

U.S. Department of Education
OMBUDSMAN UPDATE

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

Dear Colleague:

We anticipate that by the time you receive this newsletter, the updated *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)* will be close to publication. Upon issuance, you will notice noteworthy updates based on over 500 comments. Please note that we did not do this alone. Our colleagues in the Office of Elementary and Secondary Education and the Office of the General Counsel were instrumental in updating the guidance. Work on updating the equitable services non-regulatory guidance applicable to the programs under *Title VIII* is already underway.

I would like to give a shout out to Chris Kelly, Virginia ombudsman, who has transitioned to a new position, and highlight his early, proactive efforts to build strong relationships with Virginia's private schools long before the *Elementary and Secondary Education Act (ESEA)* statute required states to designate an ombudsman. Kelly's work with private schools was a natural springboard for his leadership in the ombudsman community as he served as a voice of experience and expertise and took an active role on the steering committee for the Collaborative of State Ombudsmen. Notwithstanding the challenges that arise from monitoring and enforcing the *ESEA* equitable services provisions, Chris always maintained a positive and collegial professionalism with his private school counterparts. ONPE has been fortunate to collaborate with him over the years in spotlighting effective practices in *ESEA* equitable services implementation. We wish him much success moving forward in his new role.

Finally, we hope you received the National Private School Leadership Conference and Ombudsman Update Live workshop invitation and that you have registered for both events. The conference will include sessions on *ESEA Title I* equitable services and consultation that leads to consensus, while the workshop will be devoted to an in-depth look at the *Title I* Equitable Services Updated NRG, navigating disputes and complaints, and technical assistance from the State Support Network. If you did not receive that email notice, please first check your SPAM folder and then contact us so that we can ensure you receive the invitation. In the meantime, enjoy the summer and we'll see you in the fall.

Sincerely,

Maureen Dowling

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Welcomes and Farewells

Welcome to Rick Green—Arkansas ombudsman, Cathy Danyluk—Indiana ombudsman, Cecelia Pelkey—Rhode Island ombudsman, and Carol Sylvester—Virginia ombudsman.

Farewell to Wes Whitley—Arkansas ombudsman, Sheryl Hamilton—District of Columbia ombudsman, Brenda Martz—Indiana ombudsman, Jessica Roche—Rhode Island ombudsman, David Boison—South Carolina ombudsman, and Chris Kelley—Virginia ombudsman.

Technical Assistance and Peer-to-Peer Support

Ombudsman Community of Practice (CoP) Resources: Between March and May 2019, state ombudsmen participated in a community of practice focused on implementing equitable services (statutes, regulations, and guidance). Members engaged with each other and selected resources across three virtual learning cycle meetings. To read a summary of the CoP and access resources shared in the CoP, click [here](#) for the CoP summary.

Ombudsman Hub (Hub) Resources: Between February and June 2019, state ombudsmen participated in various virtual activities as part of the Hub. The Hub offered a password-protected environment for state ombudsmen to engage with peers in other states, access tools and resources, and share best practices. To read a summary of the Hub, view archives of the activities, and access resources shared in the Hub, click [here](#) for the Hub summary.

Technical Assistance at a Glance: The CoP and Hub used different types of technologies to engage ombudsmen in various synchronous and asynchronous activities, ranging from wikis and collaborative documents to webinars. The State Support Network housed both the CoP and the Hub, and leveraged the Adobe Connect platform for online events. The following notable data provide a snapshot of the activity.

- Nine state ombudsmen participated in three learning cycles as part of the CoP.
- Over 20 state ombudsmen participated in Ombudsman Hub activities.
- Between February and June the Hub received 1,047 pageviews, with 516 of those pageviews distributed across the activities in the discussion board. This was the fourth most pageviews received by any part of the State Support Network website, which hosts activities and provides support for various other ED programs, during that timeframe.
- Between March and June, the CoP received 411 pageviews across all its pages and sections. This was the ninth most pageviews received by any part of the State Support Network website during that timeframe.

For more information on the CoP, please feel free to reach out to 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 Aug. 29, 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

[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 *Title II*, Part A funds be used to pay for equitable services provided by a faith-based organization?

Answer: Yes. A local education agency (LEA) may enter into a contract with a religious organization to provide equitable services on the same basis as with any other private entity. Although section 8501(d)(2)(B) of [the Elementary and Secondary Education Act of 1965, as amended \(ESEA\)](#), states that an individual or organization that, through a contract with a public agency provides equitable services to private school students and teachers, “be independent ... of any religious organization,” the U.S. Department of Education (Department) has determined that this specific requirement is unconstitutional in light of the U.S. Supreme Court’s decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and has so informed Congress in a letter dated March 11, 2019, available at <https://www2.ed.gov/policy/elsec/guid/secletter/190311.html>.

Accordingly, the Department will no longer enforce, apply, or administer the specific requirement in *ESEA* section 8501(d)(2)(B) that an equitable services provider “be independent ... of any religious organization.” A school district may, therefore, enter into a contract to provide equitable services with a religious organization, such as a religiously affiliated college or university, on the same basis as with any other entity.

The Department will, however, continue to enforce all other provisions of *ESEA* section 8501, including the requirement that the contractor be independent of the private school for which it is providing services and that the educational services and other benefits being provided by the contractor are “secular, neutral, and nonideological.” (*ESEA* sections 8501(a)(2), (d)(2)(B)).

Question: May *Title II*, Part A funds be used to pay for a private school teacher’s attendance at a professional conference?

Answer: In order to be an allowable activity under *Title II*, including for private school participants, attendance at a professional conference must meet certain requirements:

1. The activity must be an allowable *Title II* activity and meet the definition of professional development where applicable (*ESEA* sections 2103(b)(3) and 8101(42)).
2. The activity must serve to meet the needs of the private school teacher(s) as identified through the consultation process (*ESEA* section 8501(c)).
3. The activity must be supplemental in nature, and may not supplant the professional development that the private school would otherwise provide absent the *Title II*, Part A services ([34 CFR § 299.8\(a\)](#)).
4. The activity must be a reasonable and necessary expense ([2 CFR § 200.403\(a\)](#)).
5. The services must be secular, neutral, and nonideological (*ESEA* section 8501(a)(2)).

Professional Development: Under *Title II*, Part A, an LEA may “provide high quality, personalized professional development that is evidence-based, to the extent that the state (in consultation with LEAs in the state) has determined that evidence is reasonably available, for teachers, instructional leadership teams, principals, or other school leaders, that is focused on improving teaching and student learning and achievement.” Professional development services and programs must meet the definition of “professional development” in *ESEA* section 8101(42), which requires that the activity is both (1) part of the strategies for providing educators with the knowledge and skills necessary to enable students to succeed in a well-rounded education; and (2) “sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data driven, and classroom focused.”

Because many conferences are short-term or are stand-alone, they may not meet this definition as an allowable expenditure under *ESEA* section 2103(b)(3) without further integration as part of a comprehensive plan for professional development for the teacher or teachers. However, if a private school official can demonstrate, through consultation with an LEA, that attendance at a short-term conference is part of a sustained and comprehensive professional development plan for the teacher that meets these *Title II*, Part A requirements, including the statutory definition of professional development, then an LEA may use *Title II*, Part A funds for costs associated with a private school teacher’s participation in the conference. Furthermore, depending on the content and substance of the conference, participation may be allowable under other specifically-defined activities in *Title II*, Part A, which do not need to meet the definition of professional development under *ESEA* section 8101(42). For example, *ESEA* sections 2103(b)(3)(H), (J), (K), and (L) allow training for selecting and implementing formative and classroom-based assessments, for identifying gifted and talented students, for supporting instructional services provided by effective school library programs, and for preventing and recognizing child sexual abuse.

Secular, Neutral, Nonideological Content: A conference conducted by a religious organization often includes both secular and religious content. If an otherwise allowable professional conference is conducted by a religious organization, an LEA may pay for only a teacher’s participation in that portion of the conference program that is secular, neutral, and nonideological. In determining the costs associated with a private school teacher’s participation in the conference, the LEA would need to (1) determine the sessions of the conference that are secular, neutral, and nonideological professional development; (2) have the teacher document his/her participation in such program sessions in such a way that the LEA is able to determine the percentage of the teacher’s overall time spent attending those sessions; and (3) apply that percentage against the overall costs of attending the conference as a whole. For professional development activities, whether in-person or via a virtual/online format, an LEA might require that the private school teacher provide both titles and descriptions of the sessions the teacher expects to attend, as well as some form of verification that he/she participated in the sessions.

Example:

A conference runs from 8 a.m. to 5 p.m. (with an hour for lunch). If for the 8 hours of work-time the teacher spends six hours attending/participating in secular sessions that meet the *Title II* requirements above, the LEA could use *Title II*, Part A funds to pay 75% of the registration and travel costs, since the teacher has spent 75% of the full-day conference time attending/participating in secular activities.

Timely and Meaningful Consultation: It is important to note that any form of professional development for private school teachers with *Title II*, Part A funds must be a topic of timely and meaningful consultation with private school officials. Such consultation must take place before the LEA makes any decision that will impact the participation of private school teachers in the *Title II*, Part A program. Thus, the LEA, in consultation with private school officials, would need to discuss the needs of private school teachers as related to improving teaching and student learning and achievement in their classrooms. Based on the needs of the private school teachers, the LEA would then decide the kind of professional development that would serve to meet those needs.

Supplement not Supplant; Reasonable and Necessary: In addition, as with all *Title II*, Part A professional development, the costs must be supplemental in nature, and may not supplant any professional development activity that the private school would otherwise provide absent the *Title II*, Part A services ([34 CFR § 299.8](#)). Finally, the activity must be “reasonable and necessary” ([2 CFR § 200.403\(a\)](#)).

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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 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 for inclusion in the next newsletter. All submissions should be sent to ONPE@ed.gov. **To receive future editions of the *Ombudsman Update*, please subscribe [here](#).**

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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 *ESEA*, as amended by the *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*.