made in meeting participating students' academic needs. (ESEA section 1117(a)(1)(A), (b)(1)(D)). As part of this process, each year the LEA must consult with appropriate private school officials to determine how the services will be academically assessed and how the results of that assessment will be used to improve those services. (ESEA section 1117(b)(1)(D)). In measuring annual progress, the LEA has the flexibility to group children in a manner that will provide the most accurate information about their progress. For example, the LEA may decide to group children by instructional method, grade level, school, or other appropriate basis. If the Title I program for the private school participants does not make the expected annual progress, the LEA must make modifications to the Title I program.

D-1. In what subjects does an LEA assess private school children?
An LEA normally would assess private school children in the subjects in which the LEA provides Title I services to those children.

D-2. May Title I funds be used to assess private school children?
Yes, if the assessment is used only for Title I purposes. To the extent, however, that an assessment is conducted for other purposes, it may not be paid for from Title I funds.

D-3. May an LEA use a private school's assessment data to determine progress of the LEA's Title I program?
Yes. Private school officials may provide an LEA with private school assessment data on participating students if they agree to do so following consultation. However, private school officials are not obligated to do this, and refusal by private school officials to provide these data does not release the LEA from its obligation to provide services and assess the progress of participating students.

E. STATE OMBUDSMAN

OMBUDSMAN REQUIREMENT

To help ensure equitable services and other benefits for eligible private school children, teachers and other educational personnel, and families, an SEA must designate an ombudsman to monitor and enforce ESEA equitable services requirements under both Title I and Title VIII. (ESEA sections 1117(a)(3)(B) and 8501(a)(3)(B)).

E-1. What are the roles and responsibilities of an ombudsman?

An ombudsman serves as an SEA's primary point of contact for addressing questions and concerns from private school officials and LEAs regarding the provision of Title I equitable services. In addition, the ESEA requires the ombudsman to monitor and enforce the Title I equitable services requirements and, thus, the ombudsman should have a significant role in the State's monitoring process. Furthermore, it is important that the ombudsman become familiar with information that the Department provides concerning equitable services. The following are examples of activities the ombudsman could undertake in fulfilling the roles and responsibilities of the position:

- Serve as a general resource for LEAs and private school officials, which may include conducting initial outreach to define ombudsman responsibilities.
- Develop, in partnership with other relevant SEA staff, monitoring protocols and participate in a sample of any monitoring activity.
- Provide technical assistance for SEA staff administering applicable programs, LEA staff, and private school officials.
- Establish a process for receiving results of agreement regarding consultation from LEAs. For example, the ombudsman might direct an LEA to provide the results of agreement on the same form as the affirmation of consultation. (ESEA section 1117(b)(1)).
- Participate in the State's Title I Committee of Practitioners (ESEA section 1603(b)) and, as applicable, a nonpublic school working group. (See A-19).

E-2. What specific monitoring and enforcement responsibilities does an ombudsman have?

The primary responsibilities of an ombudsman are to monitor and enforce the equitable services requirements in Titles I and VIII of the ESEA in coordination with other SEA staff. Accordingly, an ombudsman should work with SEA staff administering Title I and programs covered under Title VIII to develop monitoring protocols applicable to the provision of equitable services under each program. The ombudsman should take an active role in the monitoring process, particularly with respect to the resolution of any findings regarding equitable services requirements under Titles I and VIII. The ombudsman should also play a role in responding to and resolving any complaints regarding equitable services that the SEA receives under its ESEA complaint procedures, which may include serving as the primary point of contact for complaints.

E-3. Who may serve as an ombudsman?

An SEA has discretion in determining who to designate as an ombudsman. In determining the relevant qualifications, an SEA should consult with appropriate private school officials. Within most States there is a statewide private school coalition with representatives of the various private

schools within the State. An SEA might consider engaging such a private school coalition. An SEA should consider the following factors in determining who will serve as an ombudsman:

- **Knowledge:** Does the individual have sufficient experience and demonstrate thorough knowledge and understanding regarding the equitable services provisions, including the statute, regulations, and guidance, necessary to implement, monitor, and enforce the equitable services requirements under both Titles I and VIII?
- **Capacity:** Will the ombudsman work alone or in collaboration with other Federal program directors in the State? Does the individual have experience with integrating input from other technical experts and program specialists, including those at the Department, and communicating it to the appropriate audiences?
- **Impartiality:** Will the individual be able to carry out the ombudsman duties, including monitoring, enforcement, and resolving complaints, in a fair and impartial manner? Will the individual be able to provide guidance to LEAs and private school officials to facilitate the goal of reaching agreement when agreement cannot be achieved independently through consultation?

E-4. What funds are available to support an ombudsman?

An SEA may support its ombudsman using consolidated State administrative funds under ESEA section 8201. If an SEA does not consolidate State administrative funds, it 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 C.F.R. § 200.405(a)).

F. COMPLAINTS, STATE PROVISION OF EQUITABLE SERVICES, AND BYPASS

By engaging in timely and meaningful consultation and developing positive relationships with private school officials, an LEA can facilitate a cooperative environment. If private school officials believe that timely and meaningful consultation has not occurred, they should first discuss this matter with the LEA official responsible for coordinating the consultation, the LEA superintendent, or Title I program director. If the response at the local level is unsatisfactory, the private school official may contact the ombudsman and the responsible SEA official. In the event the problem is not resolved through those means, private school officials have the right to file a formal written complaint with the SEA.

COMPLAINTS

A private school official shall have the right to file a complaint with the SEA when the official deems that the LEA has not engaged in consultation that was meaningful and timely, has not given due consideration to the views of the private school official, or has not made a decision that treats the private school students equitably. (ESEA section 1117(b)(6)(A)).

F-1. What information must a formal written complaint to an SEA include?

A formal written complaint must include:

- A statement that an LEA has violated a requirement of the Title I statute or regulations with respect to equitable participation;

- The facts on which the statement is based and the specific statutory or regulatory requirement(s) allegedly violated; and
- The signature of the complainant. (34 C.F.R. § 299.12).

F-2. What option is available to private school officials if an SEA does not answer their complaint in a timely manner?
ESEA section 8503(a) requires an SEA to resolve a complaint in writing within 45 days. If an SEA does not resolve the complaint within 45 days, private school officials may appeal to the Department. (ESEA section 8503(b)).

F-3. If private school officials or another interested party are dissatisfied with an SEA's resolution of a complaint, what recourse is available?
Any interested party to a complaint (e.g., private school officials who filed the complaint or the LEA that is the subject of the complaint) may appeal an SEA's resolution to the Secretary. The appeal must be filed no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within 45 days). The Department investigates and resolves the appeal no later than 90 days after receipt of the appeal. (ESEA section 8503(b)).

F-4. 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?
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 an equitable services complaint, however, the SEA's procedures must result in the SEA's final resolution of the complaint within 45 days of the private school official's initial filing of the complaint. (ESEA section 8503(a)).

F-5. Under what circumstances is an SEA required to provide equitable services directly or through a third-party provider?
An SEA must provide Title I equitable services directly or through contracts with public or private agencies, organizations, and institutions if the appropriate private school officials have: (1) requested that the SEA provide such services directly; and (2) demonstrated, in accordance with the SEA's procedures for filing a complaint, that an LEA has not met the requirements to provide equitable services. (ESEA section 1117(b)(6)(C)). In evaluating such a request, an SEA might include procedures that require private school officials to demonstrate that an LEA has substantially failed or is unwilling to provide equitable services before the SEA intervenes to provide equitable services directly or through a third-party provider, consistent with the standards the Secretary uses for a bypass under the equitable services requirements in Titles I and VIII. (ESEA section 8504; see F-8). An SEA should have transparent procedures for evaluating such requests and may also make available a standard template for requests.

F-6. If an SEA determines that it must provide equitable services in lieu of an LEA in accordance with ESEA section 1117(b)(6)(C), what funds does it use to provide the services?
An SEA may retain from the applicable LEA's Title I allocation the funds generated by eligible private school students from low-income families in the involved private school(s). The SEA may also retain from the proportional share of Title I funds generated for equitable services reasonable and necessary administrative costs for arranging the services.

F-7. What is a "bypass"?
A "bypass" is a means by which the Department arranges for the provision of equitable services to private school students and teachers through a third-party provider.

F-8. Under what circumstances may the Secretary determine that a bypass is appropriate?
If an LEA is prohibited by State law from providing Title I equitable services to eligible private school children, or if the Secretary determines that an LEA has substantially failed or is unwilling to provide equitable services, the Secretary will waive the LEA's responsibility to provide equitable services and arrange for the provision of services by another entity. (ESEA section 1117(e)(1)-(2)). In making the determination to bypass an LEA, the Secretary will consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of private school children to participate in the program. (ESEA section 1117(e)(3)).

F-9. How do private school officials request a bypass?
With respect to allegations that an LEA has not met the requirements of ESEA section 1117, private school officials must first file a complaint with the SEA and give the SEA the opportunity to resolve the complaint, including determining whether it should provide services directly. (ESEA section 1117(b)(6)(A)-(C)). If those officials are dissatisfied with the SEA's resolution, they may request that the Department bypass the LEA through an appeal of the SEA's determination. (ESEA section 8503(b)).

With respect to allegations that an LEA is prohibited by law from providing equitable services, private school officials may request a bypass from the Department without first going through the SEA. (ESEA section 1117(e)).

F-10. How is a bypass implemented?
To implement a bypass, the Department generally enters into a contract with a third party and deducts funds from the SEA's Title I allocation. Accordingly, the SEA reduces the bypassed LEA's allocation.