



**Council for American
Private Education**

13017 Wisteria Drive #457

Germantown, MD 20874

301-916-8460 (tel)

301-916-8485 (fax)

cape@capenet.org

www.capenet.org

ESEA Reauthorization Proposals and Bill Language

April 2011

PRIVATE EDUCATION:

Good for Students

Good for Families

Good for America

13017 Wisteria Drive #457
Germantown, MD 20874
301-916-8460 (tel)
301-916-8485 (fax)
cape@capenet.org

www.capenet.org

CAPE member organizations:

Agudath Israel of America
American Montessori Society
Association Montessori International—USA
Association of Christian Teachers and Schools
Association of Christian Schools International
Association of Waldorf Schools of N.A.
Christian Schools International
Evangelical Lutheran Church in America
Friends Council on Education
Lutheran Church—Missouri Synod
National Association of Episcopal Schools
National Association of Independent Schools
National Catholic Educational Association
National Christian School Association
Oral Roberts University Educational Fellowship
Seventh-day Adventist Board of Education
United States Conference of Catholic Bishops
Wisconsin Evangelical Lutheran Synod Schools
32 Affiliated State Organizations

ESEA Reauthorization

Objective

To secure improvements in services to private school students and teachers in certain programs authorized by the *Elementary and Secondary Education Act* (ESEA) as reauthorized in 2001 by the *No Child Left Behind Act*.

Rationale

The reauthorization of ESEA is a major education priority for the 112th Congress. Many provisions within ESEA have a direct impact on students and teachers in private schools, and some of those provisions go back as far as the mid-1960s, when Congress determined that federal education aid should be directed toward helping children in need, regardless of the type of school they attend. However, certain inequities have developed in recent years that have seriously disadvantaged students and teachers in religious and independent schools.

CAPE believes that federal programs that benefit public school students and teachers should provide equitable benefits to comparably situated private school students and teachers. Such equity is mandated in much of federal education law. It is based not only on a commitment to fairness, but also on the practical recognition that America's children are educated in a variety of schools and that the nation is best served when all its children are well-educated. In keeping with this rationale and to address the inequities that have developed, CAPE supports the following proposals.

Action

Priority Issues for Ensuring Equitable Services

1. Require that all funds generated by private school students be clearly set aside for the benefit of such students and be spent for the benefit of such students. Allocations to benefit private school students should be determined before any "off the top" reservations are made for purposes that do not include such students.
2. Include in consultation requirements an examination of options for directing administrative and program funds set aside for the private school community through a public administrative agency or a third-party contractor whose sole responsibility would be to administer programs provided through ESEA to private school students and teachers.
3. Require that equitable participation for State Grants for Teacher Quality under Title II-A be determined on the basis of the full allocation to the LEA, rather than only on the portion spent on professional development activities by the LEA.

Funding Equitable Services

4. Calculate and set-aside at the state level all funds earmarked for services to students and teachers in private schools.
5. Require school districts to expend in a timely manner funds generated by private school students for services to such students during the school year for which the funds have been appropriated. If funds are not expended during the appropriate school year, require school districts to expend any remaining funds for services to private school students at the start of the subsequent school year.
6. Provide private schools the option to receive the benefits for students and teachers available to them prior to a district's decision to flex the funds to other programs under Title VI.

7. Allow school district officials, after consulting with private school officials, to transfer funds generated by private school students in accordance with the provisions in Title VI, Part A, Subpart 2, in order to better meet the needs of private school students and teachers.

Establishing Equitable Services

8. Provide for the participation of private school students and teachers in any combined or newly proposed formula or competitive grant programs as well as in existing programs that are not currently available to them.
9. Establish a new section of ESEA that consolidates all provisions relating to services to private school students and teachers, or, as an alternative, include applicable private school provisions relating to the equitable participation of private school students currently found in Title I within each of the appropriate titles.
10. Require school districts to include private school students and teachers in all discretionary grants for which they are eligible.
11. Allow participants in the Troops-to-Teachers program to teach in private schools.
12. Amend Section 1120(a)(1) to clarify that special education services provided to eligible students in private schools include, singly or in any combination, instructional services, counseling, mentoring, and tutoring. The school district would be required to provide these services and benefits at the school's request in order to best address the needs of participating children.

Consulting About Establishing Equitable Services

13. Require school districts to secure written affirmations from private school officials that timely and meaningful consultation has taken place in connection with all programs serving private school students and teachers. Provide a section on the written affirmation for private school officials to indicate that timely and meaningful consultation has not occurred, in order that the SEA might be informed about the process and results.
14. Require school districts that disagree with private school officials over any issues involved in the consultation process to provide in writing the reason why the LEA has chosen a different course of action.
15. Include among the topics of required consultation the issue of pooling funds generated by private school students for the purposes of improving services to students and teachers. Require that school districts honor the request by private school officials to pool funds.
16. Establish that the goal of consultation be to reach agreement between school district officials and private school officials on the various issues identified in the law as required topics for consultation.
17. Require states to include in their consolidated grant applications from school districts adequate and specific assurances that timely and meaningful consultation with private school officials has taken place.

Safeguarding Equitable Services

18. Streamline the bypass provision and the complaint process and shorten the bypass/complaint implementation timeline.
19. Establish a threshold for "substantial failure," as used in Sections 1120(e) and 9502(a), based on a fixed number or percentage of eligible students in private schools within a district who should be served but are not, that would automatically require the delivery of services (e.g., through a bypass or an alternative method).
20. Require each state education agency to identify a private school ombudsman to advocate for private schools and to monitor and enforce requirements regarding private school participation in federal education programs.

Legislative Language to Implement CAPE's Proposals for the Reauthorization of ESEA

Matter in strikethrough is deleted from existing law; matter underlined is added.

Proposal:

1. Require that all funds generated by private school students be clearly set aside for the benefit of such students and be spent for the benefit of such students. Allocations to benefit private school students should be determined before any “off the top” reservations are made for purposes that do not include such students.

Language to Implement Proposal:

NCLB Sec. 1120(a)(4) shall be amended to read as follows:

(4) Expenditures. Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds generated by such students. ~~Said proportion shall be allocated to participating school attendance areas~~ based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years. The determination of expenditures shall be made before the LEA reserves any funds pursuant to sections 1116, 1118, and 1119.

Justification:

The above change would recapture a principle of fairness and equity that has informed the *Elementary and Secondary Education Act* from the start, namely, that dollars generated through formulas by students in religious and independent schools should be used for services to such students.

=====

Proposal:

2. Include in consultation requirements an examination of options for directing administrative and program funds set aside for the private school community through a public administrative agency or a third-party contractor whose sole responsibility would be to administer programs provided through ESEA to private school students and teachers.

Language to Implement Proposal:

NCLB Sec. 1120(b)(1) shall be amended to include a new subparagraph (I) to read as follows:

(I) whether the agency shall provide services directly or assign responsibility for the provision of services to a separate government agency, consortium, or entity, or to a third-party contractor.

NCLB Sec. 9501(c) shall be amended to include a new subparagraph (G) to read as follows:

(G) whether the agency, consortium, or entity shall provide services directly or assign responsibility for the provision of services to a separate government agency, consortium, or entity, or to a third-party contractor.

Justification:

The above change would be of benefit to both public school districts and private school students by requiring relevant parties to at least consider providing services to students in private schools through an agency, consortium, or entity other than the school district itself. Such an arrangement would relieve the district of responsibility for the direct management and delivery of services and could increase the efficiency and effectiveness of services for students.

=====

Proposal:

3. Require that equitable participation for State Grants for Teacher Quality under Title II-A be determined on the basis of the full allocation to the LEA, rather than only on the portion spent on professional development activities by the LEA.

Language to Implement Proposal:

NCLB Sec. 9501(b)(1)(C) shall be amended to read as follows:

(C) part A of title II, ~~to the extent provided in paragraph (3);~~

NCLB Sec. 9501(b) shall be amended by striking paragraph (3).

Justification:

The above change would expand opportunities for professional development for educators in private schools by basing the allocation for such services on a district's full Title II-A allocation, rather than on the portion of the allocation that the district chooses to use for professional development. The change would thereby eliminate the disadvantage in professional development opportunities that private school teachers face when public school districts decide to use Title II-A funds for purposes such as teacher recruitment and class-size reduction.

=====

Proposal:

4. Calculate and set-aside at the state level all funds earmarked for services to students and teachers in private schools.

Language to Implement Proposal:

NCLB Sec. 1120(a)(4) shall be amended to include a new subparagraph (B) to read as follows:

(B) Funds allocated to an LEA for the public and private school programs will be determined by the SEA in a timely manner. The SEA will inform the LEAs and private school officials simultaneously about the allocation of funds for the public and private school programs as determined in (4) (A) and (B) and including any carryover funds.

NCLB Sec. 1120(a)(5) shall be amended to include a new subparagraph (B) to read as follows:

(B) Private school officials or their representatives may request that the SEA administer the program and provide services under this section directly or through contracts with a separate government agency or a consortium or third party provider.

Similar changes shall be made to comparable sections of NCLB to achieve the same objective in all programs serving students and teachers in private schools.

Justification:

The above change would eliminate the uncertainty and confusion surrounding the amount of funds that should be reserved for services to students and teachers in private schools and would identify an unambiguous amount of funds for such services that all parties would know and be able to reference for planning purposes.

Proposal:

5. Require school districts to expend in a timely manner funds generated by private school students for services to such students during the school year for which the funds have been appropriated. If funds are not expended during the appropriate school year, require school districts to expend any remaining funds for services to private school students at the start of the subsequent school year.

Language to Implement Proposal:

NCLB Sec. 1120(a)(4) shall be amended to read as follows:

(4) Expenditures

(A) Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.

(B) In general, funds allocated to a local educational agency for services to eligible private school children shall be obligated in the fiscal year in which the funds are received. However, any funds for services to eligible private school children not obligated in a given fiscal year shall be used to serve such children in the following fiscal year.

NCLB Sec. 5142(b)(1) shall be amended to read as follows:

(1) In general

(A) Expenditures for programs under subsection (a) of this section shall be equal (consistent with the number of children to be served) to expenditures for programs under this part for children enrolled in the public schools of the local educational agency.

(B) Funds allocated to a local educational agency for services to eligible private school children shall be obligated in the fiscal year in which the funds are received. However, any funds for services to eligible private school children not obligated in a given fiscal year shall be used to serve such children in the following fiscal year.

NCLB 20 Sec. 9501(a)(4) shall be amended to read as follows:

(4) Expenditures

(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.

(B) Funds allocated to a local educational agency for services to eligible private school children shall be obligated in the fiscal year in which the funds are received. However, any funds for services to eligible private school children not obligated in a given fiscal year shall be used to serve such children in the following fiscal year.

Justification:

The above change would help guarantee that funds for services to private school students would be spent in the year in which they are made available and would ensure that if they were not so spent, they would at least be earmarked for private school students the following year. Current law does not provide that such funds be carried over for their intended purpose from one year to the next.

=====

Proposals:

6. Provide private schools the option to receive the benefits for students and teachers available to them prior to a district's decision to flex the funds to other programs under Title VI.

7. Allow school district officials, after consulting with private school officials, to transfer funds generated by private school students in accordance with the provisions in Title VI, Part A, Subpart 2, in order to better meet the needs of private school students and teachers.

Language to Implement Proposals:

NCLB Sec. 6123(e)(2) shall be amended to read as follows:

(2) Consultation. Each State educational agency or local educational agency that transfers funds under this section shall conduct consultations in accordance with section 9501, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools. Upon such consultation the state educational agency or local educational agency may

(A) exempt funds generated by the count of private school students from any funds transferred under this section, thereby allowing private school students, teachers, or other personnel to receive the services they would have received absent the transfer; or

(B) allow funds generated by the count of private school students in a program to which the transferability authority applies to be transferred in proportions similar to or different from those used for funds generated by the count of public school students, in order to meet the needs of private school students and teachers.

Justification:

The flexibility provisions under Title VI are designed to give public school officials some discretion in redirecting funds under certain NCLB programs in order to better meet the needs of students. But the reallocation chosen in a particular district may not serve the needs of private school students. The above change would allow a different allocation plan for funds earmarked for services to private school students in order to better meet the needs of those students.

=====

Proposal:

8. Provide for the participation of private school students and teachers in any combined or newly proposed formula or competitive grant programs as well as in existing programs that are not currently available to them.

Language to Implement Proposal:

Note: The following change would include private school students in the following programs: Striving Readers (ESEA I-E-1502), Advanced Placement (I-G), National Writing Project (II-C-2), Civics Education (II-C-3), Teaching of Traditional American History (II-C-4), Character Education (V-D-3), Gifted and Talented Students (V-D-6), Foreign Language Assistance (V-D-9), Physical Education (V-D-10), and Arts in Education (V-D-15). Newly combined or established programs would have to include appropriate language regarding equitable participation. CAPE's proposal 10 ("Require school districts to include private school students and teachers in all discretionary grants for which they are eligible.") could also be implemented here by adding appropriate programs.

NCLB Sec. 9501(b)(1) shall be amended to read as follows:

(b) Applicability

(1) In general

This section applies to programs under -

- (A) subparts 1 and 3 of part B of title I (Reading First, Even Start);
- (B) part C of title I (Migratory Children)
- (C) section 1502 of part E of title I (Striving Readers)
- (D) part G of title I; (Advanced Placement)
- (~~E~~ E) part A of title II, ~~to the extent provided in paragraph (3)~~ (Teacher and Principal Training and Recruiting)
- (~~D~~ F) part B of title II (Math and Science Partnerships);
- (G) subpart 2 of part C of title II (National Writing Project);
- (H) subpart 3 of part C of title II (Civic Education);
- (I) subpart 4 of part C of title II (Teaching of Traditional American History);
- (~~E~~ J) part D of title II (Enhancing Education Through Technology);
- (~~F~~ K) part A of title III (English Language Acquisition);
- (~~G~~ L) part A of title IV (Safe and Drug-Free Schools); and
- (~~H~~ M) part B of title IV (21st Century Community Learning Centers);
- (N) subpart 3 of part D of title V (Character Education);
- (O) subpart 6 of part D of title V (Gifted and Talented Students);
- (N) subpart 9 of part D of title V (Foreign Language Assistance);
- (O) subpart 10 of part D of title V (Physical Education); and
- (P) subpart 15 of part D of title V (Arts in Education).

Justification:

This change is necessary because under current law not all ESEA programs that could serve private school students and teachers in need do so. CAPE believes that federal programs that benefit public school students and teachers should provide equitable benefits to comparably situated private school students and teachers.

=====

Proposal:

9. Establish a new section of ESEA that consolidates all provisions relating to services to private school students and teachers, or, as an alternative, include applicable private school provisions relating to the equitable participation of private school students currently found in Title I within each of the appropriate Titles.

Language to Implement Proposal:

Concerning the establishment of a new section of ESEA that consolidates all provisions relating to services to private school students and teachers, sample language will be provided upon request.

Concerning the determination of funds for private schools:

NCLB Sec. 1120(b)(1)(E) shall be amended to read as follows:

(E) the size and scope of the equitable services to be provided to the eligible private school children, ~~and~~ the proportion of funds that is allocated under subsection (a)(4) for such services, and how that proportion of funds is determined;

NCLB Sec. 9501(c)(1)(E) shall be amended to read as follows:

(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel, ~~and~~ the amount of funds available for those services, and how that amount is determined; and

Concerning consultation between private school officials and the LEA:

NCLB Sec. 5142(a)(1) shall be amended to read as follows:

(1) In general. To the extent consistent with the number of children in the school district of a local educational agency that is eligible to receive funds under this part, or that serves the area in which a program assisted under this part is located, who are enrolled in private nonprofit elementary schools and secondary schools, or, with respect to instructional or personnel training programs funded by the State educational agency from funds made available for State educational agency use, the local educational agency, after consultation with appropriate private school officials in accordance with provisions contained in section 9501(c)

NCLB Sec. 9501(c)(3) shall be amended to read as follows:

(3) Timing. The consultation required by paragraph (1) shall include meetings of agency and private school officials and shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under this chapter, and such meetings shall continue throughout the implementation and assessment of activities under this section.

Concerning compliance:

NCLB Sec. 1120(b)(5)(A) shall be amended as follows:

(A) In general. A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school or its students equitably as required by this section.

Justification:

These changes are necessary because under current law (a) the consultation processes between public and private school officials do not include discussions about how the proportion and amount of funds available to students in private schools are determined; (b) the valuable requirement for a written explanation by the LEA of why it disagrees with private school officials currently applies only to disagreements regarding the use of a contractor and should apply to other topics of consultation; (c) the valuable consultation requirements under the Uniform Provisions (NCLB Sec. 9501(c)) do not apply to Title V, Part A (Innovative Programs); (d) the consultation section under the Uniform Provisions does not include the documentation requirements or the meeting requirements that currently exist under the consultation process provided for Title I.

=====

Proposal:

10. Require school districts to include private school students and teachers in all discretionary grants for which they are eligible.

Language to Implement Proposal:

See language for proposal 8.

Justification:

This change is necessary because under current law not all ESEA programs, including discretionary grant programs, that could serve private school students and teachers in need do so. CAPE believes that federal programs that benefit public school students and teachers should provide equitable benefits to comparably situated private school students and teachers.

Proposal:

11. Allow participants in the Troops-to-Teachers program to teach in private schools.

Language to Implement Proposal:

NCLB Sec. 2302(b)(2)(A) shall be amended to read as follows:

(A) by local educational agencies, ~~or public charter schools,~~ or private, including religious, schools that the Secretary identifies as—

NCLB Sec. 2303(d) shall be amended as follows:

(d) Selection Priorities. In selecting eligible members of the Armed Forces to receive assistance under the Program, the Secretary shall give priority to members who have educational or military experience in science, mathematics, special education, or vocational or technical subjects and agree to seek employment as science, mathematics, or special education teachers in public or private, including religious, elementary schools or secondary schools. ~~or in other schools under the jurisdiction of a local educational agency.~~

NCLB Sec. 2304(a)(1)(B) shall be amended to read as follows:

(B) to accept an offer of full-time employment as an elementary school teacher, secondary school teacher, or vocational or technical teacher for not less than 3 school years with a high-need local educational agency, ~~or public charter school,~~ or private, including religious, school, as such terms are defined in section 2101, to begin the school year after obtaining that certification or licensing.

NCLB Sec. 2304(d)(3) shall be amended to read as follows:

(3) High-Need School Defined. In this subsection, the term 'high-need school' means a public or private, including religious, elementary ~~school,~~ public or secondary school, or public charter school that meets one or more of the following criteria:

NCLB Sec. 2307(b)(5) shall be amended to read as follows:

(5) The rates of retention of the participants by the local educational agencies, ~~and~~ public charter schools, and private, including religious, schools employing the participants.

Justification:

These changes are necessary because under current law military personnel who complete the Troops-to-Teachers program are only eligible for the program's stipends and bonuses if they elect to teach in a high-need public school. That provision denies military personnel choice in determining the type of high-need school in which to teach, and it puts students in high-need private schools at a disadvantage when it comes to accessing teachers with military backgrounds.

=====

Proposal:

12. Amend Section 1120(a)(1) to clarify that special education services provided to eligible students in private schools include, singly or in any combination, instructional services, counseling, mentoring, and tutoring. The school district would be required to provide these services and benefits at the school's request in order to best address the needs of participating children.

Language to Implement Proposal:

NCLB Sec. 1120(a)(1) shall be amended to read as follows:

(1) To the extent consistent with the number of eligible children identified under section 1115(b) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) ~~that address their needs, including but not limited to instructional services, counseling, mentoring, and one-on-one tutoring.~~ These services and benefits shall be made available singly or in combination at the school's request in order to best address the needs of eligible children, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 1118 and 1119.

Justification:

Low achieving students and those at risk of failing often suffer from low self-esteem and emotional and psychological problems that impair their ability to succeed academically. Remedial services that do not address these issues thus often fail to result in improvement. Mentoring by caring adults and counseling by the appropriate professionals can help ensure that some of the major factors contributing to low academic achievement are alleviated. While NCLB funds currently can be used for counseling services, some school districts continue to insist that only instructional services can be provided, or that counseling and other non-instructional services can only be provided to those students currently receiving Title I instructional services. This amendment clarifies that counseling and other such services can be provided to students, singly if need be, to enable students to receive whatever services are best suited to help them achieve academic success. This amendment will not cost the federal government any more money than it spends at present and it will not enable any students who are not currently eligible for services to become eligible; it merely gives schools more options as to what services their students can access than exists at present.

Proposal:

13. Require school districts to secure written affirmations from private school officials that timely and meaningful consultation has taken place in connection with all programs serving private school students and teachers. Provide a section on the written affirmation for private school officials to indicate that timely and meaningful consultation has not occurred, in order that the SEA might be informed about the process and results.

Language to Implement Proposal:

NCLB Sec. 1120(b)(4) shall be amended to read as follows:

(4) Documentation. Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. The written affirmation must provide the option for private school officials to indicate that timely and meaningful consultation has not occurred or that the program design is not equitable. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation or attempts at consultation ~~has~~ have taken place to the State educational agency.

NCLB Sec. 9501(c) shall be amended by adding a paragraph to read as follows:

(5) Documentation. Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. The written affirmation must provide the option for private school officials to indicate that timely and meaningful consultation has not occurred or that the program design is not equitable. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation or attempts at consultation have taken place to the State educational agency.

Justification:

Under current law the requirement to secure written affirmations from private school officials that timely and meaningful consultation has taken place applies only to Title I and should be extended to the Uniform Provisions in Title IX. Further, the written affirmation should provide a clear opportunity for private school officials to indicate that timely and meaningful consultation has not occurred or that the program design is not equitable.

=====

Proposal:

14. Require school districts that disagree with private school officials over any issues involved in the consultation process to provide in writing the reason why the LEA has chosen a different course of action.

Language to Implement Proposal:

NCLB Sec. 1120(b)(1)(H) shall be amended to read as follows and subsequent paragraphs shall be renumbered as necessary:

~~(H)~~ (2) Disagreement. ~~how,~~ If the agency disagrees with the views of the private school officials ~~on the provision of services through a contract,~~ the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to ~~use a contractor.~~ adopt the course of action requested by the private school concerning:

- (A) the on-site delivery of services to private school children;
- (B) the pooling of funds; and
- (C) any of the topics for consultation found under paragraph(1) of this subsection.

NCLB Sec. 9501(c)(2) shall be amended to read as follows:

(2) Disagreement. If the agency, consortium, or entity disagrees with the views of the private school officials ~~on the provision of services through a contract~~ on any of the topics for consultation found under paragraph 1 of this subsection, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency, consortium, or entity has chosen not to ~~use a contractor.~~ adopt the course of action requested by the private school officials.

Justification:

Under current law, the valuable requirement for a written explanation by the LEA of why it disagrees with private school officials applies only to disagreements regarding the use of a contractor under Title I and should apply to other topics of consultation wherever consultation is required.

=====

Proposal:

15. Include among the topics of required consultation the issue of pooling funds generated by private school students for the purposes of improving services to students and teachers. Require that school districts honor the request by private school officials to pool funds.

Language to Implement Proposal:

NCLB Sec. 1120(b)(1) shall be amended to include a new subparagraph (I) and additional language to read as follows:

(I) whether to create a pool or pools of funds from which the local educational agency provides equitable services to eligible private school children; or to provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

In general, a local education agency shall comply with a request by private school officials to pool funds as described in subparagraph I.

NCLB Sec. 9501(c)(1) shall be amended to include a new subparagraph (G) and additional language to read as follows:

(G) whether to create a pool or pools of funds from which the agency, consortium, or entity provides equitable services to eligible private school children; or to provide equitable services to eligible children, teachers, and other educational personnel in each private school with the funds generated by children who attend that private school.

In general, a local education agency shall comply with a request by private school officials to pool funds as described in subparagraph G.

Justification:

Under current law the various consultation requirements that apply to private schools do not include the issue of pooling funds—an issue that could bring about efficiencies in the delivery of services to students and teachers in private schools.

=====

Proposal:

16. Establish that the goal of consultation be to reach agreement between school district officials and private school officials on the various issues identified in the law as required topics for consultation.

Language to Implement Proposal:

NCLB Sec. 1120(b) shall be amended by inserting a new paragraph (2) to read as follows, and the current paragraph (2) shall be renumbered (3), and subsequent paragraphs shall be renumbered accordingly:

(2) GOAL- The goal of such consultations shall be to reach agreement between the local educational agency and the private school officials about equitable and effective programs to serve participating private school students.

NCLB Sec. 9501(c) shall be amended by inserting a new paragraph (2) to read as follows, and the current paragraph (2) shall be renumbered (3), and subsequent paragraphs shall be renumbered accordingly:

(2) GOAL- The goal of such consultations shall be to reach agreement between the agency, consortium, or entity and the private school officials about equitable and effective programs to serve participating private school students.

Justification:

The ideal outcome of consultation, namely, agreement between the consulting parties, should be established as the goal of the process from the start.

Proposal:

17. Require states to include in their consolidated grant applications from school districts adequate and specific assurances that timely and meaningful consultation with private school officials has taken place.

Language to Implement Proposal:

NCLB Sec. 9304(a) shall be amended by adding the following paragraph:

(8) all applicable statutes and regulations relating to services to private school students and personnel, including those related to timely and meaningful consultation, were adhered to.

NCLB Sec. 9306(a) shall be amended by adding the following paragraph:

(8) all applicable statutes and regulations relating to services to private school students and personnel, including those related to timely and meaningful consultation, were adhered to.

Justification:

Consolidated grant applications, a critical instrument of program design and accountability to the U.S. Department of Education, should include specific assurances relating to the meaningful participation of students in private schools.

=====

Proposal:

18. Streamline the bypass provision and the complaint process and shorten the bypass/complaint implementation timeline.

Language to Implement Proposal:

NCLB Sec. 9503 shall be amended to read as follows:

(a) Procedures for Complaints. The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 9501 of this title by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint in writing, along with supporting documentation, to the State educational agency for a written resolution by the State educational agency ~~within a reasonable period of time.~~ The State educational agency has 45 days to investigate the complaint and provide a written resolution.

(b) Appeals to Secretary. The written resolution of the State educational agency may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency ~~resolves the complaint~~ provides a written resolution about the complaint or fails to resolve the complaint within a reasonable period of time. if the State educational agency has failed to provide a written decision within the required time. The appeal shall be accompanied by a copy of the State educational agency's written resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall ~~investigate and resolve the appeal~~ provide a written resolution not later than ~~120~~ 90 days after receipt of the appeal.

NCLB Sec. 9504(a)(1)(A) shall be amended to read as follows:

(A) Written Objections. The Secretary shall not take any final action under section 9502 of this title until the State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity affected by the actions has had an opportunity, for not less than 45 but not more than 60 days after receiving written notice thereof, to submit written objections about why that action should not be taken and to appear before the Secretary to show cause why that action should not be taken. After receiving the written objections, the Secretary may require further investigation of the reasons why a by-pass has been requested. This investigation may include meetings of the affected parties in order to resolve the issues without a by-pass. If no resolution of the issues has occurred within 120 days after the by-pass was requested, the Secretary shall rule whether a by-pass is justified.

Justification:

The bypass and complaint processes currently take an extraordinary amount of time to implement and should be streamlined, through the imposition of reasonable timeframes, in order to bring about a quick resolution and to implement equitable services.

=====

Proposal:

19. Establish a threshold for “substantial failure,” as used in Sections 1120(e) and 9502(a), based on a fixed number or percentage of eligible students in private schools within a district who should be served but are not, that would automatically require the delivery of services (e.g., through a bypass or an alternative method).

Language to Implement Proposal:

NCLB Sec. 1120(b)(5) shall be amended by adding new subparagraphs C and D as follows:

(C) Private school officials or their representatives can request that the state educational agency administer the programs directly or through contracts.

(D) If a local educational agency has more than 10,000 educationally needy private elementary and secondary school children that are not being served by the agency’s program, and/or if 90 percent of the eligible nonpublic school students within the district are not being served by the agency’s program, upon request by private school officials or their representatives within such district, the state educational agency shall administer the program directly or through a contract.

NCLB Sec. 1120(e) shall be amended to read as follows:

(e) Standards for a Bypass. If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency or a state educational agency, if applicable, has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall—

- (1) waive the requirements of this section for such local educational agency;
- (2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 9503 and 9504; and
- (3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

(4) If a state educational agency is administering the program directly or through contract, and there are within a district more than 10,000 educationally needy private elementary and secondary school children that are not being served by the state agency’s program, and/or if 90 percent of the eligible nonpublic school students within the district are not being served by the state agency’s program, then each private school within that district shall be granted the right to receive a bypass, upon its request, by the Secretary.

Justification:

The NCLB currently states that the Secretary of Education shall provide for a bypass, under which the federal government administers the program directly, where a local educational agency “has substantially failed or is unwilling” to provide equitable services to nonpublic school students. This amendment provides an objective definition of what those words mean and gives private schools the option of first requesting the SEA to administer the program in such cases rather than the federal government. The justification for this provision is that if so many nonpublic students are not being serviced, obviously the district has fundamentally failed to comply with NCLB’s requirement to provide equitable services to nonpublic school students. But since it may impose an undue burden on the U.S. Department of Education to grant a bypass in such cases, the amendment gives schools the initial option of having their SEA administer the program instead. If the SEA also fails to provide equitable services, then the schools concerned should have a right to a bypass so that the U.S. Department of Education runs the program. This amendment will not cost the federal government any more money than it spends at present on NCLB programs.

Proposal:

20. Require each state education agency to identify a private school ombudsman to advocate for private schools and to monitor and enforce requirements regarding private school participation in federal education programs.

Language to Implement Proposal:

NCLB Sec. 1120(a)(3) shall be amended by adding a new subparagraph B to read as follows:

(3) Equity.

(A) Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

(B) To help ensure equitable services to private school children, the state educational agency shall identify an ombudsman to monitor and enforce requirements of this section.

NCLB Sec. 9501(a)(3) shall be amended by adding a new subparagraph B to read as follows:

(3) Special Rule

(A) Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(B) To help ensure equitable services to private children, teachers, and other educational personnel, the state educational agency shall identify an ombudsman to monitor and enforce requirements of this section.

Justification:

Each state education department should have at least one official to advocate for the equitable participation of students in private schools under federal programs and to monitor and enforce requirements regarding participation.

Appendix A: Proposed Amendments for Sec. 1120

SEC. 1120. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

(a) GENERAL REQUIREMENT-

(1) IN GENERAL- To the extent consistent with the number of eligible children identified under section 1115(b) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, after timely and meaningful consultation with appropriate private school officials, provide such children, on an equitable basis, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) ~~that address their needs, including but not limited to instructional services, counseling, mentoring, and one-on-one tutoring.~~ These services and benefits shall be made available singly or in combination at the school's request in order to best address the needs of eligible children, and shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities developed pursuant to sections 1118 and 1119.

(2) SECULAR, NEUTRAL, NONIDEOLOGICAL- Such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological.

(3) EQUITY-

(A) Educational services and other benefits for such private school children shall be equitable in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

(B) To help ensure equitable services to private school children, the state educational agency shall identify an ombudsman to monitor and enforce requirements of this section.

(4) EXPENDITURES-

(A) Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds generated by such students. Said proportion shall be allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years. The determination of expenditures shall be made before the LEA reserves any funds pursuant to sections 1116, 1118, and 1119.

(B) Funds allocated to an LEA for the public and private school programs will be determined by the SEA in a timely manner. The SEA will inform the LEAs and private school officials simultaneously about the allocation of funds for the public and private school programs as determined in (4) (A) and (B) and including any carryover funds.

(C) In general, funds allocated to a local educational agency for services to eligible private school children shall be obligated in the fiscal year in which the funds are received. However, any funds for services to eligible private school children not obligated in a given fiscal year shall be used to serve such children in the following fiscal year.

(5) PROVISION OF SERVICES-

(A) The local educational agency may provide services under this section directly or through contracts with public and private agencies, organizations, and institutions.

(B) Private school officials or their representatives may request that the SEA administer the program and provide services under this section directly or through contracts with a separate government agency or a consortium or third party provider.

(b) CONSULTATION-

(1) IN GENERAL- To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part, on issues such as —

(A) how the children's needs will be identified;

(B) what services will be offered;

- (C) how, where, and by whom the services will be provided;
- (D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, ~~and~~ the proportion of funds that is allocated under subsection (a)(4) for such services, and how that proportion of funds is determined;
- (F) the method or sources of data that are used under subsection (c) and section 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools;
- (G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers; ~~and~~
- ~~(H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor. [See replacement language below in (2) DISAGREEMENT.]~~
- (H) whether the agency shall provide services directly or assign responsibility for the provision of services to a separate government agency, consortium, or entity, or to a third-party contractor; and
- (I) whether to create a pool or pools of funds from which the local educational agency provides equitable services to eligible private school children; or to provide equitable services to eligible children in each private school with the funds generated by children from low-income families who attend that private school.

In general, a local education agency shall comply with a request by private school officials to pool funds as described in subparagraph I.

(2) DISAGREEMENT- If the agency disagrees with the views of the private school officials, the local educational agency will provide in writing to such private

school officials an analysis of the reasons why the local educational agency has chosen not to adopt the course of action requested by the private school concerning:

(A) the on-site delivery of services to private school children;

(B) the pooling of funds; and

(C) any of the topics for consultation found under paragraph(1) of this subsection.

(3) GOAL- The goal of such consultations shall be to reach agreement between the local educational agency and the private school officials about equitable and effective programs to serve participating private school students.

(24) TIMING- Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue throughout implementation and assessment of services provided under this section.

(35) DISCUSSION- Such consultation shall include a discussion of service delivery mechanisms a local educational agency can use to provide equitable services to eligible private school children.

(46) DOCUMENTATION- Each local educational agency shall maintain in the agency's records and provide to the State educational agency involved a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred. The written affirmation must provide the option for private school officials to indicate that timely and meaningful consultation has not occurred or that the program design is not equitable. If such officials do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation that such consultation or attempts at consultation has have taken place to the State educational agency.

(57) COMPLIANCE-

(A) IN GENERAL- A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due

consideration to the views of the private school official, or did not make a decision that treats the private school or its students equitably as required by this section.

(B) PROCEDURE- If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency.

(C) Private school officials or their representatives can request that the state educational agency administer the programs directly or through contracts.

(D) If a local educational agency has more than 10,000 educationally needy private elementary and secondary school children that are not being served by the agency's program, and/or if 90 percent of the eligible nonpublic school students within the district are not being served by the agency's program, upon request by private school officials or their representatives within such district, the state educational agency shall administer the program directly or through a contract.

(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;

(B) using the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable;

(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area; or

(D) using an equated measure of low income correlated with the measure of low income used to count public school children.

(2) COMPLAINT PROCESS- Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 9505.

(d) PUBLIC CONTROL OF FUNDS-

(1) IN GENERAL- The control of funds provided under this part, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

(2) PROVISION OF SERVICES-

(A) PROVIDER- The provision of services under this section shall be provided

—
(i) by employees of a public agency; or

(ii) through contract by such public agency with an individual, association, agency, or organization.

(B) REQUIREMENT- In the provision of such services, such employee, individual, association, agency, or organization shall be independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency.

(e) STANDARDS FOR A BYPASS- If a local educational agency is prohibited by law from providing for the participation in programs on an equitable basis of eligible children enrolled in private elementary schools and secondary schools, or if the Secretary determines that a local educational agency has substantially failed or is unwilling, to provide for such participation, as required by this section, the Secretary shall —

(1) waive the requirements of this section for such local educational agency;

(2) arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section and sections 9503 and 9504; and

(3) in making the determination under this subsection, consider one or more factors, including the quality, size, scope, and location of the program and the opportunity of eligible children to participate.

(4) If a state educational agency is administering the program directly or through contract, and there are within a district more than 10,000 educationally needy private elementary and secondary school children that are not being served by the state agency's program, and/or if 90 percent of the eligible nonpublic school students within the district are not being served by the state agency's program, then each private school within that district shall be granted the right to receive a bypass, upon its request, by the Secretary.