Ohio | Department of Education

2018 Nonpublic School Service Questions and Answers

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Sources: No Child Left Behind Act (P.L. 107-110), Sections 1117, 8501-8504; USDE Non-Regulatory Guidance: Title I Equitable Services for Eligible Private School Students, Teachers and Other Educational Personnel, March, 2009, USDE Non-Regulatory Guidance: Title IIA Improving Teacher Quality State Grants, October 5, 2006; IDEIA-Part B; Operating Standards for Ohio's Schools Serving Students with Disabilities

Key Words: Nonpublic School Services

Summary: This document answers questions on nonpublic school service for Title I, II-A, III and IDEIA-B and summarizes the district's annual requirements/responsibilities. It also includes the formulas for determining nonpublic share of appropriate grants.

General

The *Elementary and Secondary Education* Act (ESEA), as reauthorized by the *Every Student Succeeds Act* (ESSA) provides educational services and benefits to nonpublic school students and educational personnel. This includes those in religiously affiliated schools. The *No Child Left Behind* Act requires the equitable participation of nonpublic school students and educational personnel. The following are explanations of some of the provisions of the No Child Left Behind Act and brief summaries of each program. Also included are the provisions for nonpublic service for the *Individuals with Disabilities Education Improvement* Act (IDEIA).

The Uniform Provisions in *ESEA*, Sections 8501-8504, govern the participation of nonpublic school students and educational personnel in the *Elementary and Secondary Education* Act programs. The exception is that Section 8501 does not apply to Title I, Part A; it is covered in Section 1117.

The public district should consult with nonpublic school administrators prior to submitting the grant application and during implementation. This is to ensure services are provided according to federal law and the nonpublic service plan. The consultation must occur before the district makes any decision that affects the opportunities for eligible nonpublic school children, their teachers and their families to participate.

- If there is a disagreement between the district and the nonpublic school on the provision of services through a contract with a third party, section 8501(c)(2) of *No Child Left Behind* requires the district to provide to the nonpublic school official a written explanation of the reasons why it has chosen to use or not use a contractor. The district must maintain copies of this written communication.

- The district is required to contact the officials of all nonpublic schools within the boundaries of the school district annually. Even if there has been no indication of a desire to participate in the

federal programs in the past, the district must contact the nonpublic school officials. In addition, for Title I, the district must contact the nonpublic schools in other communities outside the district that are serving eligible students who are residents of the school district.

- Districts may request timely submission of reasonable documentation, as needed, from nonpublic school officials to help the district identify educational services that may be appropriate to the needs of nonpublic school students and educators.

- Districts must maintain records to show they have met their responsibilities for equitable participation of nonpublic educators and/or students. To meet general record-keeping responsibility, districts should document that:
  - Representatives of nonpublic schools were informed of the availability of services;
  - The needs of nonpublic school educators and/or students were identified;
  - The nonpublic school officials were consulted and provided an opportunity to give input in the planning of the district's program activities prior to the district making programmatic decisions;
  - The amount of funds made available were equitable for nonpublic school students
  - The designed project meets the needs of the nonpublic school educators and/or students;
  - The number of children at the nonpublic schools who were evaluated during the child find process;
  - The number of limited English proficient and immigrant children;
  - The number of children identified as students with disabilities and served; and
  - The Nonpublic Consultation Guide responses are completed electronically in the Nonpublic Data System within the Nonpublic Data System Forms section.

- Districts must maintain control of the federal funds used to provide services under the programs funded through the *No Child Left Behind* Act and *Individuals with Disabilities Education Improvement* Act. They also maintain title to materials, equipment and property purchased with those funds. Districts may allow the nonpublic schools to keep the items from year to year, in accordance with approved ongoing activities, as long as records are maintained.

- Title I Substitute Teacher Assignments - In accordance with state and federal laws, Title I substitute teacher assignments for both public and nonpublic schools shall be equitable and timely. The district must provide a teacher replacement and/or a substitute if the current service provider is not able to provide services for an extended period of time. The nonpublic consultation process should include discussion and budget allowance for substitute costs, which would encourage timely initiation of assigning a substitute to provide Title I services.

- Title I-Funded Teacher as a Substitute - In accordance with federal law and Non-Regulatory Guidance Title I Fiscal Issues, supplement, not supplant Title I teachers for both public and nonpublic schools shall not be used as substitute teachers unless other funds are used to pay the Title I teachers their regular, daily salary, and Title I services are not interrupted. As a Rule, Title I targeted assistance teachers should not be used as substitutes on a regular basis.

- Nonpublic schools can assist the district in meeting the obligation for equitable participation and consultation by:
  - Completing and submitting the Nonpublic Data System enrollment and participation information upon consultation with the public district;
  - Completing and submitting the Nonpublic Data System enrollment and participation information upon consultation with the public district. Reference the Nonpublic Data System instructions in the Doc Library under Consolidated Funding Application: https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=920;
  - Timely response to the district's request for consultation;
  - Providing documentation of students and educators in accordance with each grant program's requirements;
  - Assessing student achievement in accordance with the grant program requirements.

Title I, Part A, Improving the Academic Achievement of the Disadvantaged

For complete instructions, see the U.S. Department of Education Non-Regulatory Guidance, Title I Services to Eligible Private School Children, October 17, 2003 at: http://www.ed.gov/programs/titleiparta/psguidance.doc.

In the past, equitable service amounts have been calculated ***after*** allowable district wide set asides. Beginning in 2017-18, ESEA 1117(a)(4)(A)(2)(ii) states the proportional share of funds will be determined based on the total amount of funds received by the LEA under this part ***prior*** to any allowable expenditures or transfers by the LEA.

After timely and meaningful consultation, instructional services to meet the needs of eligible children may include: Instructional services (including evaluations to determine the progress being made in meeting academic needs), counseling, mentoring, one-to-one tutoring, or other benefits under this part (such as dual or concurrent enrollment, educational radio and television, computer equipment and materials, other technology and mobile educational services and equipment.

Title I, Part C, Migrant

Contact Rasha Hetata at (614) 752-1468 if you determine that a nonpublic school in your area has migrant students.

Title II, Part A, Supporting Effective Instruction

Beginning in 2017-18, ESEA 8501(a)(4)(A), expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children. In previous years, how an LEA budgeted and expended their funds determined whether a nonpublic school was eligible to receive an equitable service amount. For example, if an LEA budgeted their Title IIA allocation for class size reduction, the equitable service amount would be calculated on the hold harmless amount. With ESSA in effect, this is no longer the case. The nonpublic school will receive an equitable service amount based upon the percentage of students in the nonpublic school

compared to the number of students in the LEA attendance area, regardless of how the LEA budgets their allocation.

How does the district ensure that it is providing equitable services?
To ensure it is providing equitable services, a district must:

- Assess, address and evaluate the needs and progress of both public and nonpublic educators;
- Spend an equal amount of funds per student to serve the needs of public and nonpublic teachers;
- Provide nonpublic school teachers with an opportunity to participate in Title II activities equivalent to the opportunity provided public school educators; and
- Offer educational services to nonpublic school educators that are secular, neutral and non-ideological. (USDE Non-Regulatory Guidance: Title IIA)

Does the professional development program for nonpublic school teachers have to be the same as the professional development program for public school teachers?
No. The professional development needs of nonpublic and public teachers may be different, in which case the district, in consultation with the nonpublic school, should develop a separate program plan.

May Title IIA funds be used to pay for substitute teachers who replace teachers from nonpublic schools while they attend professional development activities?
No. The Title IIA program does not authorize payments to be used for hiring substitutes for nonpublic school teachers.

May Title IIA funds be used to pay any portion of a nonpublic school teachers' salaries or benefits?
No. While districts must set aside an amount of Title IIA funds for the equitable participation of nonpublic school teachers in professional development activities, funds may not be used to pay or subsidize any portion of nonpublic school teachers' salaries or benefits.

Must the district administer and retain control over the Title IIA funds used to serve nonpublic school educators?
Yes. The district must administer and retain control over the funds and therefore may not provide program funds directly to nonpublic schools.

Title III, Part A, Language Instruction for English Learners and Immigrant Students

What is meant by "equitable" participation by public and nonpublic school students and educational personnel in a Title III program?
Participation is considered to be equitable if the district does the following:

a) Assesses, addresses and evaluates the needs and progress of public and nonpublic school students and educational personnel on a comparable basis;
b) Provides, in the aggregate, approximately the same amount of services to students and educational personnel with similar needs;

c) Spends an equal amount of funds to serve similar public and nonpublic school students and educational personnel; and
d) Provides both groups of students and educational personnel equal opportunities to participate in program activities.

How are English Learners identified?
The responsibility under the Title IX uniform provisions for providing Title III, Part A services to English Learners in nonpublic schools lies with the district and, as a result, the district is responsible for assessing the English language proficiency of nonpublic school students. In many, if not most school districts, a home language survey is used to identify, among other things, those students who were not born in the United States or who have a native language other than English. A similar process could be followed by nonpublic schools in identifying potential English Learner students.[1] The assessment is critical to ensuring, for example, that a student who has a native language other than English is identified and provided the proper supports. Details on the kind of assessment and how it will be conducted should be discussed during the consultation process. However, the district cannot require a nonpublic school to administer an assessment as a condition for equitable participation of the nonpublic school students. A district is required to pay for initial English language proficiency assessments for nonpublic schools students.

Are nonpublic school students receiving Title III services required to participate in the English Learner assessments required of public school students receiving Title III services?
No. States are not required to include participating nonpublic school students in the annual assessment of English language proficiency. If a district provides services to nonpublic school students, the district must, through timely consultation with nonpublic school officials, determine how those students will be assessed for English language proficiency and how the results will be used to improve services to the participating nonpublic school students.

Do state English language proficiency standards and annual measurable achievement objectives apply to participating private school students?
No. A state's English language proficiency standards and annual measurable achievement objectives do not apply to private schools or their students. However, they apply to all public schools and public school students.

Must nonpublic schools report the results of English Learner assessments to the district?
No. Nonpublic schools with children participating in programs funded under Title III are not required to report assessment results. Officials from the district and the nonpublic school must agree how the results of the assessments will be used to improve services to the participating nonpublic school students.

Does the Title III requirement on language qualifications for teachers providing Title III services to public school students apply to teachers providing these services to nonpublic school students?

[1] See Section 3301 of the ESEA

Yes. Like teachers serving public school English Learners or immigrant students, teachers providing Title III services to nonpublic school students must be fluent in English and any other language used for instruction.

Use this link for calculations
https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=78906. English Learners and immigrant calculations will appear on the Nonpublic School Service page in the CCIP funding application.

Title IV, Part A, Student Support and Academic Enrichment Grants

Title IV, Part A funds will be available to districts for the first time starting school year 17-18. Awards made to districts can be used to support student needs in the following three areas:

- Providing a "well-rounded education" to students;
- Keeping students safe and healthy; and
- Using technology effectively

Districts that have an in-districts nonpublic school have a requirement to consultant and equitable services to those schools that wish to participate [ESEA Section 8501(b)]. This grant provides several areas that districts and participating nonpublic schools can explore to meet student identified needs in the three areas. For additional information on the allowable activities under Title IV-A, please review USDOE Non-regulatory guidance on Student Support and Academic Enrichment Grants.

PLEASE NOTE: Districts must maintain public control of funds, as was required under ESEA prior to passage of ESSA. [ESEA 8501(d)(1)]. This means that any service provided must be secular, non-ideological and under the control of the public entity. Therefore, when exploring the possibility of using Title IV-A to purchase technology under "Activities to Support the Effective Use of Technology [ESEA 4109], several steps would need to be taken to ensure that public control of funding is maintained and often could be in conflict with existing non-regulatory guidance from USDOE on equitable services (click here).

IDEIA-Special Education, Part B (P.L. 111-5)

Under the *Individuals with Disabilities Education Improvement* Act, children with disabilities enrolled in chartered nonpublic schools and non-chartered nonpublic schools may be eligible to receive IDEIA, Part B benefits through the public school district in which the nonpublic school is located. Residency of the nonpublic school student within the public school attendance area is not a factor.

Please refer to the *Operating Standards for Ohio's Schools Serving Students with Disabilities* at Ed Resources Ohio at http://www.edresourcesohio.org/. The complete guidelines for providing services in chartered and non-chartered nonpublic schools can be found at Rule 3301-51-08, page 140.

What IDEIA, Part B-Special Education participation is required of a district if a non-chartered nonpublic school is in the attendance area?

According to IDEIA, Part B-Special Education PL 108 – 446 20 USC 1412(a)(10), public school districts are required to offer equitable services to eligible non-chartered nonpublic school students residing in the district's geographical attendance area. The public school district must consult with the non-chartered nonpublic school officials to determine if any students are eligible for equitable participation services. Letter/Form C for non-chartered nonpublic IDEIA, Part B-Special Education participation must be completed and kept on file with the district.

NOTE: The Ohio Department of Education has established a process for districts to ensure the count of nonpublic students for IDEIA proportionate share calculation is correct. The nonpublic school shall input count of "eligible" students in the NS3 system. "Eligible" includes the count of students identified as students with disabilities who are not being served, as well as the count of students with disabilities who are being served. This will be a total head count. The district must validate the information in Nonpublic Data System to ensure it is correct.

- If the district has an Autism or Jon Peterson Scholarship Program, which also may be a chartered nonpublic school, in their attendance boundaries, the district must ensure the count of students on scholarship also is included in the total head count input into the Nonpublic Data System. These students count as part of the formula for determining the IDEIA proportionate share amount.

Proportionate Share Calculation for Parentally Placed Private School Children with Disabilities:

- Please see the Guidelines for Providing Services to Children with Disabilities Parentally Placed in Ohio Chartered and Nonchartered, Nonpublic Schools for the proportionate share calculation.

What does a district do if they determine the nonpublic school student count in the Nonpublic Data System enrollment does not include all eligible students with disabilities?
Please contact the Office for Exceptional Children, at 614-387-0156.

What is the per-child IDEIA allocation for 2017-2018 and what year is it based upon?
The calculation of IDEIA Part-B special education funds uses a number of factors, including child count, public and nonpublic population counts and the number of children within the district living in poverty. Due to these factors, each school district's calculation will vary based on its individual data. Therefore, it is impossible to determine a statewide per-child allocation. School districts nonpublic eligible student count, per pupil amount and total proportionate share amount are available at: http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=847&ContentID=11621&Content=107072.