

Every Student Is Not Succeeding: ESSA, Titles I-IV, & Religious School Students

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Executive Summary

As the most recent reauthorization of the *Elementary and Secondary Education Act* (ESEA), the *Every Student Succeeds Act* (ESSA) provides to public and private school students and schools wide-ranging academic and educational supports.

This paper provides a historical review of (1) the federal government's role in education, (2) the creation and passage of ESEA, and (3) ESEA's subsequent development and reauthorizations. The authors next describe ESEA's application to parentally placed private school students.

The law makes it clear that private school students are to participate equitably in the benefits that ESEA confers. Upon identifying and describing the challenges to this equitable participation that private school students and stakeholders have faced under ESEA's most recent reauthorization (ESSA), the authors conclude by offering concrete recommendations on how ESEA's next reauthorization can effectively address these challenges.

Introduction

On August 20, 1964, President Lyndon B. Johnson signed into law the Economic Opportunity Act (EOA). A legislative effort in the so-called "war on poverty," the EOA was the legislative linchpin of the Johnson administration's pursuit of a "Great Society."¹

"For so long as man has lived on this earth, poverty has been his curse," proclaimed LBJ. "Today, for the first time in all the history of the human race a great nation is able to make and is willing to make a commitment to eradicate poverty among its people."²

Inspiring and spawning a flurry of legislation that massively increased the size and scope of the federal government, the EOA targeted, at the behest of the Johnson administration and the Congress that its political party controlled,³ wide-ranging sectors of American society. Among these sectors were civil rights, employment, and culture. Another was education.

In April 1965, Johnson signed into law the *Elementary and Secondary Education Act* (ESEA).

Consisting of eight titles,⁴ ESEA provides to public school districts (LEAs) that serve low-income students federal grants for text and library books, special education, and a variety of state-led, education improvement measures.⁵ Since ESEA's passage, Congress has reauthorized ESEA every five years,⁶ and with the exception of the 2015 reauthorization, each reauthorization has augmented the federal government's role in and oversight of education.⁷

An overview of the federal government's role in education between 1787 and 1965

As evidenced by the fact that the federal government did not establish a federal department of education until after the Civil War, it can be presumed that the Founding Fathers envisaged only a very limited role for the federal government in primary and secondary education, and possibly no role at all.

However, precedent for future federal involvement in education existed as early as 1787, the year the Constitution was drafted.⁸ On July 13 of that year, the Continental Congress adopted "An Ordinance for the Government of the Territory of the United States North West of the River Ohio," that, among other things, established the government of the Northwest Territories and ordered that newly created states, upon being established and admitted into the Union, would have power equal to all other states. Within the "Northwest Ordinance," the Continental Congress decreed, "[S]chools and the means of education shall forever be encouraged."

The federal government did not establish a federal department of education until after the Civil War.

During the republic's earliest years, such luminous figures as George Washington, Thomas Jefferson, and John Adams extolled the virtues of education and contended that the new and fledgling⁹ federal government ought to have some role in supporting publicly funded education.¹⁰

As Adams descriptively and somewhat prophetically contended, “The whole people must take upon themselves the education of the whole people, and must be willing to bear the expenses of it. There should not be a district of one mile square, without a school in it...maintained at the public expense of the people themselves.”¹¹

Despite these early whispers of support for a practical and proactive, if not also robust, *federal* role in the establishment and maintenance of a universal, public education system, the establishment, control, and maintenance thereof became mostly subsumed by the states, and *not* the federal government.

The Constitution itself countenances this reality. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States,” the Tenth Amendment declares, “are reserved to the States respectively, or to the people.”¹²

Beginning in 1787, the role in public education that the federal government would come to play over the next 80 years was largely constrained by the principle of subsidiarity that undergirds the Tenth Amendment.

This constraint is demonstrated—indeed, epitomized—throughout the history of federal involvement in education, generally, and the United States Department of Education (USED), in particular.

It would not be until the Civil War that the federal government would claim for itself a prescriptive role in public education, which it did in 1862 with the passage of the *Morrill Land-Grant Act*. This Act granted land to states for the establishment of colleges that would specialize in “agriculture and the mechanic arts.”¹³

Ten years later, due to pressure from the National Education Association (NEA) which had been founded in 1857,¹⁴ President Andrew Johnson signed legislation that established a Department of Education. This new, non-cabinet level department—the purpose of which was to collect data to aid the states in establishing public education systems—was as limited as its budget of only \$15,000 and size of only four staffers.¹⁵

Due to consternation over and concern about the federal government's growing role in education, even those limitations, however, were not enough to ensure that the department would remain politically tenable. Within a year Congress downgraded the Department of Education to an “Office of Education,” sequestering it within the United States Department of the Interior (DOI).¹⁶

In the decades that followed, the federal government's role in education continued to evolve. This evolution trended toward augmentation, and this trend more or less corresponded with and reflected the American people's evolving and expanding notions of how federal involvement in and support for education could and should advance the common good of the nation.

Some of the touchpoints of that evolution include:

- The *Smith-Hughes Act of 1917* that provided federal funding to support vocational schools;¹⁷
- 1930s-era “New Deal” programs in support of education¹⁸ that, arguably, were precursory to ESEA;
- The *Serviceman's Readjustment Act of 1944* that, better known as the “G.I. Bill,” provided to American military veterans higher education tuition grants;¹⁹ and
- The *Impact Aid Program of 1950* that provided federal grants to public schools that educate children living either in or near “federally-impacted” areas, such as Native American reservations and military bases.²⁰

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After the Office of Education was created in 1867, nearly a century passed before the Office of Education was elevated to a cabinet-level position.²¹ Fourteen years *after* the passage of ESEA, the status of said Office became upgraded in 1979 to a cabinet-level office. President Jimmy Carter, who facilitated this development at the behest of the NEA, called it a “major step.”²²

Of the 15 departments which hold a secretary’s seat in the president’s cabinet, USED is currently the ninth largest with a staff of over 8,000 persons and an annual budget of approximately \$77 billion.²³

The Elementary and Secondary Education Act of 1965

Over the past six decades since its passage, the *Elementary and Secondary Education Act* (ESEA) has been amended or, more accurately, reauthorized by Congress eight times.

Occurring only a year after President Johnson signed ESEA into law, the *Elementary and Secondary Amendments of 1966* allocated “supplemental” funds to state departments of education (SEAs) for the provision of grants to public institutions that serve neglected and/or delinquent youth. The purpose of these grants was to support these state-run institutions in providing services to these youth that would support them in their post-release transition to employment or additional schooling.²⁴

Then followed the *Elementary and Secondary Education Amendments of 1967* that augmented support for struggling youth through the provision of financial assistance “for the education of children from low-income families.” These Amendments also provided additional financial resources to support school library resources and supplementary educational centers and services. Additional grants provided for the strengthening of SEAs and support for school construction following disasters that warrant federal assistance. Included in the *Elementary and Secondary Education Amendments of 1967* were amendments that regulate grants for the education of American Indian, bilingual, and handicapped children.²⁵

While these first two amendments/reauthorizations to ESEA *expanded* the law’s reach and funding, the next six amendments/reauthorizations *delimited* ESEA’s reach and funding. These latter amendments/reauthorizations to ESEA, implemented between 1969 and 2002, sought to hold states accountable for the educational outcomes that, with ESEA funding, states were to pursue.

This rather abrupt pivot in 1969 from expansion to delimitation that concurrently corresponded with the end of the Johnson administration and its dogged pursuit and prosecution of, respectively, a “Great Society” and the “war on poverty” also corresponded with the end of what some commentators have called the “high tide of liberalism.”²⁶

The *Elementary and Secondary Education Amendments of 1969* and the *Education Amendments of 1978* addressed the co-mingling of state education funds with the federal education funds provided under ESEA. In the former amendments, the federal government mandated that ESEA funds must “supplement, not supplant” state and local funds. In other words, if SEAs and LEAs use ESEA funds, then those federal funds can only supplement—and not be used in place of—state and local education funds. The latter amendments mandated that public schools may utilize ESEA funds to support schoolwide programs and thus students who are not Title I-eligible, but *only* if those funds are matched by state and local funds.²⁷

Having opined that “education is the principal responsibility of local school systems, teachers, parents, citizen boards and state governments” and that USED²⁸ was Carter’s “new bureaucratic boondoggle,”²⁹ President Ronald Reagan took office in January of 1981 vowing to drastically reduce the federal government’s role in education.³⁰ Notwithstanding the passage of the *Education Consolidation and Improvement Act of 1981* (ECIA)³¹ that consolidated many federal education programs into a single block grant and reduced the number of students served under Title I,³² President Reagan’s efforts to deliver on these promises ultimately fell short, however.³³

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During the final year of the Reagan administration this was signaled in and by the *Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988*. Creating *new* programs for adult education, parents of disadvantaged children, and gifted and talented children, among others,³⁴ Hawkins-Stafford rolled back the “supplement, not supplant” requirements.

If not by design, then at least by effect, this curtailment eventually prompted in the overall implementation of and student participation in Title I significant *increases*. In addition, Hawkins-Stafford required public schools to measure and, for each underachieving Title I student, implement an academic improvement plan. Furthermore, each school in which deficiencies in student academic achievement persisted would be required to follow an improvement plan, written for it by its LEA.³⁵ Arguably, these measures that were intended to foster accountability on the part of individual public schools became precursory to the accountability structure for which a future authorization of ESEA, the *No Child Left Behind Act* (NCLB), would become best well known—and also criticized.

The trend toward requiring greater accountability for improving educational outcomes continued with the *Improving America's Schools Act* (IASA) of 1994. Serving as a legislative harbinger of NCLB and containing the most significant changes to the original ESEA law since its inception in 1965, IASA was also a legislative manifestation and expression of the trend toward the ideological centrism that, by the time Bill Clinton was elected president in 1992, characterized the Democratic Party.³⁶

IASA's centrism is explicitly demonstrated, for example, by its inclusion of aid for the establishment of charter schools and its allowance for the use of Title I funds to support for Title I-eligible public school students school choice. Among IASA's central and, arguably, most “centrist” components is the obligation of SEAs that receive Title I grants to implement for their respective LEAs school improvement plans that are in accord with student performance standards in reading and mathematics.³⁷ Other notable components of IASA include:

- A reduction from 60 percent to 50 percent of the total percentage of low-income students required before public schools can utilize Title I funds schoolwide;
- The obligation for schools to utilize Title I funds in manners that reform for improvement the “*total* [emphasis added] instruction program in the school;”
- A variety of other notable provisions, including support for education technology and programs to prevent crime, drug abuse, and dropping out.³⁸

The No Child Left Behind Act (NCLB) of 2001

Just three days after his inauguration in January of 2001, Republican president George W. Bush unveiled his education reform agenda. Undergirded by four principals, this reform was material to his domestic agenda, which in turn had spawned (and been spawned by) education promises that he had made during his presidential campaign.³⁹ This agenda was also in response to a troubling reality: despite the fact that more than \$200 billion federal dollars had been spent on education since ESEA's passage in 1965,⁴⁰ myriad shortcomings with America's education system persisted. The newly inaugurated president presented to the American public this troubling reality:

We must confront the scandal of illiteracy in America, seen most clearly in high-poverty schools where nearly 70 percent of fourth graders are unable to read at a basic level. We must address the low standing of American test scores amongst industrialized nations in math and science, the very subjects most likely to affect our future competitiveness. We must focus the spending of federal tax dollars on things that work. Too often, we have spent without regard for results, without judging success or failure from year to year.

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Yearly testing of third through eighth-grade students, annual measurement of student progress, and, on the part of public schools, annual accountability for results constituted the first principle of President Bush's education reform agenda.

The second principle placed the responsibility of fostering and implementing necessary changes at the local level. "Authority and accountability must be aligned at the local level," observed President Bush, "or [public] schools will have a convenient excuse for failure."

Corresponding closely with this second principle is the third: The federal government would grant to public schools that pursue necessary reform the assistance and time that those schools might require to implement the reform.

Fourth, parents of children whose schools continue to fail would have access to other educational options, though President Bush provided no details of what those options might be and notably avoided any reference to vouchers for families who may wish to send their children to private schools. The president stated, "When schools do not teach and will not change, parents and students must have other meaningful options."⁴¹

little more than a year later, President Bush signed into law on January 8, 2002 the *No Child Left Behind Act*. Passing both houses of Congress with relatively broad bipartisan support, this law "expanded [emphases added] the role of the federal government in public schools in an effort to expand accountability."⁴²

One of the primary means by which NCLB expanded accountability was by requiring states to "implement statewide accountability systems covering all public schools and students."

These systems were to be "based on challenging state standards in reading and mathematics, annual testing for all students in grades 3–8, and annual statewide progress objectives ensuring that all groups of students reach proficiency within 12 years."

That NCLB expected academic achievement and improvement to redound to *all* students was codified in the law's requirements that "[a]ssessment results and state progress objectives must be broken out by poverty, race, ethnicity, disability, and limited English proficiency to ensure that *no group is left behind* [emphasis added]."

Furthermore, the law mandated that LEAs and/or public schools that "fail to make adequate yearly progress (AYP) toward statewide proficiency goals" would be subject to "improvement, corrective action, and restructuring measures."

A second means by which NCLB sought to hold public school systems accountable was by codifying measures that would inject into the nation's public school system at-large competition. Public schools were now impelled, if not compelled, to compete to keep students. For instance, NCLB required LEAs to "spend up to 20-percent of their Title I allocations to provide school choice."

Furthermore, public schools that failed to improve, that is, become competitive, would become susceptible to losing students whose parents, it was expected, would choose to disenroll their children from these failing schools in order to enroll them instead in better-performing public schools, including charter schools.

Such losses could result in reduced budgets, and so it was also expected that this prospect would incentivize these schools to undertake efforts to improve—and thereby disincentivize—such disenrollment.

At the same time, those public schools that "meet or exceed AYP objectives or close achievement gaps" would become "eligible for State Academic Achievement Awards," while those public schools from whence parents would choose to disenroll their students would be required to use up to 5 percent of their Title I allocation to pay to transport those students to the "competing" school(s).

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Furthermore, NCLB permitted Title I-eligible students to use Title I funds for supplemental educational services provided by public or private sector, third-party providers. This further incentivized public schools to ensure that results-based accountability would become, necessarily, a priority.

Beyond these measures that increase and improve accountability on the part of public schools, LEAs, and SEAs, NCLB also (1) granted to SEAs and LEAs greater flexibility on how they could use NCLB/federal funds, (2) prioritized literacy, and (3) improved/increased choice, flexibility, and efficiency regarding other major ESEA programs, including those that relate to class-size reduction, English-language acquisition, and drug and alcohol-(ab)use mitigation.⁴³

The *Every Student Succeeds Act (ESSA)* of 2015

Less than one month before what would have been the fifteenth anniversary of the signing of NCLB into law, Democratic president Barack Obama signed into law ESEA's latest (and at present most current) reauthorization. That reauthorization is the *Every Student Succeeds Act (ESSA)*.

Arguably, the “Common Core State Standards” and “Race to the Top” initiatives of the Obama administration were antecedent to ESSA. Simply stated, the aim of these initiatives was to improve the educational achievement of the nation’s primary and secondary school students. However, further explication of these initiatives’ individual and collective influence on ESSA is beyond the scope of this paper.

At ESSA’s signing ceremony on December 10, 2015, President Obama explained, “The goals of No Child Left Behind, the predecessor of this law, were the right ones. High standards. Accountability. Closing the achievement gap. Making sure that every child was learning, not just some.” However, NCLB also included inadequacies. “[NCLB],” the forty-third president explained, “didn’t always consider the specific needs of each community. It led to too much testing during classroom time. It often forced schools and school districts into cookie-cutter reforms that didn’t always produce the kinds of results that we wanted to see.”⁴⁴

And so, under ESSA, SEAs have been granted greater power and flexibility to set student achievement/academic goals; these goals are set against and determined by academic standards that the federal government can no longer substantially influence. Furthermore, under ESSA, SEAs are now granted *complete* autonomy to set their own assessment goals,⁴⁵ which extends to determining the means of achieving those goals and the timelines within which they are to be achieved.⁴⁶ And when it comes to SEAs evaluating the performance of public schools, SEAs can and must consider factors beyond academic achievement and the data related thereto.⁴⁷

High standards for and academic achievement by *every* student had been, collectively, NCLB’s meta-goals. Congress and President Obama also prescribed these goals for ESSA, but in ways that provide to SEAs “flexibility to tailor their improvement plans” and reduce “unnecessary standardized tests so that more [public school] teachers can spend time engaging in student learning while, at the same time, making sure that [public school] parents and teachers have clear information on their children’s academic performance.”⁴⁸

Under ESSA, then, SEAs still must publicly report public school student assessment results, disaggregated according to race and other factors.⁴⁹ Furthermore, though NCLB’s annual testing requirement remains in place under ESSA, SEAs can now meet this requirement by utilizing other standardized tests such as the Scholastic Aptitude/Assessment Test (SAT) and the American College Testing (ACT) test.

Additionally, SEAs must now attain input from public school parents/families regarding the former’s plans for improving public schools.⁵⁰

At the beginning of his ESSA signing ceremony, President Obama introduced a public school student named Antonio whom he had met four years earlier. At that time, Antonio had been in middle school. President Obama cited Antonio's former school as an aspirational example, implying that Antonio's former school was a sort of foil to the myriad public schools throughout the country that had largely failed to implement—much less benefit from—reforms that had been envisioned for them by NCLB.

“As wonderful as Antonio’s school is,” the president said, “as wonderful as a learning experience is as [*sic*] a lot of our young people are receiving, we know that there are other schools that just aren’t hitting the mark yet.”⁵¹

Under ESSA, those failing schools are no longer subject to federal sanctions and penalties, however.⁵² Instead, under ESSA, most failing schools receive even *more* federal dollars,⁵³ and decisions about how to respond to failing public schools are left to these schools’ respective LEAs and SEAs, *not* the federal government.⁵⁴

As has been the case regarding each preceding ESEA reauthorization, ESSA’s design, execution, and implementation have been far from perfect. More particularly, there are ambiguities contained within ESSA’s statutes and accompanying regulations that have undermined both the quality of implementation and, importantly, the equitable participation of *private school students (and teachers)* in ESSA-funded services.

Federal education programs, equitable participation, & private schools

In the preceding sections, we did not address the divergent experiences of public education and private education. Nor have we addressed how public education and private education have affected and been affected by the development over time of both ESEA and the federal government’s role in education.

This section focuses explicitly on private education and, in particular, private education’s participation in the latest reauthorization of ESEA that is the *Every Student Succeeds Act*.

In 2019, the latest year for which data regarding the nation’s total private school student enrollment is available, there were approximately 4.7 million K–12 students attending America’s private schools. Those 4.7 million students comprised about nine percent of America’s *total* K–12 student population.⁵⁵

Coupled with these notable, private school enrollment statistics, *freedom of, for, and from* religion that is endemic to the ideological commitment and political self-understanding of the American body politic has prompted Congress to include within the federal government’s two major education programs equitable participation provisions. These provisions grant to private school students and other stakeholders, including private school teachers, access to the services that are funded under these federal education programs.

The first of these programs is the *Education for All Handicapped Children Act*, which became in 2004 the current *Individuals with Disabilities Education Act* (IDEA).

The second is ESSA.

Since the passage of ESEA in 1965, LEAs have been required to provide equitable services to students attending nonpublic schools and their teachers under eight title programs. In passing ESEA, Congress deemed it appropriate to ensure that all children in need could access services regardless of the school that they attend.

Under ESSA, those failing schools are no longer subject to federal sanctions and penalties, however. Instead, under ESSA, most failing schools receive even *more* federal dollars.

In 2019, the latest year for which data regarding the nation’s total private school student enrollment is available, there were approximately 4.7 million K–12 students attending America’s private schools.

The programs covered under the uniform provisions include as follows:

- 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 Centers⁵⁶

For these programs, LEAs must set aside a “proportional share”⁵⁷ of the grant for the benefit of eligible private school students and engage in timely and meaningful consultation with private school officials regarding the services that are to be provided.⁵⁸

With the passage of ESSA in 2015, the private school equitable services requirements included in NCLB became more robust, and additional LEA and SEA oversight was added. These changes included the requirement to appoint a statewide ESSA ombudsman, an expansion of the required topics at consultation, updates to affirmation-of-consultation forms, modifications to the proportional share calculation for Title IA and IIA, the addition of a new provision regarding the obligation of funds, broader allowable uses of grant funds for the Title IA program, a new requirement for SEAs to provide a “notice of allocation,” and the addition of specific timelines for the private school complaint process.

Each of these new requirements are outlined in greater detail in the next section.

In the section thereafter (“The impact of these changes (A – F)”), analysis of the execution of these new requirements since 2015 is undertaken.

In anticipation of ESEA’s next/future reauthorization, we conclude this paper with our final section, “Ensuring that every student can succeed under the Every Student Succeeds Act: Policy Recommendations.”

ESSA’s new requirements vis-a-vis private schools (A–F)

A. ESSA Ombudsman

One of the most significant changes included in ESSA is the requirement that each state appoint an ESSA ombudsman⁵⁹ to “ensure equity for private school students” and “monitor and enforce” the equitable sharing provisions in the Act.⁶⁰

ESEA has long required LEAs to engage in consultation with private school representatives regarding the provision of equitable services to students attending private schools. Historically, this has been a complicated process for private school representatives, and many of them have found it difficult to ensure that their schools could equitably participate in the ESEA programs. Each year, many eligible private schools across the country forgo participation in federal education programs given the difficulties these private schools have encountered in the past and the many bureaucratic hoops these schools have had to jump through to receive services. To address these difficulties, the private school community strongly advocated for creating the ombudsman position to level the playing field between LEAs and private school officials and to ensure that the equitable sharing requirements are carried out.⁶¹

The ombudsman is meant to be the “primary point of contact”⁶² at the SEA for both private school officials and LEAs in addressing any questions that arise regarding the equitable services requirements.⁶³ The ombudsman is also meant to play a significant role in the state’s monitoring processes and help develop monitoring protocols applicable to the equitable services requirements.⁶⁴ The ombudsman should also take a lead role in resolving any complaints that arise and addressing any findings.⁶⁵

With the passage of ESSA in 2015, the private school equitable services requirements included in NCLB became more robust, and additional LEA and SEA oversight was added.

One of the most significant changes included in ESSA is the requirement that each state appoint an ESSA ombudsman to “ensure equity for private school students” and “monitor and enforce” the equitable sharing provisions in the Act.

The SEA has discretion in appointing the ombudsman and should consult with private school officials regarding the ombudsman's necessary qualifications. An SEA should ensure that the ombudsman has the knowledge, capacity, and impartiality to fulfill the ombudsman function.⁶⁶

B. Changes to the Consultation Requirements/Changes to Affirmation-of-Consultation Forms

Consultation is the framework provided by ESSA for private school officials to collaborate with LEAs regarding the equitable services that are to be delivered to private school students. Consultation is required to be both "timely" and "meaningful"⁶⁷ and is intended to give all parties a "genuine opportunity"⁶⁸ to express their respective points of view.

ESSA added a number of additional topics to be discussed during consultation regarding the Title IA Program and the law's Uniform Provisions. Changes to the consultation requirement for the Title IA program include the obligation of LEAs to discuss with private school officials the following questions:

- How the proportionate share of funds is determined
- Whether services will be provided directly or through a separate government agency, consortium, entity, or third-party contractor
- Whether to pool funds for equitable services
- When, including the approximate time of day, services will be provided
- Whether to consolidate Title I equitable services funds with funds available for services to private school children under other ESEA programs⁶⁹

The additional topics required to be discussed include:

- Whether services will be provided directly or through a separate government agency, consortium, entity, or third-party contractor
- Whether to pool funds for equitable services⁷⁰

These additional topics were added to ensure that consultation is robust and covers all considerations that may impact the opportunity for participation by private school students and their teachers.

While ESSA's guidance retains language stipulating that LEAs have the final word in consultation,⁷¹ the law expressly states that the goal of consultation is "to reach agreement."⁷² This new language encourages LEAs and private school officials to work collaboratively, seek consensus, and compromise when necessary.

At the conclusion of consultation, LEAs are also now required to submit the results of the agreement reached during consultation to the state's ESSA ombudsman.⁷³ The ombudsman is meant to establish a process for LEAs to transmit the agreement reached during consultation either within the affirmation-of-consultation form or another document.⁷⁴ Furthermore, private school officials are required to sign an affirmation-of-consultation form to indicate whether timely and meaningful consultation has occurred.

ESSA requires that these forms be updated to provide an option for private school officials to indicate that consultation was *not* timely and meaningful or that the program was *not* designed in an equitable way with respect to the participation of private school students.⁷⁵

This requirement is designed to add another layer of oversight and provide a simple mechanism for private school officials to voice their concerns about LEAs' equitable services processes.

While ESSA's guidance retains language stipulating that the LEA has the final word in consultation, the law expressly states that the goal of consultation is "to reach agreement."

At the conclusion of consultation, LEAs are also now required to submit the results of the agreement reached during consultation to the state's ESSA ombudsman.

C. Calculation of Proportional Share

Title IA

Prior to the 2015 reauthorization, LEAs could set aside funds “off the top” of their Title IA allocations for district-wide activities such as professional development or family engagement for public school students and their families. The Title I funding for private school students was calculated based on the remaining Title I funding after all “off the top” reservations had been made.

This meant that private school students and their teachers were unable to equitably participate in the *full* Title I grant; they received only a “proportional share” of the *remaining* funds, after the set-asides were deducted. In some cases, these set-asides were quite significant and had a serious and negative impact on private school students’ equitable share of Title IA services.

With the reauthorization, this practice is no longer allowed. The private school proportional share for Title IA must now be calculated based on the *total* Title I funding provided to the district.⁷⁶ ESSA specifies that “[t]he proportional share of funds shall be determined based on the total amount of funds received by the local educational agency under this part prior to any allowable expenditures or transfers by the local educational agency.”⁷⁷ This change increased the private school proportional share under the Title IA program.

Title IIA

Title IIA grant funding may be used by LEAs for high quality professional development or for class size reduction.⁷⁸ The latter is not an allowable use of the private school equitable share for the Title IIA grant since it would be inconsistent with the public control requirement.⁷⁹

Prior to ESSA, LEAs calculated proportional share based only on the portion of the grant that was utilized for professional development.⁸⁰ Therefore, LEAs were not required to equitably share with private schools the portion of the grant that they spent on class-size reduction.

In ESSA this limitation is removed.⁸¹ Funding for equitable services must now be calculated based on the LEA’s *total* Title IIA allocation.

D. Obligation of Funds in the Year that they were Received/ Broader Allowable Uses for Title IA

ESSA also includes new language requiring that funds be obligated in the year that they are received.⁸² This requirement was added to reinforce the consultation requirements and help ensure that LEAs expend proportionate share funds in a timely manner and do not delay in providing equitable services.⁸³

ESSA, however, still allows for a carryover of funds to the following school year when those funds are not expended. When consultation is meaningful and equitable services are being delivered, carryover is typically not meant to occur. However, the law does not prohibit the carryover of funds when necessary. The guidance provides that “in most cases [carry-over is] require[d].”⁸⁴ This may occur in the case of procurement challenges, delays to services, natural disasters, or when a small amount of funds remains at the end of the school year.⁸⁵

ESSA has also authorized a broader array of allowable services for the Title IA program. In addition to special education allowed under NCLB, the added services that have been included in ESSA are instructional services including evaluations to monitor progress, counseling, mentoring, and one-on-one tutoring.⁸⁶ Moreover, ESSA provides that the decision to group students for these services or provide to students one-on-one support should be based on the “[request] by the [private school] officials to best meet the needs of such children.”⁸⁷

E. Notice of Allocation

Prior to the reauthorization, private school advocates had requested that the proportional share be calculated at the SEA level and split into two separate allocations, with one allocation earmarked for private school students to avoid confusion on the part of LEAs.⁸⁸ That provision did not make it into the law. However, ESSA now requires SEAs to provide directly to private school officials an annual notice-of-allocation. Whereas previously the LEAs shared the allocation amounts with private school officials during consultation, the information regarding the allocation is now *also* communicated to private school officials by the SEA.⁸⁹

The notice-of-allocation from SEAs is meant to include information regarding how the allocations were calculated by the LEA,⁹⁰ and should be provided prior to the start of each school year.⁹¹

This requirement provides an additional layer of oversight by the SEAs to ensure equity for private school students and teachers. Furthermore, this requirement enables private school representatives to cross-reference the proportionate share allocation provided to them by the LEA with the notice-of-allocation provided by the SEA.

F. Complaint Process

Additionally, ESSA clarified that the timeframe within which SEAs must respond to and resolve complaints filed by parents, teachers, or other individuals related to violations of the equitable sharing provisions in ESSA.⁹² Said timeframe is 45 days.⁹³ If private school officials are dissatisfied with the resolution and choose to appeal the SEA's decision, then they must do so within 30 days of the SEA's resolution. The U.S. Secretary of Education must then complete an investigation and resolve the complaint within 90 days of receiving the appeal.⁹⁴

The impact of these changes (A–F)

The authors have sought to understand how these changes have played out and the impact they have made on the provision of equitable services to eligible private school students six years after the reauthorization.

To that end, the authors analyzed the consolidated applications⁹⁵ from 10 LEAs across four states from geographically representative areas of the country,⁹⁶ interviewed and surveyed private school representatives in nine states, and reached out to ombudsman in these selfsame states.⁹⁷ In four out of the nine states, the ombudsman agreed to be interviewed for this paper.⁹⁸ Other ombudsmen provided more limited information via email correspondence.

A. ESSA ombudsman

In general, ombudsmen have been helpful.

Private school leaders were asked about how accessible and helpful their ombudsman is and whether said official has made a difference in private schools' ability to equitably participate in ESSA. Private school leaders were also asked how many persons have served in this role in their states since the ombudsman requirement went into effect. In addition, private school leaders were asked about their respective state ombudsmen's knowledge, capacity, and impartiality, which are the three criteria set out by the non-regulatory guidance of USED as being essential for the ombudsman.⁹⁹

Almost unanimously, private school officials believe that the ESSA ombudsmen in their states had made a difference in terms of access to equitable services.

On a 1–10 scale, with 1 being the lowest ranking and 10 being the highest, private school leaders ranked the effectiveness of their ombudsmen between three and nine, with most of the rankings at the higher end of the scale. Private school officials who report the highest levels of effectiveness

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indicate that the ombudsmen in their states either serve full-time (or close to it) or have significant seniority at the SEA level.

The amount of time that the ombudsmen dedicate to their role and/or the seniority level of the persons assigned to this role are strong indicators of the degree to which the ombudsman role is valued within SEAs, and it is therefore not surprising to see a strong correlation between these factors and the ombudsmen's collective impact in the field.

In general, ombudsmen have been reachable and available.

All but two of the private school leaders surveyed had reached out to their respective ESSA ombudsmen and know how to contact him or her. Smaller private schools that are not part of an established network of private schools, such as a Catholic (arch)diocesan school system, seem to struggle more with knowing how to contact the ombudsman and what questions to bring to the ombudsman's attention.

All of the ombudsmen surveyed indicate that private school leaders in their states know how to contact them and indicated that their contact information is publicly posted on SEA websites.

Between the states, there exists ambiguity and inconsistent expectations regarding the job description/responsibilities of ombudsmen.

There is little guidance provided to SEAs regarding ESSA ombudsmen's formal job description(s). For example, ESSA and its regulations do not prescribe a specific number of hours that should be allocated towards this role, nor do the law and the regulations provide a comprehensive listing of the ombudsman's roles and responsibilities.

Furthermore, the law also does not specify where this position should be housed. Rather, the law provides that the general purpose of the ombudsman role is to ensure equity for private school students and, additionally, monitor and enforce the equitable services requirements.¹⁰⁰ The non-regulatory guidance published by USED also does not provide a detailed description of this role or provide recommendations on the topics outlined above. The specifics of how to achieve ESSA's intended goals are left to SEAs.

Private school leaders in eight out of the nine states surveyed shared that the ombudsman in their respective states was a part-time position (50 percent FTE or less) and that the ombudsman served several other functions within their respective SEAs.

Several of the ombudsmen interviewed reported that they spent 10 percent of their time or less allocated to this role. One ombudsman shared that although 10 percent of their time was allocated to the ombudsman role, they spent about 25 percent of their time in this role and could easily spend 40 percent of their time in this capacity. By contrast, the Wisconsin ombudsman noted 85 percent of her time was allocated to the role.

There is wide variance in turnover and overall competence of ombudsmen.

In some states, ombudsman turnover has been high, whereas in others only one or two persons have served in that role since 2015. Many of the private school leaders expressed concern about the turnover rate and were worried about whether the next ombudsman would be as competent as their current one. Some private school leaders were unsure whether this position was sufficiently valued by the SEA and whether the SEA would be able to continue to attract qualified and ambitious professionals.

The following chart lists the number of ombudsmen that each state has employed since the start of the program and, in each state, whether the role is part-time or full-time, and where the ombudsman position is housed:

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State	Number of Ombudsmen	Full-time/ Part-time	Position Housed
Colorado	2	Part-time	SEA
Florida	2	Full-time	SEA
Indiana	6	Part-time	SEA
Illinois	3	Part-time	SEA
Michigan	3	Part-time	SEA
New York	1	Part-time	SEA
Massachusetts	3	Part-time	SEA
Wisconsin	1	85 percent FTE	WCRIS ¹⁰¹
Washington ¹⁰²	3	Part-time	SEA

USED in its non-regulatory guidance lays out the three criteria required for an ESSA ombudsman. Those criteria are knowledge, capacity, and impartiality.¹⁰³

Between the states, the knowledge of ombudsmen is uneven and inconsistent; in some states, said knowledge is lacking.

Ombudsmen must have mastery of the ESSA equitable services laws and regulations, as well as accompanying non-regulatory guidance documents. There are many nuances to the law and different applications to varying factual circumstances. Despite this, there is no required course work or licensing exam to become an ombudsman.

Many of the ombudsmen interviewed shared that the Office of Non-Public Education (ONPE) provides an annual training for ESSA ombudsmen as well as an additional annual conference for new ombudsmen. There are also additional mentoring opportunities for ombudsmen available through ONPE's "national ombudsman collective." This includes an active listserv and message board.¹⁰⁴ In addition, the ombudsmen have also set up a private listserv that, not including ONPE staff members, allows for additional and more informal collaboration among ombudsmen across states.

Most of the ombudsmen shared that they had previous experience working on the federal programs team at their respective SEAs and were already familiar with the legal requirements for the ESEA title programs. Other ombudsmen had previous experience with private schools. All indicated that they believe that for the role they have the relevant experience and background. Some indicated that, depending on the timing of when they had started in the role, they did not receive any formal training until the annual ONPE conference, which in some cases was as much as six months *after* they had assumed their roles.

Some private school leaders shared that their states' respective ombudsmen were initially challenged in attaining adequate (1) understanding of the substantive laws, regulations, and guidance and (2) appreciation for the context of the private school community. While ONPE provides trainings on the legal and substantive requirements, there is little-to-no training for ombudsmen on the context of or introductions to the private school community.

Private school leaders have been quick to fill that gap. For example, the Indiana Nonpublic School Education Association (INPEA) arranged for each new ESSA ombudsman tours of various non-public schools. The purpose of these tours has been to demonstrate to these ombudsmen the different models of ESSA service delivery to private schools (the LEA direct-service model, the third-party provider model, and the pooling model).¹⁰⁵

In addition, INPEA fosters between Indiana's ombudsman and Indiana's private school community.

Most of the ombudsmen shared that they had previous experience working on the federal programs team at their respective SEAs and were already familiar with the legal requirements for the ESEA title programs.

Private school leaders in other states similarly indicated that they had proactively reached out to help build bridges between their respective ombudsmen and the private school community. However, in states where there has been high turnover, it has been harder for private school leaders to develop these relationships.

Ombudsmen in some states were already well aware of the particular culture and needs of the private school community. For example, in New York, Assistant Commissioner of Education Christina Coughlin, who has significant experience with and ties to the nonpublic school community, serves as the ESSA ombudsman.

Similarly, Abigail Pavela serves as Wisconsin's ESSA ombudsman and is employed by the Wisconsin Council of Religious and Independent Schools (WCRIS) through a contract with the Wisconsin Department of Public Instruction. WCRIS is the private school association in Wisconsin, and in this capacity, Ms. Pavela has extensive experience with private schools on a wide range of issues and a strong contextual understanding of the private school community. Wisconsin also has a liaison at its SEA that works closely with the ombudsman. Wisconsin's model appears to be unique.

The time, talent, and overall capacity of ombudsmen are inconsistent between the states and, in many states, seem to be lacking.

High turnover among ombudsmen was noted as a concern. For example, Indiana has had six ombudsmen since 2016, while both Wisconsin and New York have had only one since ESSA was implemented. As noted above, in eight out of nine states, the ombudsmen wear multiple other hats within the SEA, and the ombudsman role is not full-time. To some private school leaders, this seems like the SEA is trying to plug a hole or check off a box on a compliance form without dedicating serious resources to the ombudsman role.

In states wherein the ombudsmen are serving only part-time in their respective roles, there is less proactive outreach to the private school community to build partnerships or offer training on equitable services requirements. The ombudsmen become involved only when contacted by private school officials. Ombudsmen who spend more time in their role have more bandwidth to proactively connect with the private school community and provide equitable services training.

It is unclear whether SEAs are attempting to save resources by adding non-related responsibilities to the ombudsman's plate. ESSA ombudsmen can be paid out of funds reserved for state administration,¹⁰⁶ but the overall amount that a state can reserve has not increased. Therefore, there may be an incentive for SEAs to keep costs down for this role. If and wherever this is occurring, ombudsmen's respective capacities are limited.

In general, the ability of ombudsmen to be impartial and thus truly effective in their roles is questionable.

Another question that has been raised is whether ombudsmen can be fully impartial while working for the SEA and whether the ombudsmen have the support that they need from their respective SEAs to enforce the law when LEAs resist.

Some state leaders feel that the ombudsmen are accessible and helpful at explaining program parameters, but less effective in enforcing the law and mediating disputes between LEAs and private school officials. There is a sense that ombudsmen do not want to stand up to the LEAs due to potential push-back from LEAs to their respective SEA leadership.

The Wisconsin model appears to have worked particularly well because the ombudsman is not a state employee but is instead employed by the private school association through a contract with the state Department of Public Instruction. Similarly, in New York, given the level of seniority held by the ombudsman within the Department, there is less concern about the ombudsman's ability to stand up to LEAs and enforce the law on behalf of private schools.

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Another question that has been raised is whether ombudsmen can be fully impartial while working for the SEA and whether the ombudsmen have the support that they need from their respective SEAs to enforce the law when LEAs resist.

B. Changes to Consultation Requirements/ Affirmation-of-Consultation Forms

It is unclear whether the additional consultation topics prescribed by ESSA are being discussed; in particular, the discussion of consolidation of funds from one ESSA program to another may be lacking.

As discussed above, ESSA added a number of topics to be discussed during consultation for the Title I program and for the programs covered under the uniform provisions. The topics discussed during consultation were not listed in the consolidated applications that the authors reviewed, but private school leaders shared that these additional topics had been discussed during their consultation meetings.

One private school representative indicated that one of the new topics—*the consolidation of funds (“flexing”) from one ESSA program to another*—was not discussed during consultation. As a result, the private schools that this official represented lost out on their respective Title IIA allocations and Title IV allocations because these funds were flexed into Title IA and the schools had few eligible students for that Title IA program. This concern was not raised by the other private school leaders surveyed. However, given the nuance of this provision in the law, it is likely that few private school representatives are aware of the impact(s) of flexing on their equitable share.

The authors’ review of the consolidated applications showed that all Title IIA funds and Title IV funds for Springfield, Massachusetts and Spokane, Washington were flexed into the Title IA program. It is unclear whether consultation regarding the flexing of these funds took place or, as noted above, whether the impact was well understood by the private school community that seems to have lost out on Title IIA and Title IV funding as a result.

Between the states/LEAs, private school leaders’ ability to effectively affirm and indicate to their respective ombudsmen that consultation across all of ESSA’s title programs had been timely and meaningful was inconsistent.

In the authors’ review of the consolidated applications, there was little indication that during consultation agreement had been reached. These applications simply asked the LEAs to indicate whether the affirmation-of-consultation form had been received. The Colorado and Florida applications did not ask for any information regarding how the funds were calculated, while the Massachusetts and Washington applications required this information.

Most surveyed private school leaders believe that the new language within the law clarifying that the goal of consultation is to reach agreement has (1) improved the meaningfulness of consultation and (2) increased their LEAs’ willingness to engage in dialogue.

However, some private school leaders indicated that this new language does not impact the nature or quality of their consultation meetings, and in some cases, these leaders continue to believe that they do not have the opportunity to provide meaningful input. In these cases, “consultation” is merely a presentation provided by the LEA and a unilateral offer of services.

Across the board, private school leaders indicated that the affirmation-of-consultation forms have been updated to include an option for private school leaders to indicate that consultation have not been meaningful or that the program have not been equitably designed with respect to private school students.

However, some private school leaders feel that important context is being missed when a private school is forced to select a “yes” or “no” option for all title programs or even within a particular title program. These leaders indicated that they would prefer a separate affirmation line for each title program and for the specific requirements within each program.

Some private school leaders also shared that they are mindful of the importance of maintaining a good relationship with their LEAs given the LEAs’ level of discretion in implementing the

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equitable services programs for their schools. Therefore, among some of these same private school leaders there is reluctance to include on the affirmation-of-consultation form any negative feedback.

Few of the private school representatives surveyed indicated that they have shared the specific terms of the agreement reached during consultation with their respective ombudsmen. While these private school representatives have signed off on the updated affirmation-of-consultation forms, these representatives have not provided to their respective states' ombudsmen detailed information regarding the specific agreement that had been reached during consultation. These leaders indicated that it would have been helpful if they had been given a chance to provide a narrative description of the agreement reached.

This paper's authors have reviewed the affirmation-of-consultation forms from Colorado,¹⁰⁷ Indiana,¹⁰⁸ Illinois,¹⁰⁹ New York,¹¹⁰ Massachusetts,¹¹¹ Michigan,¹¹² Washington,¹¹³ and Wisconsin.¹¹⁴ The purpose of this review was to analyze the level of information collected by these SEAs and the nature of the agreement that was submitted to these SEAs' respective ombudsman.

In some states the affirmation-of-consultation forms ask private school representatives to indicate whether consultation was timely and meaningful with respect to all title programs. In other states, the affirmation-of-consultation forms ask specifically about each individual title program. The agreements reached during consultation are required to be submitted to ombudsmen via the affirmation-of-consultation form or another document.¹¹⁵

The authors reviewed the affirmation-of-consultation forms to determine whether these forms included the specific terms of the agreement reached during consultation either through a narrative section or through another means. Most states do not include an optional or required narrative section detailing the specific agreement reached during consultation. Only one state *requires* that these details be included.

In Colorado, Indiana, Massachusetts, Washington, and Wisconsin, the affirmation-of-consultation form lists all the required topics at consultation and asks private school leaders to indicate whether consultation on all title programs was, on the whole, timely and meaningful.

In Illinois, the affirmation-of-consultation form asks private school leaders to indicate whether consultation was timely and meaningful for each individual title program. However, the Illinois affirmation-of-consultation form does not provide a mechanism for private school leaders to indicate that, even though consultation on a particular title program was meaningful, consultation on other title programs was not meaningful.

The Michigan affirmation-of-consultation form is quite detailed and requires *both* LEAs *and* private school leaders to separately affirm whether timely and meaningful consultation has occurred on *each* of the required topics at consultation for each title program.

For example, regarding the Title IVA program, both LEA officials and private school representatives must separately initial three lines to affirm that: 1) the needs of the private school(s) have been determined, 2) timely and meaningful consultation has occurred and the LEA has considered the views of private school officials before making any decisions that may impact private schools' participation, and 3) the services provided meet the needs of eligible private school students and have been agreed upon during consultation. This particular form allows private school leaders to note a problem in one program area within a particular title program while agreeing that consultation was timely and meaningful in other areas. Input from the LEA also provides a mechanism to ensure that both parties have after the consultation meeting a common understanding.

Similarly, the New York affirmation-of-consultation form, which picks up on new language in ESSA specifying that the goal of consultation is to reach agreement, asks private school leaders to indicate (1) whether an agreement was reached for each of the required topics at consultation for each title program and (2) the date on which the agreement was reached.

Few of the private school representatives surveyed indicated that they had shared the specific terms of the agreement reached during consultation with their respective ombudsmen.

In addition, the New York form requires specific and detailed information regarding the calculation of funds for each title program and a description of the equitable services to be provided.

The Illinois, Indiana, Michigan, and New York affirmation-of-consultation forms do not provide space for an optional or required narrative regarding the agreement reached during consultation. However, given the robust and detailed nature of the New York affirmation-of-consultation form, much if not all of the agreement reached during consultation is transmitted to the ombudsman via said form.

The Massachusetts affirmation-of-consultation form provides space for a narrative description of the agreement reached, but private school leaders indicated that this section is not required.

Similarly, Wisconsin provides space at the end of its affirmation-of-consultation form for private school representatives and LEAs to detail the equitable services agreed upon in consultation for each title program. However, this portion of the form is not required, and the form explicitly states that “DPI¹¹⁶ will not review the services listed on this page.”¹¹⁷ Of all the states surveyed, Colorado appears to be the only state that requires a narrative section outlining the agreement reached during consultation.¹¹⁸

The Indiana, New York, and Wisconsin forms also separately ask private school representatives to specify whether agreement has been reached at consultation regarding the pooling of funds. This is an area where there must be agreement between private school officials and LEAs, notwithstanding the general rule that LEAs have the final word in consultation.¹¹⁹ The other state affirmation-of-consultation forms that the authors reviewed either ask private school leaders to indicate whether the pooling of funds was covered in consultation or list such pooling as being among the required topics, but these forms do not specifically ask whether agreement has been reached on the pooling of funds.

One additional feature included on the New York affirmation-of-consultation form is a checkbox for private school leaders to indicate whether they would like to receive a copy of the consolidated application from the LEA. This is a simple way for private school leaders to have access to the information contained within the consolidated application.

However, the other affirmation-of-consultation forms reviewed did not provide to private school representatives this option. Representatives in those states would have to request the application from the LEA or file a Freedom of Information Act (FOIA) request to obtain the consolidated application. Furthermore, it is likely that some LEA officials are not aware that consolidated applications are public documents that are meant to be shared upon request.¹²⁰

C. Calculation of Proportional Share

Due to ESSA’s prohibition of “set-asides,” the private school proportionate share has, in general, increased.

Per this prohibition, the private school proportional share has been calculated based on the full allocation for Title IA before any off-the-top reservations and on LEAs’ full Title IIA allocations, not just the portions reserved for professional development.

Most private school leaders have indicated that their proportional share for Title IA and Title IIA has increased. As noted above, prior to the reauthorization, public school districts were able to front-load significant amounts of Title IA funding into “reservations,” thus reducing their equitable share obligation.

Furthermore, Title IIA was previously calculated based only on the funding designated for

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professional development. Now, in any given LEA, the proportional share for Title IIA is calculated based on private school enrollment vis a vis the LEA's *total* public and private school student enrollment and without regard to the residency of private school students.

D. Obligation of Funds in the Year that they were Received/Broader Allowable Uses for Title IA

Many LEAs have wrongly interpreted ESSA's new requirement that proportionate share funding is to be obligated in the year in which it is received to mean that carryover of that funding is no longer permitted.

A new requirement in ESSA requires funding to be obligated in the year in which it is received.¹²¹ This requirement is intended to ensure that equitable services will be delivered to private school students in a timely manner. However, this requirement appears to have caused some confusion.

Several private school leaders have indicated that their LEAs have interpreted this new requirement to mean that carryover is no longer allowed. *This is not the case.* The equitable services guidance provides that, in most cases, a carryover is *required*.¹²² The need for carryover arose for many private schools because of COVID-19 pandemic-related shutdowns and other challenges resulting therefrom. Private school representatives shared that, during this time, their respective ombudsmen were helpful to them in advocating for a carryover.

Based on a review of the consolidated applications, it is difficult to discern if carryover for private schools has been allowed. In some cases, a carryover was indicated for the public school portion of the program only. It was unclear whether private schools had requested a carryover during consultation that their respective LEAs had denied, or if private school leaders have been able to fully expend their schools' respective ESSA grant funds during the carryover period.

E. Notice of Allocation

In general, notices of allocation are lacking and/or difficult to locate.

Another new ESSA requirement directs SEAs to annually communicate to appropriate private school representatives the amount of funds available for equitable services under each relevant program through a "notice of allocation." Ideally, private school leaders would use this notice to (1) ensure that the allocation provided by LEAs is accurate and (2) engage in additional consultation if the allocation amount(s) or method of calculation for determining the funding listed on the notices of allocation do not align with their understanding from their consultations with their respective LEAs.

The majority of private school leaders surveyed had not received a "notice of allocation" from the SEA and did not know where to look for it. Others thought that this information was published on a website but were unsure of the particular web address from which that information can be accessed.

Florida¹²³ and New York¹²⁴ publish the "notice of allocation" on their webpages and list the allocation(s) by title program for each LEA. Since many of the LEAs in these states are quite large and the allocation amounts are not broken down by schools, the information is difficult for private school officials to use effectively.

Massachusetts¹²⁵ and Wisconsin¹²⁶ provide a list of each private school participating in each title program along with their respective allocations. Both states also send a notice to all participating private schools regarding the private school allocation(s). Breaking down the list to include the amounts allocated for each private school ensures greater transparency and accountability for the LEAs.

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Information regarding notices of allocation was not readily available on the Colorado, Indiana, Michigan, or Washington equitable services webpages.

F. Complaint Process

It is an open question whether private school leaders are aware of their right to file a complaint

Few private school complaints have been filed since 2015. It is unclear whether private school leaders are knowledgeable about their right to file a complaint and/or whether they have the knowledge and capacity to do so when necessary. Furthermore, even when the law is clearly on their side, private school leaders may be reluctant to file a complaint due to (1) the level of discretion held by LEAs in administering the title programs and the fact that (2) LEAs have the final word during consultation.

¹²⁷Colorado,¹²⁸ Indiana,¹²⁹ Massachusetts,¹³⁰ Michigan,¹³¹ New York,¹³² and Wisconsin¹³³ have published the complaint processes including updated timelines on their websites. This information was harder to find for Florida and Illinois. In Washington, the affirmation-of-consultation form asks private schools to note whether the LEA explained the complaint processes and procedures and the form links to those processes and procedures. However, when the authors tried to access that information, the link was broken.¹³⁴

Ensuring that every student can succeed under the Every Student Succeeds Act: Policy Recommendations

As the latest reauthorization of the *Elementary and Secondary Education Act* (ESEA), the *Every Student Succeeds Act* (ESSA) has been to its precursor, the *No Child Left Behind Act* (NCLB), what NCLB had been to its precursor: a respectable and valiant, though far-from-sufficient effort to update and improve the law and its application and execution.

At least as far as private education is concerned, the various reauthorizations of ESEA since its inception, including this latest reauthorization, have ultimately fallen short. Given the size and scope of this law, this is not too surprising, however. Therefore, it was and it remains seemly that Congress has mandated this law's quinquennial reauthorization.

Each reauthorization presents to all of ESEA's stakeholders, including private school leaders, another opportunity to get the law right for *every student* for whose benefit ESEA was first conceived. Inclusion of the phrase "every student" in the title of the latest reauthorization is seemly. Because only a literal interpretation of this phrase befits Congress's intent, we must necessarily presume that until ESEA's application to and execution among America's private school students is significantly improved, the *Every Student Succeeds Act* will continue to be unequal to its name. In that case, ESEA would remain deficient, as would this nation's ongoing quest to wage "a crusade against ignorance" of which President Johnson, quoting Thomas Jefferson, reminded the nation on April 11, 1965, just after he signed into law ESEA.¹³⁵

Congress must again act to mend this deficiency.

This mending is a requirement of the law itself. This mending is also a requirement if we are to fully live up to the transcendental values that collectively animate and preserve our democracy. Fairness and equitability, freedom and choice, and subsidiarity and the common good are among these values. These values' future guardians include today's private school students. In their name, we now offer these recommendations:

- USED should provide a more detailed job description for the ESSA ombudsman that fully delineates the role's required responsibilities and the level of experience that is necessary for a person to fully execute the ombudsman's functions. This job description should include provision of trainings for private school officials and LEAs as one of the official roles and responsibilities of ombudsmen.

Few private school complaints have been filed since 2015. It is unclear whether private school leaders are knowledgeable about their right to file a complaint and/or whether they have the knowledge and capacity to do so when necessary.

USED should provide a more detailed job description for the ESSA ombudsman that fully delineates the role's required responsibilities and the level of experience that is necessary for a person to fully execute the ombudsman's functions.

- USED should recommend that (1) the ESSA ombudsman spend at least half of their time in this role and (2) this requirement should only be overridden with the express written consent of private school officials no less than every three years.
- Congress should consider implementing an ombudsman requirement in IDEA; furthermore, states should consider combining the IDEA ombudsman and the ESSA ombudsman into a single, *full-time* position.
- USED should offer additional training and resources to new ombudsmen and support the ombudsmen in proactively reaching out to the private schools in their respective states to learn more about the schools and their “context” and build strong relationships with the private school community.
- USED should issue guidance to states on the contractor model for the ombudsman role and, importantly, provide explicit guidance stating that SEAs may contract out that role to private school associations or other competent third parties.
- Congress should consider amending the law to require that the ombudsman be housed *outside* the SEA in order to ensure ombudsmen’s impartiality.
- SEAs should enforce the ESSA requirement stipulating that the agreement reached during consultation must be transmitted to their respective ombudsmen.¹³⁶
- SEAs should consider updating their respective affirmation-of-consultation forms to include a required narrative description wherein both LEAs and private school officials detail the agreement(s) reached during consultation.
- SEAs should consider breaking down their affirmation-of-consultation forms to ask about each of the required areas for each title program separately in order to allow private school representatives to indicate that there is a problem in one area even if, overall, they are satisfied with the program. Furthermore, SEAs should consider following the New York model that asks whether agreement was reached in *each* area.
- SEAs should update their respective affirmation-of-consultation forms to ask if agreement was reached regarding the pooling of funds since there must be agreement on this topic.
- SEAs should redesign their consolidated applications to require LEAs to list all eligible private schools, then indicate from that list all (1) participating private schools, (2) the proportional share for each participating school, (3) the methodology used to arrive at that calculation, (4) whether private schools participated in consultation, and (5) the equitable services provided.
- USED should publish a uniform consolidated application for LEAs that covers all of the topics outlined above to create more transparency in the field.
- SEAs should (1) consult with private school leaders about the best way to disseminate the notice of allocation and (2) provide a list of all private schools participating in each program as well as the total amount of funds allocated to each school prior to the start of each school year.
- Congress should consider amending the law to require SEAs, rather than LEAs, to (1) calculate the proportional share and (2) provide two separate allocations to the LEAs; one of these allocations would be designated for equitable services for private school students, while the other allocation would be designated for public school students.
- SEAs should provide increased training to LEAs on equitable services requirements and, via these trainings, focus on the (1) new allowable uses for Title I funds and (2) consolidation of funds between programs.
- USED should require each SEA to post the private school complaint process on its website in an accessible and easy-to-find format.
- Congress should consider amending the law to require SEAs to administer the title programs at the state/SEA level, rather than at LEAs.

Congress should consider amending the law to require that the ombudsman be housed outside the SEA in order to ensure ombudsmen’s impartiality.

USED should require each SEA to post the private school complaint process on its website in an accessible and easy-to-find format.

Appendix A: Michigan Affirmation Form

Introduction to Private School Documentation

Federal legislation requires that timely and meaningful consultation occurs between the Local Education Agency (LEA) and private school officials prior to any decision being made that affects the opportunities for eligible private school students, teachers, and other educational personnel to participate in programs. For consultation to be meaningful, the LEA must genuinely consider the comments of the private school officials. A unilateral offer of services by an LEA with no opportunity for discussion is not meaningful consultation. The consultation must continue throughout the implementation and assessment of activities under this section.

LEAs that have private school students eligible for equitable services are required to complete their documentation by using the Documentation of Private School Consultation Form and uploading it on the Submit Documents Page in the Grant Electronic Monitoring System/Michigan Administrative Review System (GEMS/MARS). Your completed Documentation of Private School Consultation Form should be submitted no later than February 15.

Documentation of Private School Consultation Form

This Form must identify the programs for which consultation has occurred. Complete all applicable questions and include signatures and dates from the required parties. Initial Consultation should be completed by July 1 and Amendment Consultation should be completed by January 15.

Sample Letter In-District and/or Sample Letter Out-of-District

If the LEA has several participating private schools, it is only required to upload a sample of the Letters that were sent. If the LEA chooses to customize the Sample Letter provided by the Office of Field Services (OFS), the Letter must be customized with LEA-specific information prior to being uploaded in GEMS/MARS.

Memorandum of Understanding (if applicable)

If the LEA is transferring funds to a neighboring LEA to provide services on their behalf to eligible students, educational personnel, or families of a private school; upload a copy of the Memorandum of Understanding in the Consolidated Application. This Memorandum must:

- Identify parties entering into the agreement,
- Provide contact information,
- Specifically delineate timelines and the agreed-upon services to be provided to each eligible group (students, teachers, families),
- Provide the identified equitable service from each Federal funding source, and
- Include signatures and dates.

The LEA is ultimately responsible for oversight of all contracted services for students.

Participating Private Schools' Equitable Service Calculation Worksheet

Complete all applicable tabs within the Excel Worksheet to determine the equitable services of funds for participating private schools.

- **Title I, Part A Per Pupil Allocations:** LEAs will use the District Information and Participating Private Schools' tabs to determine the allocation for Title I, Part A services in each private school prior to any district reservations. If an LEA is required to have a Parent and Family Engagement reservation, proportional amounts will be reserved from the public and private school allocations of Title I funds for their Parent and Family Engagement. At amendment LEAs should complete the Carryover tab to identify any additional funds that may need to be allocated for Title I, Part A services in the private schools. A Title I, Part A Summary tab is available to help with completion of the Title I School Selection (TISS) application in MEGS+.
- **Title I, Part C Per Pupil Allocations:** Migrant students are identified and recruited by a trained recruiter from an LEA that operates a local Migrant Education Program (MEP). An LEA that operates an MEP will provide equitable instructional support or referred services through meaningful consultation with the private school and in accordance with Title I, Part C legislation. If a private school suspects a student may be eligible for the MEP (parent or student has a history of agricultural or fishing work in addition to a recent history, last 36 months, of mobility), contact the OFS Migrant Education Consultant. The worksheet is not used to calculate service amounts for these students.
- **Title II, Part A and Title IV, Part A Per Pupil Allocations:** LEAs will use the District Information and Participating Private Schools' tabs to determine the allocation for Title II, Part A and Title IV, Part A services in each private school. At amendment LEAs should complete the Carryover tab to identify any additional funds that may need to be allocated for Title II, Part A and Title IV, Part A services in the private schools. Title II, Part A and Title IV, Part A Summary tabs are available to help ensure alignment with Title II, Part A and Title IV, Part A budgets in the Consolidated Application.
- **Title III, Part A Per Pupil Allocations:** LEAs will use the District Information, Participating Private Schools', and the Title III tabs to determine the allocation for Title III, Part A English Learner and Immigrant Student services in each private school. The LEA and the private school should collaboratively identify needs, create a plan, and a corresponding budget which may include expenditures for the LEA to provide educator professional learning, initial identification screening, and summative assessment as well as other instructional services that support their English Learners (ELs). These EL services continue until the allocation to the private school is depleted. For additional details, see the document at https://www.michigan.gov/documents/mde/Private_School_Consultation_Under_Title_III_665154_7.docx.

Documentation of Private School Consultation Form

The following topics must be discussed during meaningful consultation with the private school with the goal of reaching agreement on how to provide equitable and effective programs for eligible private school students, teachers, educational personnel, and families based on a Comprehensive Needs Assessment (CNA).

Uniform Consultation Topics for Grant Sources

Title I, Part A: Date(s) Completed: N/A

1. The source of data and method used to determine the number of students from low income families in participating attendance areas has been explained.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

2. The amount of funds available for Title I services and how the private school amount is calculated has been explained.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

3. The LEA and private school have identified the needs of eligible resident students.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

4. The services the LEA will provide to the private school have been agreed upon.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

5. When, where, and by whom the services will be provided has been specified.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

6. How the services will be assessed and how the results of the assessment will be used to improve those services have been discussed.

Initial: LEA Yes No Private: Yes No

Amendment: LEA Yes No N/A Private: Yes No

7. The size and scope of the services to be provided to the private school students and educational personnel have been determined.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

8. The LEA and private school have made decisions about the delivery of services. These decisions include a thorough consideration of the views of the private school officials on providing contract services through potential third-party providers, by pooling funds, or by consolidating funds from other Federal programs that are dedicated to providing equitable services to private school students.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

Title II, Part A: Date(s) Completed: N/A

1. The Professional Development needs of staff have been determined and Professional Development activities for staff have been agreed upon, if applicable.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

Title III, Part A: Date(s) Completed: N/A

1. The needs of eligible English Learners have been identified and specific services have been agreed upon for students, if applicable.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

Title IV, Part A: Date(s) Completed: N/A

1. The needs of the private school have been determined for these funds, if applicable.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

Affirmations of Meaningful Consultation

1. Timely and meaningful consultation has occurred, and the LEA has considered the comments of the private school officials before decisions were made that affected the participation of eligible private school students, teachers, educational personnel, and families.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

2. The services to be provided to meet the needs of eligible private school students have been agreed upon.

Initial: LEA Yes No Private: Yes No
 Amendment: LEA Yes No N/A Private: Yes No

If you have answered No to any of the above items; please identify the item number(s), the person responding, indicate LEA or private school, and provide a brief explanation for your response(s).

If the LEA disagrees with the views of the private school officials with respect to any of the issues described above, the LEA will provide the private school officials with a written explanation as to the reason for the disagreement.

If the private school officials do not agree that the above conditions have been met, they are encouraged to provide a written statement to the LEA specifying the reasons for their disagreement.

If an agreement cannot be settled upon, please see the Complaint Process for Private Schools on the Equitable Services Ombudsman website at www.michigan.gov/mde-esombudsman.

The completed Documentation of Private School Consultation Form with any attachments shall be maintained by the LEA, and a copy shall be transmitted via GEMS/MARS, to the State’s Equitable Services Ombudsman who oversees and monitors equitable services for private school students.

Initial Consultation:

LEA Official _____
Date _____
Private School Official _____
Date

LEA Name _____
Private School Name

Amendment Consultation:

LEA Official _____
Date _____
Private School Official _____
Date

LEA Name _____
Private School Name

Appendix B: Washington Affirmation Form

School District

Affirmation of Consultation with Private Schools

2018–19 School Year

Date of Initial Consultation	Click or tap here to enter text.
Name of District	Click or tap here to enter text.
Name of Private School	Click or tap here to enter text.

Participation in ESSA Federal Programs (Check all that apply):

- Title I, Part A
 Title I, Part C
 Title II, Part A
 Title III, Part A
 Title IV, Part A
 Title IV, Part B

***Note:** this template only covers ESSA Federal Programs. There are other federal programs (IDEA, Perkins, Child Nutrition), with equitable services requirements. This form does **not** apply to them.

The goal of the consultation process is agreement between the district and private schools. District officials must take into consideration the private school officials' views for how to serve students and the design of the program. Consultation includes meetings with private school officials before the district makes any decisions that affect the opportunities available to private schools choosing to participate in federal programs, including the transfer of funds from one ESSA program to another. If the district disagrees with the views of private school officials on any topic subject to consultation, the district must provide in writing to such private school officials, the reasons why they disagree. The final decision rests with the district.

Discuss the following topics during the initial and ongoing consultation:

- Identification of children's needs.
- What services will be offered. Services including materials and equipment must be secular, neutral, and nonideological.
- How, where, and by whom the services will be provided.
- How services are academically assessed and how the results of the assessment will be used to improve those services.
- The size and scope of the equitable services provided to eligible private school children, teachers, and other educational personnel.
- The proportionate share of funding allocated for services and how the funding allocated is determined.
- How and when decisions about delivery of services will be made and how the private school will be notified of those decisions.
- Whether services shall be provided by the school district directly or through a separate government agency, consortium, or entity, or through a third-party contractor.
- Whether to provide equitable services to eligible private school children by pooling funds allocated for the program's purpose or on a school-by-school basis.
- Transfer of funds from one federal program to another.

For Title I, Part A, discuss these additional topics:

- The methods or sources of data that will be used to determine the number of children from low-income families in participating public school attendance areas who attend private schools.
- How, if the school district disagrees with the views of the private school officials on the provision of services through a contract, the school district will provide in writing to the private school officials an analysis of the reasons why the district has chosen not to use a contractor.
- When services will be provided (including the approximate time of day).

Private School Official Affirmation

District explained [the complaint process and procedures](#).

Check one:

Timely and meaningful consultation occurred and an equitable program of services was designed during the consultation process.

Consultation was not timely and meaningful and/or did not result in an equitable program of services to meet the needs of the private school children.

*If consultation was not timely and meaningful, provide a brief explanation on a separate page.

Signature of Private School Official Name of Private School Official Date

Signature of District Official Name of District Official Date

The district maintains a copy of this written affirmation in its files, provides the private school official with a copy, and uploads an electronic copy to the Office of Superintendent of Public Instruction via the Private Participation in Federal Programs application in EDS.

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- 59 Sec. 1117(a)(3)(B).
- 60 Ibid.
- 61 Cf., for example, Council for American Private Education Issue Paper on ESEA Reauthorization, pg. 2. Available for download at <http://www.capenet.org/pdf/IP-ESEA2013.pdf>, accessed August 1, 2022.
- 62 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, Question A-19 (hereafter referred to as “Title I Guidance (2019)”).
- 63 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, Question N-1 (hereafter referred to as Fiscal Changes and Equitable Services Requirements Guidance (2016)). Available for download at <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>, accessed August 8, 2022).
- 64 Ibid.
- 65 Fiscal Changes and Equitable Services Requirements Guidance, Question N-2
- 66 Title I Guidance (2019), Question E-3.
- 67 Sec. 1117(b)(1).
- 68 Title I Guidance (2019), Question A-1.
- 69 Section 1117(b)(1).
- 70 Section 8501 (c)(1)(G) and (H).
- 71 Title I Guidance (2019), Question A-1.
- 72 Sec. 1117(b)(1) and Sec. 8501(c)(1).
- 73 Sec. 1117(b)(1).
- 74 Fiscal Changes and Equitable Services Requirements Guidance (2016), Question 0-5.
- 75 Section 1117(b)(5).
- 76 Sec. 1117(a)(4)(A)(ii).
- 77 Ibid.
- 78 Fiscal Changes and Equitable Services Requirements Guidance (2016), Question P-3.
- 79 Ibid.
- 80 Section 9501(b)(3) of the ESEA, as amended by NCLB.
- 81 ESEA section 8501(b) and Fiscal Changes and Equitable Services Requirements Guidance (2016) Questions P-2 through P-4.
- 82 Sec. 1117(a)(4)(B) and Sec. 8501(a)(4)(B)).
- 83 Title I Guidance (2019), Question B-26.
- 84 Title I Guidance (2019), Question B-27.
- 85 Ibid.
- 86 Sec. 1117(a)(1)(A).
- 87 Ibid.
- 88 Cf. Council for American Private Education Issue Paper on ESEA Reauthorization, page 1. Available at <http://www.capenet.org/pdf/IP-ESEA2013.pdf>, accessed August 1, 2022.
- 89 Sec. 1117(a)(4)(C) and Sec. 8501(a)(4)(C).
- 90 Fiscal Changes and Equitable Services Requirements Guidance (2016), Question N-8.
- 91 Fiscal Changes and Equitable Services Requirements Guidance (2016), Question N-10.
- 92 Section 8501.
- 93 Section 8503(a).
- 94 Section 8503(b).
- 95 LEAs can opt to submit individual applications for each Title program or to submit a consolidated application for all the title programs.
- 96 These LEAs included Colorado Springs, Denver, and Grand Junction in Colorado, Orange County in Florida, Seattle, Spokane and Yakima in Washington and Boston, Springfield and Worcester in Massachusetts. The authors also submitted FOIA request for the consolidated applications in Miami and Saratoga in Florida but did not receive those documents.
- 97 These states include Colorado, Florida, Indiana, Illinois, New York, Michigan, Massachusetts, Washington and Wisconsin.
- 98 The ombudsmen that were interviewed were Kathryn Wisner from Colorado, Alex Lilley from Massachusetts, Julie Chace and Sheila Gerrish from Washington (via email), and Abigail Pavela from Wisconsin.
- 99 Title I Guidance (2019), Question E-3.
- 100 Sec. 1117(a)(3)(B).
- 101 WCRIS is an acronym for the Wisconsin Council of Religious and Independent Schools.
- 102 In Washington, there are two ESSA ombudsmen who share the responsibilities of this role.
- 103 Title I Guidance (2019), Question E-3.
- 104 Cf. e.g. the National Ombudsman Hub available at <https://oese.ed.gov/resources/oese-technical-assistance-centers/state-support-network/resources/esea-state-ombudsman-hub-summary/>, accessed August 8, 2022.
- 105 In a direct service model, the LEA staff members provide direct services to private school students. In a third-party contractor model, an external third party provides services to private school students. When private schools pool funds, each school’s allocation is pooled into a larger pool of funds that is used to provide services to the group of private school students.
- 106 Fiscal Changes and Equitable Services Requirements Guidance (2016), Question N-4.
- 107 Colorado affirmation-of-consultation form available at <https://www.cde.state.co.us/fedprograms/equitableservicescolorado>, accessed August 9, 2022.
- 108 Indiana affirmation-of-consultation form available at <https://www.in.gov/doe/grants/equitable-services-ombudsman/>, accessed August 9, 2022.

- 109 Illinois affirmation-of-consultation form available at <https://www.isbe.net/Documents/43-20-np-consult-participation.pdf>, last accessed August 9, 2022.
- 110 New York affirmation-of-consultation form available at <http://www.nysed.gov/essa/equitable-services-nonpublic-schools>, last accessed August 9, 2022.
- 111 Massachusetts affirmation-of-consultation form available at <https://www.doe.mass.edu/federalgrants/resources/equitable-services-essa/>, last accessed August 29, 2022.
- 112 The Michigan affirmation form is not available on the Michigan DOE website. A copy of the affirmation is included in Appendix A.
- 113 The Washington affirmation form is not available on the Washington DOE website. A copy of the affirmation is included in Appendix B.
- 114 Wisconsin affirmation-of-consultation form available at <https://dpi.wi.gov/eSEA/equitable-services-private-school-students>, accessed August 9, 2022.
- 115 Sec. 1117(b)(1).
- 116 “DPI” is the acronym of the “Wisconsin Department of Public Instruction.”
- 117 Wisconsin affirmation-of-consultation Form, P. 3. Available at <https://dpi.wi.gov/sites/default/files/imce/eSEA/pdf/f9580-ac.pdf>, accessed August 8, 2022.
- 118 It is possible that private school leaders and LEAs transmit the results reached during consultation to the ombudsman in a different way. However, none of the private school leaders interviewed or surveyed for this paper had submitted the specific nature of the agreement that they reached during consultation to the ombudsman in an alternate fashion.
- 119 Title I Guidance (2019), Question B-9.
- 120 Title I Guidance (2019), Question A-18.
- 121 Sec. 1117(a)(4)(B) and Sec. 8501(a)(4)(B).
- 122 Title I Guidance (2019), Question B-27.
- 123 Florida equitable services allocations are available at <https://www.fldoe.org/finance/equitable-services/resources.stml>, accessed August 8, 2022.
- 124 New York equitable services allocations are available at <http://www.nysed.gov/essa/equitable-services-nonpublic-schools>, accessed August 8, 2022.
- 125 Massachusetts equitable services allocations are available at <https://www.doe.mass.edu/federalgrants/resources/equitable-services-essa/>, accessed August 8, 2022.
- 126 Wisconsin’s equitable services allocations are available at <https://dpi.wi.gov/eSEA/private-school-equitable-share-report>, accessed August 8, 2022.
- 127 Title I Guidance (2019), Question A-1.
- 128 Colorado complaint process available at <https://www.cde.state.co.us/fedprograms/equitable-services-colorado>, accessed August 8, 2022.
- 129 Indiana complaint process is available at <https://www.in.gov/DOE/files/equitable-services-complaint-resolution-and-appeal-process-title-i-and-title-viii.pdf>, accessed August 9, 2022.
- 130 Massachusetts complaint process is available at <https://www.doe.mass.edu/federalgrants/resources/complaint.html>, accessed August 9, 2022.
- 131 Michigan complaint process is available at <https://www.michigan.gov/mde/services/flexible-learning/options/equitable-services/resources/complaint-process-for-private-schools>, accessed August 5, 2022.
- 132 New York complaint process is available at <http://www.nysed.gov/essa/new-york-state-essa-funded-programs-complaint-procedures>, accessed August 8, 2022.
- 133 Wisconsin complaint process is outlined at <https://dpi.wi.gov/eSEA/equitable-services-private-school-students>, accessed August 8, 2022.
- 134 Washington affirmation form available in Appendix B.
- 135 Lyndon Johnson, “Remarks in Johnson City, Tex., Upon Signing the Elementary and Secondary Education Bill,” The American Presidency Project [website] <<https://www.presidency.ucsb.edu/documents/remarks-johnson-city-tex-upon-signing-the-elementary-and-secondary-education-bill>>, accessed November 25, 2022.
- 136 Sec. 1117(b)(1).

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Russell Fleming: A lifelong educator, Russ started his career with the Peace Corps in the Democratic Republic of Congo, taught at and directed an English language institute at an international school, and taught bilingual education in the Boston Public Schools. Most recently, Russ has served as an education specialist at the Massachusetts Department of Elementary and Secondary Education, where he has focused on state and federal grant programs. In this role, he has also served as the state ombudsman for private school equitable services under ESEA/ESSA. Russ has a bachelor's degree from Marquette University and a master's degree from the University of Massachusetts.

Mission

Pioneer Institute develops and communicates dynamic ideas that advance prosperity and a vibrant civic life in Massachusetts and beyond.

Vision

Success for Pioneer is when the citizens of our state and nation prosper and our society thrives because we enjoy world-class options in education, healthcare, transportation, and economic opportunity, and when our government is limited, accountable, and transparent.

Values

Pioneer believes that America is at its best when our citizenry is well-educated, committed to liberty, personal responsibility, and free enterprise, and both willing and able to test their beliefs based on facts and the free exchange of ideas.

