

U.S. Department of Education Title VIII, Part F – Uniform Provisions
Subpart 1 — Private Schools

SEC. 8501. [20 U.S.C. 7881] PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.

(a) PRIVATE SCHOOL PARTICIPATION.—

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

(2) SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS.—Educational services or other benefits, including materials and equipment, provided under this section, shall be **secular, neutral, and nonideological**.

(3) SPECIAL RULE.—

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

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

(4) EXPENDITURES.—

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

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

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

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

(b) APPLICABILITY.—

(1) IN GENERAL. — This section applies to programs under—

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

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

(c) CONSULTATION.—

(1) IN GENERAL.—To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, on issues such as—

- (A) how the children's needs will be identified;
- (B) what services will be offered;
- (C) how, where, and by whom the services will be provided;
- (D) how the services will be assessed and how the results of the assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel, the amount of funds available for those services, and how that amount is determined;
- (F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through potential third-party providers; and
- (G) whether the agency, consortium, or entity shall provide services directly or through a separate government agency, consortium, or entity, or through a third-party contractor; and
- (H) whether to provide equitable services to eligible private school children—
 - (i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(C) based on all the children from low-income families in a participating school attendance area who attend private schools; or
 - (ii) in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(C) based on the number of children from low-income families who attend private schools.

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

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

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

(5) ¹⁴DOCUMENTATION.—Each local educational agency shall **maintain in the agency's records**, and provide to the State educational agency involved, a **written affirmation signed by officials of each participating private school that the meaningful consultation required by this section has occurred**. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation has, or attempts at such consultation have, taken place to the State educational agency.

(6) COMPLIANCE.—

- (A) IN GENERAL.—If the consultation required under this section is with a local educational agency or educational service agency, a private school official shall have the right to file a

¹⁴ The placement of paragraphs (5) and (6) at the end of subsection (c) reflects the probable intent of Congress. See the amendment made by section 8015(4) of Public Law 114–95, which technically adds these paragraphs at the end of the section.

complaint with the State educational agency that the consultation required under this section was not meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school or its students equitably as required by this section.

(B) PROCEDURE.—If the private school official wishes to file a complaint, the private school official shall provide the basis of the noncompliance and all parties shall provide the appropriate documentation to the appropriate officials.

(C) SERVICES.—A State educational agency shall provide services under this section directly or through contracts with public and private agencies, organizations, and institutions, if the appropriate private school officials have—

- (i) requested that the State educational agency provide such services directly; and
- (ii) demonstrated that the local educational agency involved has not met the requirements of this section in accordance with the procedures for making such a request, as prescribed by the State educational agency.

(d) PUBLIC CONTROL OF FUNDS.—

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

(2) PROVISION OF SERVICES.—

(A) IN GENERAL.—The provision of services under this section shall be provided— (i) by employees of a public agency; or (ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

(B) INDEPENDENCE; PUBLIC AGENCY.—In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) COMMINGLING OF FUNDS PROHIBITED.—**Funds used to provide services under this section shall not be commingled with non-Federal funds.**