

(ii) Any expenditures made from funds provided by the Federal Government.

[62 FR 28252, May 22, 1997, as amended at 84 FR 31678, July 2, 2019]

Subpart E—Services to Private School Students and Teachers

§ 299.6 What are the responsibilities of a recipient of funds for providing services to children and teachers in private schools?

(a) *General.* An agency, consortium, or entity receiving funds under an applicable program listed in paragraph (b) of this section, after timely and meaningful consultation with appropriate private school officials (in accordance with the statute), shall provide special educational services or other benefits under this subpart on an equitable basis to eligible children who are enrolled in private elementary and secondary schools, and to their teachers and other educational personnel.

(b) *Applicable programs.* This subpart is applicable to the following programs:

(1) Part C of title I (Migrant Education).

(2) Part A of title II (Supporting Effective Instruction).

(3) Part A of title III (English Acquisition, Language Enhancement, and Academic Achievement).

(4) Part A of title IV (Student Support and Academic Enrichment Grants).

(5) Part B of title IV (21st Century Community Learning Centers).

(6) Section 4631 (Project SERV).

(c) *Provisions not applicable.* Sections 75.650 and 76.650 through 76.662 of title 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to programs listed in paragraph (b) of this section.

[62 FR 28252, May 22, 1997, as amended at 84 FR 31679, July 2, 2019]

§ 299.7 What are the requirements for consultation?

(a)(1) In order to have timely and meaningful consultation, an agency, consortium, or entity must—

(i) Consult with appropriate private school officials during the design and

development of the agency, consortium, or entity's program for eligible private school children and their teachers and other educational personnel; and

(ii) Consult before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children and their teachers and other educational personnel to participate in the applicable program.

(2) Such consultation must continue throughout the implementation and assessment of equitable services.

(b) Both the agency, consortium, or entity and private school officials must have the goal of reaching agreement on how to provide equitable and effective programs for private school children and their teachers and other educational personnel, including, at a minimum, on issues such as—

(1) How the agency, consortium, or entity will identify the needs of eligible private school children and their teachers and other educational personnel;

(2) What services the agency, consortium, or entity will offer to eligible private school children and their teachers and other educational personnel;

(3) How and when the agency, consortium, or entity will make decisions about the delivery of services;

(4) How, where, and by whom the agency, consortium, or entity will provide services to eligible private school children and their teachers and other educational personnel;

(5) How the agency, consortium, or entity will assess the services and use the results of the assessment to improve those services;

(6) Whether the agency, consortium, or entity will provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(7) The size and scope of the equitable services that the agency, consortium, or entity will provide to eligible private school children and their teachers and other educational personnel, the amount of funds available for those services, and how that amount is determined; and

(8) Whether to provide equitable services to eligible private school children

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and their teachers and other educational personnel—

(i) On a school-by-school basis;

(ii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served by the same agency, consortium, or entity, provided that all the affected private schools agree to receive services in this way; or

(iii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served across multiple agencies, consortia, or entities, provided that all the affected private schools agree to receive services in this way.

(c)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the agency, consortium, or entity can use to provide equitable services to eligible private school children and their teachers and other educational personnel; and

(ii) A thorough consideration and analysis of the views of private school officials on the provision of services through a contract with a third-party provider.

(2) If the agency, consortium, or entity disagrees with the views of private school officials on the provision of services through a contract, the agency, consortium, or entity must provide in writing to the private school officials the reasons why the agency, consortium, or entity chooses not to use a contractor.

(d)(1) The agency, consortium, or entity must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The written affirmation must provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

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(2) If private school officials do not provide the affirmations within a reasonable period of time, the agency, consortium, or entity must submit to the SEA documentation that the required consultation occurred.

(e) A private school official has the right to complain to the SEA that the agency, consortium, or entity did not—

(1) Engage in timely and meaningful consultation;

(2) Give due consideration to the views of the private school official; or

(3) Make a decision that treats the private school or its students equitably as required by this section.

[89 FR 70344, Aug. 29, 2024]

§ 299.8 Use of Private School Personnel.

A grantee or subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

[89 FR 70344, Aug. 29, 2024]

§ 299.9 What are the factors for determining equitable participation of children and teachers in private schools?

(a) *Equal expenditures.* (1) Expenditures of funds made by an agency, consortium, or entity under a program listed in § 299.6 (b) for services for eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the amount of funds expended for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of those children and their teachers and other educational personnel.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an agency, consortium, or entity shall pay for the reasonable and necessary administrative costs of providing services to public and private school children and their teachers and other educational personnel from the agency's, consortium's, or entity's