

# Consultation for Equitable Participation of Private Schools under IDEA and ESEA

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WISCONSIN DEPARTMENT OF  
PUBLIC INSTRUCTION

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# Objectives

**Review the consultation requirements under IDEA and ESEA.**

- ◆ **Similarities and differences between the two federal programs.**

**Determination of Services and Discussion of Timelines.**

**Recommended Staff Involvement.**

**What constitutes “non-compliance” under the two laws.**



# Wisconsin Private Schools

**Private School Definition: Wisconsin statute § 118.165**

- ❖ Does not include children who are home schooled

**For a private school to maintain its status as an “active” school in Wisconsin, private school officials must annually complete the *PI-1207 Private School Report*.**

**The report is a requirement of Wis. Stat. Sec. 115.30(3) and 118.165(1) and the deadline for submission (by statute) is October 15 of each year.**

**Student enrollment is collected on this form as well as an assurance the private school is meeting the statutory requirements.**

# Consultation

Consultation is a mandatory process that involves meaningful discussions between the LEA, private school representatives, and under IDEA, representatives of parents of private school children on key issues relating to equitable participation of eligible private school children in Federally funded services.

Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to private school students. ([OSEP Q&A](#))



# IDEA Consultation Requirements

**The discussion between public school and private school officials must include:**

- ❖ The child find process and how parents, teachers and private school officials will be informed of the process.
- ❖ The amount of Federal funds available to serve private school students with disabilities and the calculation used to determine the amount.

# IDEA Consultation Requirements

- ❖ How special education and related services will be provided.
- ❖ Where special education and related services will be provided.
- ❖ Who will provide the special education and related services.
  - ❖ Services Plan development
- ❖ How services will be allocated if the required federal proportionate share amount is not enough to serve all students with disabilities.

# IDEA Consultation Requirements

- ❖ How the consultation process will operate throughout the school year to address students who are identified through child find at a later date or if services in general will change.
- ❖ How there will be a written explanation provided of the reasons why the LEA chose not to adopt the recommendations of the private school officials if there is a disagreement as a result of the consultation.

# ESEA Consultation Requirements

The discussion between public school and private school officials must include:

- ❖ How children's needs will be identified.
- ❖ What services will be provided.
- ❖ How, where, and by whom the services will be provided.
- ❖ How the effectiveness of services will be evaluated and how the results of the evaluation will be used to improve services.

# ESEA Consultation Requirements

- ❖ The size and scope of the equitable services, the proportion of funds that are allocated for such services, and how that proportion is determined.
- ❖ The method or sources of data that are used to determine the number of children from low-income families in participating school attendance areas who attend private schools.
- ❖ Whether to provide equitable services with the funds allocated to each private school, to pool funds between private schools within an LEA, or pool funds across LEAs within a private school.

# ESEA Consultation Requirements

- ❖ How and when the LEA will make decisions about the delivery of services to such children, including consideration and analysis of views of the private school officials on potential third-party providers.
- ❖ If the LEA disagrees with contracting with a third-party provider, the LEA will provide an analysis of the reasons in writing.
- ❖ Whether the LEA will provide services directly or through another party (consortium, entity, or third-party provider).

# ESEA Consultation Requirements

- ❖ When, including approximate time of day, services will be provided.
- ❖ Whether funds will be transferred from Title II-A and/or Title IV-A.
  - ❖ Each program covered by the LEA Transferability Authority is subject to equitable participation requirements.

# ESEA Consultation Requirements

**An LEA must consult with private school officials before making any decision that affects the opportunity for eligible private school students, their families and teachers to participate. Other topics of consultation must include:**

- ❖ Administrative costs of providing equitable services.
- ❖ Indirect costs.
- ❖ Services and activities for teachers of participating private school students.
- ❖ Family engagement activities.
- ❖ Any funds available for carryover.

# Consultation Documentation

Under IDEA, the LEA must maintain documentation that meaningful consultation occurred, which includes a written affirmation signed by representatives of the participating private schools.

❖ DPI's IDEA Affirmation Form:

<https://dpi.wi.gov/sites/default/files/imce/sped/doc/prischaff.doc>

Signed IDEA affirmation forms are maintained in the LEA's official records and *are not* submitted to DPI through WISEgrants.

# Did You Know?

If the LEA is unable to obtain a signed IDEA affirmation from the private school representatives, the LEA *must* forward documentation of its consultation process to DPI.

- ❖ A description of efforts should be sent to Paul Sherman and include:
  - ❖ Dates of attempts to consult.
  - ❖ Nature of attempts (email, phone, letter, etc.).
  - ❖ The results of each attempt or consultation.

**This is currently being built as a data collection within WISEgrants for FY 2020-21.**

# Consultation Documentation

Under ESEA, the LEA must maintain documentation that meaningful consultation occurs, which includes a written affirmation signed by representatives of participating private schools.

❖ DPI's ESEA Affirmation Form:

<http://dpi.wi.gov/sites/default/files/imce/forms/doc/f9580-ac.doc>

Signed ESEA affirmation forms **ARE uploaded to WISEgrants by the LEA where DPI staff review the form** and select the private school's participation status.

LEA's should maintain a record of topics discussed and decisions made during the initial consultation and all ongoing consultation meetings.

# Did You Know?

If the LEA is unable to obtain a signed ESEA affirmation form from the private school officials, the LEA *must* forward documentation of its consultation process to the appropriate Title consultant.

- ❖ A description of efforts should be sent to and include:
  - ❖ Dates of attempts to consult.
  - ❖ Nature of attempts (email, phone, letter, etc.).
  - ❖ The results of each attempt or consultation.

LEAs are unable to access their ESEA Title applications until a signed ESEA affirmation (or a description of effort) is accepted for every private school in the LEA's attendance area.

# Provision of Services

Under IDEA, the LEA must create a services plan for each parentally placed private school student designated by the LEA to receive special education services.

- ◆ A services plan describes the specific services the LEA has determined will be available to private school students.
- ◆ A services plan is *not an IEP*.
- ◆ A services plan is not created during the consultation.
- ◆ A private school student must have a services plan in place before they can receive any special education services.

# Provision of Services

**Under IDEA, the type and amount of special education services provided is driven by the proportionate share calculation (provided through WISEgrants). The LEA is only obligated to provide services up to the required set-aside amount.**

**During the consultation process, the LEA should state whether or not the full proportionate share amount will be obligated in the upcoming year; and if not, how consultation will occur if new students are identified and additional services can be provided by the LEA until the proportionate share has been spent out.**

# LEA Staff – Who Should be Involved?

## IDEA Consultation

Special Education Director  
Fiscal Staff

## ESEA Consultation

ESEA Title Coordinator(s)  
Fiscal Staff

These same staff need to stay in communication throughout the year to ensure services are budgeted, provided and claimed correctly from the federal grants programs.

# Consultation Timeline

**LEAs should establish a timeline and select dates throughout the year for consultations with private school representatives.**

**IDEA and ESEA allocations for the following fiscal year are made available in March / April. After the allocations are published, the LEA can determine the proportionate share amount for the consultation discussion. LEAs should always plan to hold consultations in the spring prior to the start of the next fiscal year.**

# What We Have Learned

**As the monitoring expectations around Equitable Services have increased at the Federal level, DPI has designed tracking procedures within WISEgrants to help LEAs.**

**What we have learned over the past two years is that there is a disconnect between what was determined at the consultation for the provision of services and how that translates to the business office staff entering the federal grant budgets and claims.**

**For instance, special education equitable services were provided, but the costs were charged to local funds instead of the IDEA grant.**

# Consultation Timeline

**Under IDEA, the services for the upcoming year can be based on the existing services plans and adjusted based on future need (and when needs or changes arise during the school year, it must be addressed through consultation).**

**Under ESEA, services and benefits to be provided for the upcoming year must address the needs of the students identified during the consultation process; changes to services and benefits provided during the school year may be necessary, but should be agreed upon through ongoing consultation.**

# ESEA Funding Timeline

The proportionate share calculations are determined as part of the ESEA Title applications in WISEgrants each fiscal year.

- ❖ LEAs may use DPI's Proportional Share Calculators to calculate an *estimate* of the amounts available for [Title I](#), [Title II](#), and [Title IV](#).
- ❖ LEA's may calculate a Title III estimate by using the formula:

2021-2022 State's Allocation divided by

Total # of Students Administered the ACCESS Test in 2020-2021 =

2021-2022 Per Pupil Amount

# ESEA Funding Timeline

The LEA has 27 months to spend a single year's proportionate share, with a focus on spending as much of the private share as possible during year one.

- ❖ Funding is available July 1, 2021.
- ❖ (Optimal) Total amount expended by June 30, 2022.
- ❖ (Allowed) Total amount must be expended by September 30, 2023.

# ESEA Funding Timeline

The proportionate share is calculated in WISEgrants as part of the ESEA Title applications.

LEAs must budget and claim equitable participation services separately under the private subbudget.

- ◆ LEAs should submit private subbudget claims throughout the school year, as soon as any services and/or benefits are provided.

Any amount of the private proportionate share not spent will result in private carryover.

- ◆ Private carryover is distributed evenly amongst an LEA's participating private schools.
- ◆ As an LEA claims, the carryover is spent down first.

# ESEA Compliance

**ESEA's *Obligations of Funds* requires LEAs to obligate the funds available for providing equitable services in the fiscal year in which the funds are received.**

- ❖ This ensures that Title funds are obligated in a timely manner; and agreed upon services are provided.
- ❖ LEA maintains all control of Title funds.
  - ❖ Private schools may not obligate or receive Title funds.

**DPI is responsible for ensuring that LEAs meet equitable participation requirements.**

**LEAs who do not claim any funds for equitable services in a fiscal year will be identified for corrective action the next year.**

# ESEA Compliance

For the 2020-2021 school year, DPI identified LEAs that did not claim any funds for equitable services in one or more Title grant(s) during the 2019-2020 school year.

These LEAs were placed under corrective action with additional terms and conditions added to the subaward to ensure compliance for the 2020-2021 school year.

- ◆ Private claims submitted by December 31, 2020; and
- ◆ Submitted quarterly for the remainder of the school year.

Discussions between LEAs and ESSA Ombudsman/DPI Staff has reaffirmed the importance for timely and meaningful consultation.

# IDEA Funding Timeline

The proportionate share calculation is determined each fiscal year.

The LEA has 24 months to spend a single year's set-aside, with a focus on spending as much of the reserved amount as possible during year one.

A set-aside amount determined by July 1, 2021

Total amount expended by June 30, 2023

- ◆ 2021-2022 – YEAR 1
- ◆ 2022-2023 – YEAR 2

# IDEA Funding Timeline

The proportionate share is calculated in WISEgrants for each fiscal year. LEAs must budget and claim special education services provided to parentally placed private school students separate from all other expenses (however, the costs are incorporated into the regular flow-through and preschool budget and are not on a separate claim form).

The software calculates the unclaimed proportionate share amount from one fiscal year and carries it over and “adds” it to the new fiscal year. As an LEA claims, the oldest reserved funds are spent down first.

# IDEA Compliance

If at the end of the two-year period (24 months), a single year's set-aside has not been fully expended, the LEA may consider those funds no longer required for the provision of equitable services *only* if the LEA is meeting all of the equitable services requirements - which includes the timely and meaningful consultation with private school representatives.

DPI is responsible for ensuring LEAs are in compliance with these requirements. If the proportionate share has not been expended in the 24-month period, DPI will monitor to determine an LEA's compliance.

# IDEA Compliance

**Proportionate Share amounts reserved in FY 2018-19 were the first amounts to be claimed as separate items in WISEgrants and the plan was to monitor beginning in July 2020.**

**However, due to the pandemic, the Tydings deadline for IDEA funds was waived for FY 2018-2019 funds until September 30, 2021. Prior to this date, LEAs with unspent FY 2018-19 proportionate share amounts will be required to provide DPI with information that, despite not expending the full amount, compliance was still met.**

# IDEA Compliance

Documentation will be collected through WISEgrants and may include:

- ◆ Signed affirmation forms from the FY 2018-2019 consultation(s).
- ◆ An examination of the disability categories of the parentally-placed private school students and how the IDEA funds were spent. A unilateral offer of services by the LEA (“*we only provide speech services*”) demonstrates that consultation did not meet the requirements outlined in the law.

# Additional Technical Assistance

**Equitable Services under IDEA**

<http://dpi.wi.gov/sped/topics/private-schools#equitable>

**IDEA Equitable Services Program Contact - Paul Sherman**

[paul.sherman@dpi.wi.gov](mailto:paul.sherman@dpi.wi.gov)

**Equitable Services under ESEA**

<https://dpi.wi.gov/esea/equitable-services-private-school-students>

**ESEA Equitable Services Program Contact – Abbie Pavela**

[essaombudsman@dpi.wi.gov](mailto:essaombudsman@dpi.wi.gov)

