

U.S. Department of Education

OMBUDSMAN UPDATE

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From the Desk of the Office of Non-Public Education Director

Dear Colleague:

I want to begin by thanking the Collaborative of State Ombudsman for taking time to facilitate the discussion on March 22 and provide comments on the draft document *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* (Title I Equitable Services Updated NRG), published by the U.S. Department of Education (Department) for comment on March 11, 2019. Your expertise and experience monitoring and enforcing equitable services positioned you well for this task and we appreciated your thoughtful comments. We are in the process of reviewing them and considering edits and additions to the Title I Equitable Services Updated NRG.

In addition to the release of the draft guidance in March, Secretary DeVos announced that the Department will no longer enforce a restriction barring religious organizations from serving as contract providers of equitable services solely due to their religious affiliation. The Department, in consultation with the U.S. Department of Justice, determined the statutory provisions in sections 1117(d)(2)(B) and 8501(d)(2)(B) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), that require an equitable services provider to “be independent of ... any religious organization” are unconstitutional because they categorically exclude religious organizations based solely on their religious identity. For more information, please see the [Secretary’s Letter to Congress](#) regarding the restriction and corresponding [fact sheet](#).

Finally, we hope you have saved the dates – Sept. 25 and 26, 2019 – for ONPE’s National Private School Leadership Conference and the Ombudsman Update LIVE, respectively. Both events will take place at the Department’s headquarters in Washington, D.C., and we look forward to seeing you then.

Please let us know how we can be of service to you as your school year enters the homestretch.

Sincerely,

Maureen Dowling

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Technical Assistance and Peer-to-Peer Support

Ombudsman Hub

- **Facilitating Stakeholders Online Webinar:** The Ombudsman Hub (Hub) hosted a webinar on April 10, 2019, focused on tools and strategies for engaging your stakeholders in online events and forums. This webinar was open to all Hub members and engaged participants in activities to demonstrate the strategies discussed. For more information, including a recording of the webinar, visit the event listing [here](#).
- **Build Your Own Ombudsman Toolkit:** This two-part activity asked Hub members to crowd-source a starter kit of tools and resources that a new ombudsman could reference when starting the job. Visit part one of the activity [here](#). Part two of the activity will launch soon.
- **Tools for Engaging Stakeholders Online:** This Hub resource provides a list of virtual engagement tools, social media resources, and community and collaboration platforms. It provides Hub members with a link to and description of each tool, as well as a brief use-case. Find it [here](#).

Ombudsman Community of Practice

- **Organizing and Managing Data and Documentation for High-Quality Consultation:** The Ombudsman Community of Practice (CoP) convened its first learning cycle virtual meeting on Feb. 13, 2019. In addition to building community and collaborative norms for CoP members, the meeting focused on organizing and managing data and documentation for high-quality consultation. State ombudsman shared processes and practices in their respective states for managing data and documentation as well as successes around communicating with private schools and LEAs. CoP members may view a recording of the session [here](#).
- **Designing and Implementing Monitoring Protocols and Enforcing Requirement to Provide Equitable Services:** The Ombudsman CoP convened its second learning cycle virtual meeting on April 3, 2019. The meeting focused on the design and implementation of monitoring protocols and the enforcement of equitable services requirements. It highlighted practices and strategies from New Jersey ombudsman Constance Webster and from Michigan ombudsman Terry Nugent. CoP members may view a recording of the session [here](#).

Please note that the links in this section require that you log into the [State Support Network \(Network\) website](#). For more information on the CoP, please feel free to reach out to State Support Network CoP leaders [Marshal Conley](#) and [Traci Karageorge](#).

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From the Field

Updates From the Collaborative of State Ombudsmen

The Collaborative of State Ombudsmen (Collaborative) is a state-led initiative, spearheaded by a steering committee of state ombudsmen, for all ESEA state ombudsmen.

Webinars

Collaborative webinars are usually scheduled for the last Thursday of every month at 1 p.m. ET. The next webinar will be on May 30, 2019. Be on the lookout for invitations. **Please submit discussion topic recommendations, and consider volunteering to facilitate future webinars.**

Steering Committee

The following individuals serve on the Collaborative steering committee:

[LaNetra Guess](#), Texas Education Agency

[Christopher \(Chris\) Kelly](#), Virginia Department of Education

[Bryan Lieb](#), Mississippi Department of Education

[Shaun Owen](#), Georgia Department of Education

Contact for Information

For information on participating in, and recommending topics for, upcoming webinars, please email [Shaun Owen](#).

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Answers From ED

Question May a local educational agency (LEA) provide equitable services through a consortium?

Answer Yes. To provide services through a consortium, a group of LEAs could establish a formal agreement under which one LEA or another entity, such as an educational service agency or third-party contractor, provides equitable services on behalf of the participating LEAs.

Question Is an LEA required to conduct timely and meaningful consultation with private school officials (with both LEA and private school officials having the goal of reaching agreement) before the LEA decides to provide equitable services through a consortium?

Answer Yes. Among the topics subject to consultation, sections 1117(b)(1)(I) and 8501(c)(1)(G) of the ESEA require an LEA to consult with appropriate private school officials regarding whether the LEA will provide equitable services directly or arrange to provide them through a separate government agency, consortium, entity, or third-party contractor. After consultation, if the LEA decides to participate in a consortium or use a third-party provider, the LEA or, if contracted to do so, a third-party provider, must consult with private school officials about all of the other required consultation topics. In subsequent school years, consultation with private school officials must include, among other things, a discussion of whether they prefer to receive services directly from the responsible LEA or through a consortium or other entities, such as a third-party provider.

Question If, after timely and meaningful consultation with private school officials, an LEA decides to provide services through a consortium, how is the amount of funding available to serve eligible private school participants in each LEA of the consortium determined?

Answer ESEA sections 1117(a)(4) and 8501(a)(4) require an LEA (the “responsible LEA”) to expend funds for equitable services consistent with the amount generated for such services. If a responsible LEA participates in a consortium, the LEA transfers the amount generated for equitable services in the LEA to the LEA or other entity that will provide the services to the responsible LEA’s private school students or teachers. The amount available to provide equitable services to the responsible LEA’s eligible private school participants does not change if the LEA participates in a consortium, and such funds may not be included in a pool or otherwise combined with funds from other LEAs participating in the consortium. As a result, the responsible LEA’s eligible students and teachers receive services on the same basis as they would have if the responsible LEA were providing them.

Question If an LEA participates in a consortium, does this change the equitable services requirements for consultation, selecting participants for services, determining the specific services that will be provided, and evaluating the effectiveness of these services?

Answer No. All of the requirements that apply to an individual LEA that provides services directly apply to LEAs that participate in a consortium. This means that the LEA or other entity that provides equitable services on behalf of the LEAs in the consortium must

- consult in a timely and meaningful way with private school officials on all of the required topics (with both LEA and private school officials having the goal of reaching agreement);
- select participants for services on behalf of each LEA separately, such as, with respect to Title I equitable services, identifying low-achieving students that reside within an LEA’s Title I attendance area for Title I services based on multiple criteria applied within a private school or among a pool of private schools within the LEA, rather than treating the consortium as a de facto single LEA;
- determine the services that it will provide on behalf of each LEA, and expend funds for equitable services consistent with the amount allocated by each LEA for these services and maintain records reflecting these expenditures; and
- assess the program for each participating LEA and discuss how the results of that assessment will be used to improve those services.

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Resources and Tools You Can Use

[U.S. Department of Education ESSA Webpage](#)
[Office of Non-Public Education ESSA Webpage](#)

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We Want to Hear From You!

If you have something to share, let us know! We welcome the opportunity to spotlight ombudsmen. Please tell us how we can showcase the work you are doing and how we can support you. Topics that we would like to highlight in our newsletter include methods to establish productive relationships between the ombudsman and private school officials; notable, replicable practices; and challenges faced and overcome. We also invite you to share information about technical assistance opportunities that could be of value to the ombudsman community. All submissions should be sent to ONPE@ed.gov. **To receive future editions of the *Ombudsman Update*, please subscribe [here](#).**

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Disclaimer

U.S. Department of Education—*Ombudsman Update*

The *Ombudsman Update* is the U.S. Department of Education’s effort to communicate with ombudsmen on matters relating to equitable services under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). This newsletter contains links to other websites and news articles. These links represent just a few examples of the many education reference materials currently available to ombudsmen and the public. The opinions expressed in any articles or webpages do not necessarily reflect the positions or policies of the U.S. Department of Education. The inclusion of resources should not be construed or interpreted as an endorsement by the U.S. Department of Education of any organization or business listed herein. This newsletter provides a platform for ombudsmen to share lessons learned. However, it does not request information per the Federal Paperwork Reduction Act.