

Georgia Questions About Equitable Services Asked 06.05.17

Answers Provided by J. Morrissey of the Office of Nonpublic Education (ONPE) on 08.03.17

- **GA QUESTION:** Does the term 'secondary school' as it is defined in ESSA Title VII apply both to public and private schools?
- **ONPE RESPONSE:** The Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA) defines secondary school in section 8101(45):
(45) SECONDARY SCHOOL- The term 'secondary school' means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

The definition applies to both public and private schools and is dependent on the state's definition of secondary school.

- **GA QUESTION:** If a public school district does not use Title II, Part A funds to support courses leading to degrees or advanced credentials, is the district nevertheless obligated to offer these services to the private schools upon request?
- **ONPE RESPONSE:** The ESEA confers on each LEA the responsibility for determining, after appropriate consultation 8501(a)(3) of the ESEA requires that the district's provision of services to private school teachers must be "equitable in comparison to services and other benefits for public school ... teachers participating in the program...."

Department regulations in 34 Code of Federal Regulations (CFR) 299.7(c) require a district to examine the particular needs of private school teachers and not simply make available to private school teachers the kinds of services it makes available to public school teachers.

In implementing these provisions, each LEA is responsible for determining, on the basis of the consultation process, the kinds of professional development opportunities that private school teachers will have available. The LEA decision must reflect how private school teachers, consistent with the availability of *Title II, Part A* funds, can best secure the professional development they need to address their own identified teaching needs. How the needs of private school teachers will be assessed is a topic for consultation between the LEA and private school officials, and it may be that through the process of assessing the teaching needs of private school teachers, the needs of private school teachers will not be the same as those of public school teachers. As with services for public school teachers, any *Title II, Part A* expenditures for private school teachers must be reasonable and necessary to carry out the purposes of the program.

In general, we believe that an LEA can (and should), in carrying out its responsibility to provide equitable services to private school teachers, establish policies that, for reasons of effectiveness, quality, cost, and other relevant factors, favor certain kinds of courses or other forms of professional development that the *Title II, Part A* statute authorizes over others. However, we do not believe that 34 CFR 299.7(c) permits a district to establish a blanket rule that forbids any private school teacher from receiving certain forms of professional development that the *Title II, Part A* statute otherwise authorizes and that best meet that teacher's identified teaching needs related to improving student academic achievement.

- **GA QUESTION: The 2003 Title I Private School non-regulatory guidance D-6 states that Title I cannot pay for substitute teachers. Does this also apply to Title II, Part A?**
- **ONPE RESPONSE:** Yes. The same principle applies. Equitable services under Title II, Part A may not be used for substitute teachers in a private school because contracts for private school teachers and staff would be inconsistent with the requirements in ESEA section 8501(d) regarding public control of funds and the supervision and control of employees or contractors. For more information, please see P-3 of the [Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act \(ESEA\), as amended by the Every Student Succeeds Act \(ESSA\)](#).

- **GA QUESTION: The 2003 Title I Private School non-regulatory guidance B-58 states that administrative costs for third-party contractors providing equitable services to private school participants must come off the top of the LEA's Title I allocation. Does this also apply to Title II, Part A?**
- **ONPE RESPONSE:** See P-2 of the November 21, 2016 [Non-Regulatory Guidance on Fiscal Changes and Equitable Services Requirements under the ESEA, as amended by the ESSA \(Fiscal Guidance\)](#), regarding Title I. Administrative costs for equitable services for Title I, Part A now come from the total amount reserved for equitable services. However, for programs covered under Title VIII (including Title II, Part A) administrative costs are to be reserved off-the-top. All costs associated with the administration of a third party contract should come from the LEAs total administrative set-aside.

- **GA QUESTION: Would you consider the following Q & A still applicable?**
(G-12) May Title II, Part A funds be used to pay for a private school teacher's attendance at a professional conference sponsored or conducted by a faith-based organization?
 Yes. To the extent that the conference is part of a sustained and comprehensive secular professional development plan for the teacher, then Title II, Part A funds may be expended to pay for the portion of the costs of the conference that, as determined by the LEA, represent the secular professional development in which the teacher participated. In this case, the LEA would pay or reimburse the teacher for attendance at the conference. Please note that the conference, as professional development, must meet the definition of professional development in section 8101(42) of the ESEA, as amended by the ESSA.
- **ONPE RESPONSE:** Yes, this response is still applicable.

- **GA QUESTION: Would you consider the following Q & A still applicable?**
(G-18) If a private school requires and annually provides, as part of its teacher contract, four days of professional development, may the LEA provide, on these same days, professional development supported by Title II, Part A funds?
 If the private school is legally bound by contract to provide a certain level of professional development, it would presumably provide those services regardless of whether Federal funds are available, and it would be supplanting to use Federal funds to provide professional development in place of those services. The law requires that all uses of Title II, Part A funds supplement non-federal funds that would otherwise be used for activities, and hence, the professional development provided with Federal funds
- **ONPE RESPONSE:**
 - Yes, this response is still applicable.

- Needs to be in addition to, and not in place of, what the private school would otherwise provide.
 - Please note that the conference, as professional development, must meet the definition of professional development in section 8101(42) of the ESEA, as amended by the ESSA.
- **GA QUESTION: Would you consider the following Q & A still applicable?**
(G-21) May an LEA require private school representatives to submit an application in order to receive services for the teachers in a private school with Title II, Part A funds?
 LEAs may request documentation, as needed, from private school officials that can help the LEA identify services that may be appropriate to the needs of private school teachers. However, requiring a formal application may, depending upon its form and content, constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school teachers.
 - **ONPE RESPONSE:**
 - Yes, this response is still applicable.
 - Please note that ESEA section 8501(c)(1) requires an LEA to consult on not only the provision of equitable services but the LEA's process for determining equitable services as well.
- **GA QUESTION: Would you consider the following Q & A still applicable?**
(G-24) May professional development be conducted within private schools?
 Yes, professional development activities may be conducted in the private school facilities.
 - **ONPE RESPONSE:** Yes, this response is still applicable.
- **GA QUESTION: Would you consider the following language applicable?**
 (G-2) Participation is considered to be equitable if the public and private educational agencies and institutions: (1) assess, address, and evaluate the needs and progress of both groups of teachers in the same manner; (2) provide approximately the same amount of training and, where appropriate, instruction to teachers with similar needs; (3) spend an equal amount of funds per student to serve public and private school teachers; and (4) provide private school teachers with an opportunity to participate in Title II, Part A program activities equivalent to the opportunity provided public school teachers.
 - **ONPE RESPONSE:** Yes, this response is still applicable. Also see 34 CFR 299.7.
- **GA QUESTION: Would you consider the following language applicable?**
(G-7) What happens if an LEA chooses not to participate in the Title II, Part A program and a private school in that LEA expresses a desire to do so? There is no authority for allowing non-public schoolteachers to receive services if the LEA elects not to participate in the program, nor does the program statute authorize an SEA to reallocate funds to another LEA for the purpose of allowing participation of teachers at a private school located in a nonparticipating LEA.
 - **ONPE RESPONSE:**
 - Yes, this response is still applicable.
 - Please note, consistent with FAQ U-4 in the Department's November 21, 2016 Non-Regulatory Guidance on Fiscal Changes and Equitable Services Requirements under the ESEA, as amended by the ESSA, if the LEA is considering transferring Title II, Part A funds to another ESEA program, the LEA must consult with private schools prior to the transfer of funds."