

**PSC-ED-OII-WEBS**

**Moderator: Dramon Turner**  
**January 31, 2017**  
**1:00 pm CT**

Maureen Dowling: Good afternoon, webinar participants. My name is Maureen Dowling. And I'm the Director of the Office of Non-Public Education at the U.S. Department of Education. The Office of Non-Public Education, also known as ONPE, is pleased to host today's webinar, on the Elementary and Secondary Education Act or ESEA, as amended by the Every Student Succeeds Act or ESSA, and changes to the equitable services requirements.

Just before we get started, a few logistics. During the webinar, if you encounter any logistical problems, please use the chat feature in the right-hand corner, and send us any information, so that we can assist you.

However, if you'd like to submit a specific question about the content that we're presenting today, about the guidance or any other information, please use the Q&A feature and send it to the host. In that way, we can ensure that we collect all your questions in one place. And that will help us as we seek to provide guidance on these questions.

At the end, we will be using a polling question, and through that, you will use the polling feature for that. And again, the presentation is on the Elementary

and Secondary Education Act, as amended by the Every Student Succeeds Act and changes to the equitable services requirements.

We hope today that you will gain an understanding of the new provisions under ESSA, as they apply to equitable services for private school students and teachers, and also, knowledge of resources to assist you in understanding current and new provisions that need to be implemented, monitored and enforced.

We'll start with a little bit of information about the Office of Non-Public Education. We'll proceed to the new and changed provisions under the ESEA, as amended by ESSA, that apply to Title I Part A and Title VIII. Then, we're going to just focus in on new and changed provisions specific to Title I Part A and new and changed provisions specific to Title VIII. And then, we hope to have some time at the end for questions.

However, if the webinar ends before your question is answered, please send it through the Q&A feature or after the webinar to [onpe@ed.gov](mailto:onpe@ed.gov). And we'll provide that e-mail address again.

Today's presenters include myself and Isadora Binder in the Office of Non-Public Education, and she's our Title I Equitable Services Specialist; Mike Anderson from the Office of the General Counsel and a lead author on the guidance on equitable services; and Jenay Morrissey in the Office of Non-Public Education, ONPE's Title VIII Equitable Services Specialist.

Just by way of background, since 1965, and the passage of the Elementary and Secondary Education Act, the ESEA has required local educational agencies or LEAs to provide equitable services to private school students, teachers,

other educational personnel and, in some cases, parents, in a number of ESEA programs such as Title I Part A, Title II Part A, Title III, to name just some.

This was based on the child benefit principle, meaning that a child who met the eligibility requirements could receive services, regardless of the school the child attended. It's also important to note that like their public school counterpart, private school students, including low-income private school students, generate some of the federal education funds that are allocated to states and local educational agencies.

At the same time, be aware though that equitable services are not provided in the form of money to private schools. Rather, equitable services are provided to the LEA in the form of direct services to eligible students, teachers, other educational personnel and, in some cases, parents.

Okay. On December 10, the Every Student Succeeds Act was signed into law. And the ESEA, as amended by the No Child Left Behind Act, however, remains in effect through the 2016-2017 school year. ESSA affirms the obligations of states and local educational agencies to provide equitable services to private school children, teachers and other educational personnel.

As you will see on this slide, in the table, ESSA includes separate governing provisions for equitable services for private school students. Title I, Part A, as referred to as Title I, Improving Basic Programs Operated by Local Educational Agencies, as well as programs covered under Title VIII, Part F, provide the equitable service provisions.

Important to note, Title VIII governs five programs, so meaning the equitable services provisions that are found in Title VIII, they are applicable to Title I, Part C, the Education of Migratory Children; Title II, Part A, Supporting

Effective Instructions; Title III, Part A, English Language Acquisition, Language Enhancement and Academic Achievement; Title IV, Part A, Student Support and Academic Enrichment Grants; and Title IV, Part B, 21st Century Community Learning Centers.

Under ESSA, the Title I equitable services requirements, as you see on this table, are found in Section 1117. Similarly, the equitable services requirements that were previously in Section 9501 of NCLB are now in Section 8501 through 8504 of ESSA.

The Department issued new non-regulatory guidance on equitable services requirements under ESSA on November 21, 2016. Most of the requirements regarding equitable services under NCLB were actually carried over into ESSA.

So moving forward into the 2017-2018 school year, LEAs and private school officials will need to use this new guidance, which we'll be talking about today, along with the current guidance listed on this slide -- Title I Services to Eligible Private School Children issued on October 17, 2003 and Title IX, Part E Uniform Provisions Private Schools revised in March 2009.

The new guidance primarily focuses on requirements that are new or changed and that are common to Title I equitable services provisions and the Title VIII equitable services provisions. The new guidance is intended, again, to be used in conjunction with existing guidance that I referenced on the previous slide. And the Department hopes to publish additional comprehensive guidance on specific topics in the coming year.

Okay. Before I pass the presentation over to my colleague Isadora Binder, let me just tell you real quickly about the Office of Non-Public Education.

ONPE is the liaison office to the non-public school community, including private, state-based, independent and home schools. We are here to provide guidance and support to you as you seek to gain knowledge about federal education programs.

ONPE's mission is to facilitate maximum participation of private school students and teachers in federal education programs and initiatives. Within the Department, we offer advice and guidance on all matters affecting non-public school students and teachers. We communicate with national, state and local non-public school associations. And we work collaboratively with many offices throughout the Department.

We encourage you to visit our web site, which is shown here on this slide, and explore the various resources that are available, including, in the coming weeks, we will post this recorded webinar, along with a transcript, so that you can go back to it and reinforce the information that we have provided.

In addition, we hope that you will consider joining the ONPE listserv. Through the listserv, ONPE announces upcoming webinars, new resources and other pertinent information, such as when a new guidance will be coming out. All right? Thank you. And at this time, I'm going to turn it over to Isadora Binder.

Isadora Binder: Thanks, Maureen. This section of the presentation will review those changes that are coming through the equitable services requirements under both Title I and Title VIII. ESSA includes a new statutory requirement regarding the designation of an ombudsman. To help ensure that private school children, teachers and other educational personnel receive services equitable to those in public schools, state educational agencies must designate an ombudsman to monitor and enforce Title I and Title VIII equitable services.

Just a reminder, we've included at the bottom of each slide the statutory reference for the particular provisions, along with the FAQs and the Non-Regulatory ESSA Equitable Services Guidance.

What are the rules and responsibilities of an ombudsman? An ombudsman should serve as an SEA's primary point of contact for addressing the questions and concerns from private school officials and LEAs regarding the provision of equitable services under Titles I and VIII.

In addition, the ombudsman is required to monitor and enforce the equitable services requirements under Titles I and VIII, and thus, should have a significant role in the state's monitoring process. Furthermore, the ombudsman should ensure that private school officials know how to contact the ombudsman.

The following are examples of activities the ombudsman could undertake in fulfilling the roles and responsibilities of the position. This is the general resource regarding equitable services requirements for both LEAs and private school officials, which may include conducting initial outreach to define the contours of the ombudsman's responsibilities.

Develop, in partnership with other relevant SEA staff, monitoring protocols applicable to the provision of equitable services and participate in a sample of any monitoring activity. Provide technical assistance regarding equitable services requirements for SEA staff administering equitable programs, LEA staff and private school officials.

Establish a process for receiving documentation of agreement from LEAs, consistent with the consultation requirement that the result of such agreement

shall be transmitted to the ombudsman. And participate in the state's Title I Committee of Practitioners, and as applicable to nonpublic school working groups.

What about the ombudsman's monitoring and enforcement responsibilities? The primary responsibilities of an ombudsman are to monitor and enforce the equitable services requirements in Titles I and VIII. An ombudsman should work with SEA staff administering Title I and programs covered under Title VIII to develop monitoring protocols applicable to the provision of equitable services under each program.

To ensure that monitoring protocols are being followed, the ombudsman should take an active role in the monitoring process, particularly with respect to the resolution of any findings regarding equitable services requirements under Titles I and VIII. The ombudsman also should serve as the primary point of contact corresponding to and resolving any complaints regarding equitable services that the SEA receives under the SEA complaints procedures.

What are the qualifications of an ombudsman? An SEA has discretion in determining who to designate as an ombudsman. In determining the relevant qualifications of the ombudsman position, an SEA should consult with appropriate private school officials.

Within most states, there is a state-wide private school coalition with representatives of the various private schools within the state. SEAs might consider engaging such private school coalition. An SEA should consider the following factors in determining who will serve as an ombudsman.

Knowledge. Does the individual have sufficient experience and demonstrate thorough knowledge and understanding, regarding the equitable services provisions, including the statutes, regulations and guidance, necessary to implement, monitor and enforce the equitable services requirements under both Titles I and VIII?

Capacity. Will the ombudsman work alone or in collaboration with other state federal program directors? Does the individual have experience with integrating input from other technical experts and program specialists, including those at the US Department of Education, and communicating it to the appropriate audiences?

Impartiality. Will the individual be able to carry out the ombudsman's duties, including monitoring, enforcement and resolving complaints in a fair and impartial manner? Will the individual be able to provide guidance to the LEAs and private school officials to facilitate the goal of reaching agreement when agreement cannot be achieved independently through a consultation?

What about funds to support the ombudsman? If an SEA consolidates state administrative funds under ESEA Section 8201, it may support its ombudsman using those funds. If the SEA does not consolidate state administrative funds, it nonetheless may support its ombudsman using funds reserved for state administration under Title I and the covered programs under ESEA Section 8501(b). Under these circumstances, however, the SEA must ensure that the ombudsman's salary is charged to each program based on the relative benefit received.

When does the ombudsman need to be designated? Under the Consolidated Appropriations Act of 2016, the equitable services requirements under the ESEA, as amended by NCLB, continue to apply to the 2016-2017 school year.

However, an LEA must consult with private school officials to plan for the 2017-18 school year before it makes any decisions that affect the opportunity of eligible private school children, their teachers and their families, to participate in Title I or covered programs under Title VIII.

Thus, an SEA should designate an ombudsman in sufficient time to be of assistance at LEAs and private school officials, begin the consultation process for the 2017-18 school year which would generally occur in the late winter/early spring of 2017.

ESSA includes a new statutory requirement regarding the obligation of funds. Funds allocated to an LEA for educational services and other benefits to eligible private school children, teachers and other educational personnel and families, must be obligated in the fiscal year for which the funds are received by the LEA.

The purpose of this requirement is to ensure that an LEA uses the funds available under Title I or a covered program under Title VIII to provide equitable services in the fiscal year for which the funds were appropriated, to ensure that eligible students, teachers and other educational personnel and families receive the services to which they are entitled in a timely manner.

This provision reinforces the requirements that an LEA conducts timely consultation with private school officials to design appropriate equitable services, so that those services can begin at the beginning of the school year, for which the funds are appropriated.

Some of you might be asking whether a carryover is permissible. In general, to ensure that equitable services are provided in a timely manner, an LEA

must obligate the funds allocated for equitable services under all applicable programs in the year for which they are appropriated.

There may be extenuating circumstances, however, in which an LEA is unable to obligate all funds within the timeframe in a responsible manner. Under these circumstances, the funds may remain available for the provision of equitable services under the respective program during the subsequent school year. In determining how such carryover funds will be used, the LEA must consult with appropriate private school officials.

It is important to note that carryover from funds allocated for equitable services must be expended for equitable services. It is also worth noting that obligating and expending funds are different. The law requires that Title I funds for equitable services be obligated in the year for which they are also created. However, this does not preclude the LEA from expending such funds in the summer or the following year in consultation with the private school officials.

ESSA includes a new statutory requirement regarding allocation. An SEA must provide notice in a timely manner to appropriate private school officials on the state of the allocation of funds for educational services and other benefits under each ESEA program that an LEA has determined are available for eligible private school children, teachers and other educational personnel and families.

What are the requirements to provide notice to private school officials? An SEA must annually provide information on the amount of funds by program, allocated for equitable services, that each LEA responsible for providing equitable services has determined are available for eligible private school students, teachers and other educational personnel and families.

This applies to Title I, including the amount for parental involvement, and each covered program under ESSA Section 8501(b). Such documentation should indicate how the allocation would determine. An SEA should consult with appropriate private school officials to determine an effective manner for disseminating the notice of allocation to appropriate private school officials, which may include the notification through the ombudsman.

An SEA may consider methods, such as publicly posting this information on the SEA's Web site, using an e-mail distribution list of private school officials, or other methods that will ensure that this information is available to appropriate private school officials.

An SEA should consult with LEAs and appropriate private school officials to determine a reasonable timeline for providing the notice of allocation. In general, an SEA should ensure that the notice is provided prior to the beginning of the school year.

ESSA includes a new statutory requirement regarding when the state must provide equitable services. An SEA must provide equitable services directly or through contract with public or private agencies, organizations or institutions, if appropriate, private school officials have requested that the SEA provide such services directly, and demonstrated that an LEA has not met applicable equitable services requirements, and according with the procedures for making such a request, as prescribed by the SEA.

I'd like to review some guidelines regarding the procedures governing a request for the state to provide equitable services. An SEA should consult with appropriate private school officials in developing procedures under which the private school officials may request the SEA to provide equitable

services in lieu of an LEA. It is likely that most instances of non-compliance with equitable services requirements by an LEA can be corrected with minimal intervention by the SEA, consistent with the standards the Secretary must use for a bypass.

Under the equitable services requirements in Titles I and VIII, an SEA might develop procedures that require private school officials to demonstrate that an LEA has substantially failed or is unwilling to provide equitable services before the SEA intervenes to provide equitable services directly or through a third-party provider.

Please note that a bypass is a means by which the Secretary directly provides equitable services to private school students and teachers through a third-party provider. An SEA should make available a standard template for requests and have a transparent procedure for evaluating such requests.

ESSA includes a new statutory requirement regarding consultation that applies to Titles I and VIII. The goal of consultation is agreement between the LEA and appropriate private school officials on how to provide equitable and effective programs for eligible private school children.

Participation in a federal or a state private school choice program does not affect a private school student's eligibility for equitable services under an ESEA program. Regardless of the source of funds paying a private school student's tuition, a student is eligible for equitable services under the ESEA if the student meets the eligibility requirements of the respective program. And I would now like to turn it over to Mike Anderson.

Mike Anderson: Good afternoon, everyone. As Maureen mentioned earlier, I serve in the Office of the General Counsel and do work on Title I, particularly in the

equitable services area. And so, I'm going to focus on the equitable services requirements that are specific to Title I.

So, first of all, let me focus on some changes related to allocation of funds for equitable services under Title I. Consistent with Title I equitable services requirements under NCLB, LEA must determine the funds available for equitable services on a proportionate basis. This is unchanged under the E-S-S-A or ESSA.

ESSA, however, made some changes that affect the methodology that LEA used for calculating the proportionate share. Significantly, as reflected on the last sentence of this slide, the statute now requires that an LEA determine a proportionate share based on the total amount of Title I funds received by an LEA, prior to any allowable expenditures or transfers of funds.

What this means is that, in allocating funds for equitable services under Title I, an LEA must determine the proportionate share based on the total amount of Title I funds it receives, prior to any reservation taken off the top. This includes reservations for administration, parental involvement and other district-wide initiatives.

This is a fairly significant change because, under NCLB, equitable services funding was determined after reservations. This resulted in a fairly complex method for calculating equitable services funding because although equitable services did apply to certain reservations, it did not apply to others, including funds under NCLB that were reserved for supplemental educational services or SES.

This caused some confusion for both LEAs and for private school officials in terms of how much is needed to be set aside for providing equitable services.

Because equitable services funding now must be determined, prior to any of those reservations, we really think the process will be much less complicated under the ESSA requirements.

Under ESSA, to determine the proportionate share, an LEA would first determine the number of children from low-income families residing in each participating Title I public school attendance area, who attend public schools, and who attend private schools. The process for doing this is unchanged by ESSA.

Now, given that it will be difficult for an LEA to determine the participating public school attendance area until it - after it knows the amount of funding available, for purposes of determining the proportionate share, we think the best way to do this would be to use data from the preceding school year.

For example, in determining the proportionate share for services in the '17-'18 school year, the LEA would use low-income data from the '16-'17 school year. This could be either fall data or spring data, as long as it's obtained at equivalent points in the school year for both public and private school students. Of course, this is something that should be addressed in consultation with private school officials.

The LEA would then determine the overall proportion of children from low-income families who reside in participating Title I public school attendance areas and that attend public schools and private schools in each attendance area. Using the proportion of children from low-income families who attend private school, the LEA would determine the amount of funds available for equitable services based on that proportionate share of the LEA's total Title I allocation.

Once the LEA determines the proportionate share for both public and private schools and reserves funds as appropriate, it would then determine the public schools to be served through the normal rank and serve process. This would establish the participating public school attendance areas that would then serve as the basis for determining funding, for providing Title I equitable services in specific private schools, most likely, using the same per pupil amount for each private school student.

This slide provides an example. It's also contained in the Equitable Services Guidance that the department released last November and reflects how an LEA would calculate the proportionate share for equitable services. In this particular example, an LEA with four Title I public school attendance areas, a total of 1500 low-income students and a total Title I allocation of \$1 million would determine the total amount of funds available for all equitable services activities as follows.

Let's start with Column 3, the number of private school low-income children. The total number of private school low-income children is 150, which is 10% of the total 1500 public and private school low-income students. Thus, the LEA would multiply the total one million Title I allocation by 10% to determine the proportionate share of Title I services for eligible private school children. In this example, the total proportionate share for Title I services for private school children is \$100,000.

Next, looking at Column 2, the number of public school low-income children. The number of public school low-income children is 1350, which is 90% of the total number of students. Here, the LEA would then multiply that total, the total amount available, \$1 million total allocation by 90%, to determine the proportionate share for Title I services for public school children. So, in this example, that share would be \$900,000.

Note that, at this stage, you could calculate a per pupil amount by dividing the proportionate share by the number of low-income students in both public and private schools; so, in other words, dividing one million by 1,500. This amount would be the same for all students, approximately \$667 per child.

In practice, however, the actual per pupil amount will differ once the LEA calculates the reservations for parental engagement and administration for both public and private school components of the program, which we will touch on next, and considers any other reservations that the LEA decides to take off the top of its public school share. And that could be these required initiatives. And also factoring in for the public school share, the ranking and serving of public schools where the per pupil amount may differ, based on determinations by the LEA.

I'd like to turn next to address a couple of specific reservations, beginning with the LEA reservation for administering the Title I program. Previously, LEAs reserve funds for administration off the top, prior to determining the proportionate share for equitable services. These funds were then used to administer the Title I program as a whole, including both the private and public school components of the Title I program.

As before, an LEA may reserve an amount that is reasonable and necessary to administer equitable services. Under ESSA, however, an LEA will need to use different methodology, given that the proportionate share must be calculated before any reservations.

Specifically, from the proportionate share of Title I funds available to provide equitable services, an LEA would determine the amount needed to administer the private school component of the program separately from the amount

needed to administer the Title I component of the program for public schools. The LEA should discuss administrative costs for implementing equitable services during a consultation with appropriate private school officials.

The other reservation that remains relevant to equitable services is the reservation for parental and family engagement. An LEA must reserve at least 1% of its Title I allocation for parent and family engagement activities if its allocation exceeds \$500,000.

To determine the amount of the reservation, an LEA must calculate 1% of its total Title I allocation. Of course, this is slightly complicated, given that the proportionate share is also based on the total allocation. So this is how it would work.

The LEA would again look at its total allocation and determine what 1% of the amount is. The LEA would then apply the proportionate share percentage for services to private school students to determine how much it must spend for parent and family engagement activities, for the families and parents of eligible private school students. The LEA must then spend the amount from the proportion of its Title I allocation available for equitable services for private school students.

So here's how it would work in this example. Again, this is from the new guidance that was issued back in November. And it reflects how the LEA would calculate equitable services for parents and families of eligible private school children. Using the same Title I funding amount, as in the previous example, the LEA has a total Title I allocation of \$1 million, as noted in the first column of this table.

Now, moving onto the second column, the LEA must reserve 1% of its total \$1 million Title I allocation for parent and family engagement. So this would be \$10,000. So \$10,000 must be expended for parent and family engagement. From this total of \$10,000, then the LEA would determine the amount that must be expended for equitable services for private school students and families.

Recall from the previous example, the LEA allocated 10% of its \$1 million Title I allocation, which is \$100,000 for Title I equitable services for private school students, and 90% which is \$900,000 for Title I activities for public school students. The LEA would use the same proportion, 10% and 90%, in determining the amount of funds allocated for parent and family engagement. So, as you can see from the slides, you would end up applying those percentages with \$1000, being the proportionate share for private school students in terms of providing parent and family engagement.

Moving on from the funding issues, there are a couple of other new requirements specific to Title I that I'd like to touch on briefly. One of these is that the results of agreement following consultation must be transmitted to the SEA's equitable services ombudsman. The ombudsman should establish a process for receiving documentation of agreement from each LEA. For example, the ombudsman may direct an LEA to document agreement on the same form that the LEA uses to document affirmation of consultation and submit that form to the ombudsman.

Next, I'd like to touch on a few other changes under ESSA that affect the statutory list of consultation topics, which have been expanded to include how the proportion of funds allocated for equitable services is determined, whether the LEA will provide services directly or through a separate government agency, consortium, entity or a third-party contractor, whether to provide

equitable services to eligible private school children by pooling funds or on a school-by-school basis.

When, including the approximate time of day, services will be provided, and whether to consolidate and use funds available for Title I equitable services, in coordination with eligible funds available for equitable services under other programs under Section 8501. These are the Title VIII programs that Maureen touched on earlier.

I will touch on a couple of these consultation topics more specifically in a moment. I would note, however, that I think many LEAs already consulted on these topics. I think the big difference now is that these are actually prescribed in the statute.

A couple of other changes related to consultation, under NCLB, LEAs were required to maintain and provide to the SEA the written affirmation signed by officials from each participating private school that meaningful consultation has occurred. This remains, however, as that adds to the requirement, by further requiring that the written affirmation provide the option for private school officials to indicate their belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

Moving onto touch on some of the consultation topics I touched on in one of the previous slides, the option to either pool funds from multiple private schools or provide services on a school-by-school basis is unchanged.

The only change is that the statute now specifies that an LEA must consult with private school officials regarding these options. And these options are addressed in how you'd go about doing pooling versus serving schools;

providing service on a school-by-school basis in the existing Title I Equitable Services Guidance. One thing to remember on this is that funds cannot be pooled across programs or LEAs.

As part of consultation, an LEA must consider whether to consolidate and use Title I funds to provide equitable services under Title I, in coordination with funds for equitable services from programs covered under Title VIII. Now, this is a new requirement. And it's one that really doesn't expand significantly on consultation under NCLB.

The focus here is really to foster increased coordination among different programs under which an LEA might be providing services to students in a particular private school. This can help address the silo effect whereby the nature of services under Title I is often determined without regard to what services are being provided under other programs with equitable services requirements, such as Title II and Title III.

For example, through coordination, an LEA with limited available funds might use Title I funds to provide instructional services to Title I eligible private school students. Use Title II funds to provide professional development to those students' teachers, as opposed to all teachers in a given school.

Use Title III funds to improve English proficiency of English learners among the participating students. And use Title IV funds to provide necessary counseling services to the most at-risk eligible students. By doing this, the LEA can maximize the services being provided and do so in a coordinated fashion.

Finally, a couple of additional points. In coordinating Title I equitable services with other programs, the funds would continue to be used for allowable activities under each program, but the coordinated services would allow the LEA to better serve the needs of the most at-risk students in a more comprehensive manner. And this coordination between programs will, as I mentioned earlier, eliminate the silo effect that can come by looking on assets - at each program in isolation without consideration of how services will be provided under multiple programs.

So, with that, I'm going to turn things over to my colleague, Jenay Morrisey, who is going to talk about equitable services requirements specific to Title VIII.

Jenay Morrisey: Great. Thank you, Mike. Okay. As previously discussed, the equitable services provisions that are also known as the Uniform Provisions, previously found under Title IX, Part E, are now located in Title VIII, Part F.

And Maureen already discussed the notable changes in regards to the covered programs, as well as a previous guidance, so I'll just quickly review that. The covered programs under ESSA Title VIII are now Title I, Part C, Title II, Part A, Title III, Part A, Title IV, Part A and Part B.

And at this time, there is no new guidance specific to equitable services under these individual programs. All new and changed requirements are covered in this fiscal guidance package. However, as Maureen noted, previous non-regulatory guidance for equitable services under Title IX and Title III may still be applicable as appropriate, in addition to the new guidance.

Now, while we have not provided any formal guidance on this topic, I do want to point out a small change in the complaint process, which actually applies to

both Title I and programs covered by Title VIII. The timeframe for a response from the state has changed from “a reasonable period of time” to a specific period of time of 45 days. Likewise, the period of time by which the Secretary of Education shall investigate and respond to any appeals have been shortened from 120 days to 90 days.

Now, moving on into changes regarding consultation. Similar to changes in consultation requirements under Title I, there are a few added topics for consultation under Title VIII. They include 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. Additionally, a new requirement for programs under Title VIII is that documentation of that consultation is now required.

Now, this slide is just a helpful graphic to help provide a reminder of the ongoing nature of consultation and all of the topics that should be discussed. On the left in blue are the existing requirements that existed under NCLB and continue under ESSA. And on the right in red are the new additions -- the pooling of funds, providing services directly or via another entity, and how the amount of funding is determined, and also noting that consultation now requires written affirmation.

Now just as in Title I, the option to pool funds or provide equitable services on a school-by-school basis has not changed. However, while we previously recommended through guidance that all options be discussed, the statute now specifies that this must be discussed in consultation. And it is good to note that the definition and descriptions of pooling found in the prior Title IX guidance are still applicable, and it may be helpful to reference that guidance.

Now, under NCLB, the amount of funds reserved for equitable services, under Title II, Part A, was limited to the amount of funds the LEA spent on professional development for its own teachers or what we call the hold-harmless amount which was determined by the amount spent under the Eisenhower Professional Development Program in class-size reduction funds that were used for professional development in 2001. Now, we use whichever is greater. ESSA removed this provision.

Now, all equitable services allocations for programs covered by the Title VIII, Uniform Provisions shall be equal, taking into account the number and educational needs of children to be served, to the expenditures for public school children, after administration costs are considered.

So for programs covered by the Title VIII, Uniform Provisions, the cost of administration of the equitable services, including the administration of services provided to a third-party contractor should come from the district's off the top administrative set aside.

Now, this slide is an example of a formula to help determine the amount to be reserved for Title II, Part A equitable services. Section A indicates the enrollment numbers for both public and private schools, and note that A2 is the participating private school enrollment. So this number comes from those schools that have indicated that they want to participate in the program.

Section B lists the total allocation the LEA receives, then less the administrative costs, which are taken off the top. Leading us to B3, B3 is then divided by the total number of students to arrive at a per pupil rate. We then multiply that per pupil rate with the number of participating private school students to arrive at the amount available for equitable services. And this chart is in the new non-regulatory guidance for reference.

So just as the allocation amount for Title II equitable services was limited to the amount the LEA spent on (PD), the use of those funds was limited strictly to professional development activities. The allowable use of the funds has changed for Title II, Part A. And there are now maybe some additional uses of funds permissible for equitable services. Still, Title II, Part A funds may not be used for class-size reduction in private schools.

So the statute does not indicate the activities that may be appropriate to provide for private school teachers. But we have provided some guidelines for determining the allowableness of specific activities. So they must be an allowable use of funds under the statute, which is Section 2103(b)(3). And we'll discuss that a bit further on the next slide.

They must also meet the specific needs of students enrolled in the private school, not the school itself, and must be provided by either an employee of the public agency or through a contract by the public agency with an individual, association, agency or organization who must be independent of the private school and any religious organization. All contracts must be under control and supervision of the public agency. And additionally, as previously noted, all funds must remain in control of the public agency responsible for providing the equitable services.

Now, regarding the changes to the allowable uses of funds under Title II, Part A, Section 2103(b)(3) -- and please forgive the typo; it says (b)(e); it should say (b)(3) -- it states that professional development may be provided as long as it is evidence-based, to the extent the state determines that such evidence is reasonably available.

In addition to professional development, Section 2103(b) covers many other allowable uses of funds, which we do recommend reviewing. Furthermore, in October, this past October, the Department released new non-regulatory guidance for Title II, Part A that you may find helpful in determining appropriate activities for meeting professional development needs. You can find it at the link on this slide. But it's also included in the Resources page at the end of our presentation.

And one final note, the requirement that the SEA provide equitable services with any state-level activity funds has not changed. The SEA must consult with appropriate private school leaders in the state to determine the services that may be provided. The amount of funds available for equitable services at the state level is based on the amount of funds reserved under Sections 2101(c)(1) and 2101(c)(3), and is calculated on a per pupil basis.

Now, at this time, I believe we have a little bit of time to address a few of the questions that have come in. So I'm going to turn it back over to Maureen.

Maureen Dowling: Thanks, Jenay, Isadora and Mike. We do have some time to respond to a few questions. And again, if we ran out of time and we're not able to respond to the question you submitted, we encourage you, again, to use the Q&A feature.

But also, you can follow up even afterwards at [onpe@ed.gov](mailto:onpe@ed.gov), and we will respond to the questions. It may take us a few days. It might even be a couple of weeks to get full responses because we will be working with the program offices and the Office of the General Counsel, as we seek to ensure the answers we provide are accurate, relevant and have been approved officially.

We did receive a couple of questions during the webinar about transferability of funds. I would like to point out that in the Fiscal Guidance and Equitable Services Requirements Guidance that is posted on the Office of Non-Public Education Web site, there's actually a section on transferability of funds.

So, in general, the transferability of funds from one particular program to another particular program, that is still allowable, but the programs from which an LEA may transfer funds and the programs into which they may transfer those funds has changed.

Secondly, if an LEA decides to transfer funds from the allowable program into another allowable program, the law continues to require consultation with private school officials, at least as related to those programs that require equitable participation of private school students and teachers.

The second question is "May a private school official request that the LEA transfer funds solely for the amount of funds generated by private schools?" The answer to that is no. And again, these two specific points are addressed in the Equitable Services Guidance in the section following Equitable Services on Transferability.

The LEA may not transfer funds to a particular program solely to provide equitable services for private school students or teachers. So again, the guidance pretty much remains the same as it had been in the past. Mike, do you have any questions you'd like to answer?

Mike Anderson: Yes. We received several questions that really relate to the effective timeline for the changes to the equitable services provisions. Based on the transition provisions under the ESSA, as clarified by the Consolidated Appropriations Act for 2016, the equitable services provisions under NCLB continue to apply

for formula grant programs like Title I, Title II, Title III, all the covered programs through the '16-'17 school year. And so, the new provisions kick in for the '17-'18 school year.

But one of the things you have to keep in mind is although sort of that effective timeline is based on school year, the consultation process for the '17-'18 school year will begin in the spring. So LEAs should be implementing the new consultation requirement in the spring as they begin to engage in consultation with private school officials for this equitable services program that will be implemented for the '17-'18 school year.

A couple of specific questions related to that, one question is “By when must the SEA have developed procedures under which private schools may request the SEA provide equitable services in lieu of the LEA in the case of non-compliance with the equitable services requirements?”

Given that the provisions, these provisions begin to apply in the '17-'18 school year, I think the SEA or the LEAs - I'm sorry, the SEA should be aiming to have those procedures in place by the beginning of the next school year, of the '17-'18 school year, to ensure that they can be implemented on that timeline.

Another question we had related to the timeline is “When will the requirements that the written affirmation contain an option for private schools to express their belief that timely and meaningful consultation has not occurred become effective?”

Again, that written affirmation must be part of the consultation that occurs in preparation for the '17-'18 school year. So, you know, there's a bit of a transition period as we move into full implementation of these provisions.

But to the extent that LEAs are beginning the consultation process for '17-'18, they should be complying with the requirements that become applicable for the '17-'18 school year.

Maureen Dowling: Mike, this is Maureen. We also received a question regarding the consultation timeline and the written affirmation. Again, I just would like to emphasize what Mike said. That consultation is an ongoing process, as you saw in one of the graphic slides, the circle with the months. And the timeline for consultation, that in and of itself should be discussed in consultation to ensure that the consultation - the statute requires it to be timely and meaningful.

So in order for the consultation to be timely and meaningful, there needs to be consultation around when it's going to take place, such that all parties will be involved in that consultation, know well in advance when the consultation meetings will be, where they'll take place and what will be discussed, so that those who'd come to that consultation meeting come prepared to consult about the needs of the students, how those needs will be met, and all those various consultation topics that Isadora and also Jenay alluded to.

Mike Anderson: While we have time, I just wanted to - there's one other question we received. And this relates to administrative costs, and whether or not there is a cap on administrative costs that could be charged against the private school on the proportionate share.

The answer is no. There's not a bright-line cap that would be applied under the statute. Rather, what applies is any administrative cost, whether it's for the public school component of a program, or in a private school, a portion of the component, must meet the requirements in the Uniform Guidance, which

is the guidance that applies to all federal grant programs and requires that cost be reasonable and necessary for the efficient administration of the program.

And so, that's really what constrains the amount of administrative funds that can be set aside. And, you know, as I mentioned, those administrative costs, at least with respect to the private school component of the Title I program, should be discussed as part of consultation. And I think, typically, we would expect that they would be very similar to the percentage that might be reserved from the public school component. But again, that's something that should be discussed by public and private school officials in consultation.

Maureen Dowling: We also have a question about the state ombudsman and that some of you are aware that some states have identified the state ombudsman. Regarding specifics about the ombudsman, we would encourage you to contact your State Department of Education, as we noted in the departmental guidance that we shared with you today. States should consult with private school officials about that position. But your state educational agency would be the point of contact to find out when and who that state ombudsman person will be.

Our hope in the Office of Non-Public Education is to, once all the states have identified their ombudsman, is to provide information about that, so that it's easily accessible from the ONPE Web site.

Isadora Binder: All right. Thanks, Maureen. We're going to end our question-and-answer session at this point. And before we close, we do have a poll question for you that you should see open up on the right side of your screen, if you could take a few moment to respond to that polling question.

And as you do that, I'm moving over to some slides that show our resources that are available to you. There are links to the Department's ESSA Web

page which houses all of the documents; I mean resources that have been published thus far; as well as links to the Non-Regulatory Fiscal Guidance and the Title III Part A Guidance for private school students; as well as many guidance documents that we can find published under NCLB that may still be helpful at implementing services.

And finally, we just want to thank you for joining us today. We do also have a recording of the webinar and access to the slides available on our Web site soon, so be sure to check back there. I know you'll have links to all of the guidance and resources that we have discussed today. Any other comments?

Jenay Morrisey: No. Thank you.

Maureen Dowling: And - no, just in closing, we want to thank state educational agencies, local educational agencies, private school officials, other educators, third-party providers, actually anyone who's participating in this webinar. We know you're where the rubber hits the road, so to say. And we want to thank you for all the work you do, on behalf of students and teachers and their families across America. So thank you. Have a great day.

Coordinator: That concludes today's conference. Thank you for your participation. You may disconnect at this time.

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