

SENT VIA EMAIL TO EquitableServices@ed.gov

To: US Department of Education
From: Jonas Zuckerman, Title I Director, Wisconsin Department of Public Instruction
Date: April 9, 2019
Re: Title I Equitable Services

The Wisconsin Department of Public Instruction (WDPI) appreciates the opportunity to review and comment on the United States Department of Education's (USDE's) draft Non-Regulatory Guidance for providing equitable services to eligible private school children, teachers, and families under Title I, Part A of the Every Student Succeeds Act (ESSA). Much of the guidance confirms WDPI's understanding and interpretation of the requirements. In particular, we found the guidance regarding consultation and indirect administrative costs helpful. The comments below thus focus only on areas where the WDPI is unclear about aspects of the guidance.

WDPI requests clarification regarding an inconsistency in Section 1117(c)(1), which is covered in B-10. The text of 1117(c)(1) states:

(c) ALLOCATION FOR EQUITABLE SERVICE TO PRIVATE SCHOOL STUDENTS.—

(1) CALCULATION.—A local educational agency shall have the final authority, consistent with this section, to calculate the number of children, ages 5 through 17, who are from low income families and attend private schools by

(A) using the same measure of low income used to count public school children.

The measures to identify public school children are later identified in Section 1113(a)(5)(A). These measures only restrict children to ages 5-17 when using "the most recent census data". In all other measures, the identification of children are not restricted in this way. WDPI believes this conflict in language creates an inequitable situation, in which public and private schools are not counting the same students.

WDPI instead recommends rephrasing the question in B-10. In the [crosswalk](#) provided, USDE refers to Question B-4 from the 2003 Non-Regulatory Guidance, in which the question is stated, "How does an LEA collect poverty data on private school children?" WDPI recommends using this same language for Question B-10.

It does not appear that the second part of the question in B-11, "...and must the collection of poverty data be uniform across the LEA?" is answered. The answer merely speaks to the decision of an LEA to collect poverty data annually or biennially. WDPI suggests to either

answer the second part of the question or remove it. The crosswalk references Question B-5 from the 2003 guidance, which clearly did answer this part of the question. WDPI recommends using this same language for question B-11.

WDPI has concerns surrounding the interpretation of the language in Section 1117(a)(4)(A) in B-14. First, there appears to be an assumption in the question, which states, "If a private school declines Title I services for its eligible children, and the LEA has poverty data for children in the private school..." WDPI is unaware of any situation in which an LEA would have both poverty data and residency data (because, in order to know if the student lived in a served attendance area, the LEA would also need addresses) for private school students attending a school that does not participate. Further, this is not attainable data in all cases, even if public schools were to request it. There are private schools that will not share data on their student populations. Further, WDPI is concerned this response leaves the impression that LEAs are required to collect this information. WDPI recommends clarifying that the LEA is not required to collect this data from private schools choosing not to participate in services.

The guidance provided in B-15 is equally concerning. Why, if a private school declines services, would these funds still be considered as being "generated for equitable services"? WDPI recommends to change this section by clarifying that if a private school chooses not to participate in the middle of the school year, the unspent funds are distributed using the equitable share formula between the remaining participating public and private schools. If there are no other private schools being served, the remaining funds would be reallocated to the public schools. Note that this question is about pooling, but USDE could clarify what happens in the scenario where a private school that is not pooling changes its mind and declines services after the school year has begun.

Additionally, B-15 states that "...an LEA must consult with appropriate private school officials regarding...why one or more private schools in the pool declined services." WDPI recommends changing this language to make it clear that an LEA may, but is not required to discuss why a private school declined services. WDPI believes it is unreasonable to put an LEA in the position where they are obligated to discuss the business of the private school that declined services with private school officials not associated with that school.

For B-17, it is unclear how an entire LEA could be considered the attendance area, making any private school student who lives in the LEA eligible for Title I based on academic need when that is not allowed for public school students. Public school students are only eligible for services if they attend a school that has a poverty rate that ranks high enough for the school to be served; if the students are experiencing homelessness; or if the students are in an institution or attending a community day program for neglected or delinquent youth (ESEA Section 1113). If the entire LEA is considered a served attendance area for private school students, shouldn't the same be true for public school students? WDPI suggests removing the last sentence from the answer in B-17 to align with the crosswalk, B-20 from the 2003 Non-Regulatory Guidance, which does not include the option of considering the entire LEA the attendance area.

WDPI agrees with the purpose of the requirement to obligate funds within a given fiscal year as discussed in B-25 and B-26. However, it is not reasonable to assume that there will be little to no carryover from private school services. The change in the calculation under ESSA increased the amount of funds allocated for private school services for the 2017-18 school year and in Wisconsin, LEAs carried over \$3.8 million for private school services into the 2018-19 school year. This is 17% of the \$22.3 million generated for Title I equitable services in the 2017-18 school year. It is important to note that WDPI did not receive any complaints from private schools regarding carryover amounts or services provided. USDE needs to be clearer as to what they are holding LEAs accountable for rather than stating an expectation and leaving districts to guess at how USDE will approach compliance.

WDPI concurs with B-36 that it is not the responsibility of the private school or the parents to provide transportation for students participating in Title I services and that transportation should be determined in collaboration between the public and private officials. However, WDPI suggests changing the language from "...the LEA, as the provider of equitable services..." to "LEA providing equitable services." This change is more consistent with the guidance in C-9 for the situations where one LEA reimburses another LEA to provide equitable services.

In Section C - Delivery of Equitable Services, WDPI suggests several changes to C-8. First we suggest separating the content into two separate questions. The first question could address what LEAs should do when a parent refuses services. WDPI agrees that if a parent refuses services, the proportional share of funds is not reduced.

The second question could address the issue of private school officials refusing services after services were agreed upon during the consultation process. WDPI has concerns regarding the phrasing of the question in C-8 as currently written, "If after receiving an offer of equitable services, private school officials...choose to have participating children receive only some services, may the LEA provide only those services?" This phrasing seems to ignore the required consultation process that results in agreed upon services. The question as written does not seem valid. If a private school does not wish to receive some services, this should be resolved during the consultation process. The services should not simply be offered to the private school as described in the question.

WDPI does understand the need to address the question of what happens if, after services are agreed upon, the private school officials change their minds, and no longer want services. C-8 does seem to answer this question, but WDPI requests some clarification, specifically on this sentence from C-8. "Please note, however, that where an LEA includes other participating private schools, a private school's refusal of services does not reduce the proportional share of funds an LEA must use to provide equitable services." WDPI is unclear on two components of this sentence. As WDPI asked in regards to Question B-15 above, it is unclear, if a school "wholly" refuses services, why would an equitable share be generated?

Additionally, the answer to C-8 is confusing as it only requires there to be no reduction in the equitable share of funds if there are other participating private schools. It is not stated, but inferred, that, if there are no other participating private schools in the district, then the funds would revert back to the public school students. While this is understandable, it also seems to set up an inconsistent standard. In order to be more consistent, WDPI again recommends clarifying that at any time during the year, if a private school refuses services, any unexpended funds should go back into the formula for equitable distribution between public and private school students. The crosswalk indicates that C-8 refers to B-31 from the 2003 Non-Regulatory Guidance. WDPI notes that the 2003 Non-Regulatory Guidance did not include this reference to not reducing the amount of funds.

If ESSA Section 1117(d)(2) is not to be enforced, under C-28 it would be helpful to know what ED considers as “membership organizations.” Would a diocese be considered a membership organization? What is USDE’s interpretation of “independent”? Does it mean, “independent of the governing body of the private school?” Additionally, it would be beneficial to reiterate the procurement process that an LEA must follow to be in compliance with the Uniform Grant Guidance in C-28.

For section C-33, WDPI suggests adding the following language for further clarification, “Even if an LEA’s Title I Allocation is less than \$500,000, the LEA may, after consultation, decide to use some of the Title I instructional funds to meet the requirements of parent and family engagement found in Section 1116 for parents and families of private school students receiving Title I services.” WDPI believes the additional language is necessary as approximately 90% of the LEAs in Wisconsin receive an allocation that is less than \$500,000.

Please consider modifying the language in section D-3 to state, “Title I program assessments must be agreed upon during the consultation process. If the agreement does not include academic assessments conducted by private school staff, then the private school is not obligated to share their academic assessments. If the LEA and private school agree to use the private school assessments as part of the program assessment, then the private school must share the assessment data.” WDPI believes that this change answers the question but also reinforces the importance of the consultation process and the agreements made during the consultation process.

In Wisconsin, the state superintendent is the primary point of contact for all complaints. While ESSA does not require states to make the ombudsman the primary point of contact for complaints, Wisconsin appointed an ombudsman that is impartial and able to support both public and private schools. Wisconsin has found that ombudsman has been able to resolve issues to the satisfaction of both the state and private school partners, preventing the need for a party to make an official complaint. Therefore, WDPI suggests replacing section F-2 to add the following, “states need to follow their internal procedures for complaint processes and those processes must adhere to state statutes or rules, 34 CFR

299.12, as well as ESSA Section 8503. If appropriate, states may appoint the ombudsman to serve as the primary point of contact for responding to and resolving any complaints regarding equitable services the SEA receives under the ESEA complaint procedures.”

WDPI believes that equitable participation guidance for Titles II, III, and IV is necessary as many of the equitable participation requirements in ESSA Section 8501 directly mirror ESSA Section 1117. LEA and private school officials discuss and determine services for all ESSA Titles together and not separately.

WDPI also believes the following questions need to be addressed.

1. What if, after consultation and allocation of funds, a private school determines the amount is too high and wishes to allow the LEA to redistribute the excess funds to other participating public and private schools? Would this be allowed?
2. What if, after consultation and allocation of funds, an LEA determines the amount is too low and would like to redistribute additional funds to private schools? Would this be allowed?
3. What if a private school generates a Title I allocation from a neighboring LEA but has no students from the neighboring LEA that have an academic need? Noting that the criteria to determine educational need is based on consultations between the private school and their resident LEA, not the neighboring LEA.
4. What if a private school generates a small allocation from a neighboring LEA and has educationally needy students from that LEA but the private school's resident LEA does not agree to or can't reach an agreement on the provision of services for those students with the neighboring LEA? Is there any recourse for either LEA or the private school? What role does the private school have in coordinating allocations and services from multiple school districts?

Unrelated to the content of the guidance, WDPI was disappointed with USDE's initial timeline for soliciting public comment. It was unfortunate that only 15 days were allowed for comment, and that the call for comment at a time when many SEA and LEA staff around the nation are traditionally on leave for spring break. WDPI appreciates that USDE granted additional time for the public to comment, and asks that USDE consider an extended comment period for proposed Non-Regulatory Guidance in the future. WDPI would also like to acknowledge the release of the [crosswalk](#) document, which was helpful in understanding this draft guidance.

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