



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INNOVATION AND IMPROVEMENT

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President
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New York, NY 10038

David Rubel
Consultant
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Dear Mr. Sutton and Mr. Rubel:

Thank you for taking time to meet with U.S. Department of Education officials from the Offices of Elementary and Secondary Education, Special Education Programs, General Counsel, and Non-Public Education, on February 6, 2014, to discuss your concerns and recommendations regarding the implementation of the equitable services provisions under the *Elementary and Secondary Education Act (ESEA)* and the *Individuals with Disabilities Education Act (IDEA)*. The informative discussion served to enhance our understanding of the delivery of *ESEA* and *IDEA* equitable services to the students and teachers your organizations represent in New York. This letter is in response to one of your specific inquiries regarding the delivery of *ESEA* Title II, Part A professional development equitable services for private school teachers.

In both your letter (dated September 10, 2013) and our discussion, you asked if a local educational agency (LEA), in the delivery of Title II, Part A equitable services, could use Title II, Part A funds to provide professional development for “all teachers working in a private school.” More specifically, in your letter you identified the teachers in question as “special education teachers (known as Special Education Teacher Support Services or SETSS providers) working in private schools...as independent contractors.” You note further that these teachers “are paid solely with public funds” and “are not employees” of the New York Department of Education or the private school. Rather, they are independent contractors hired by the LEA. Finally, you suggest that these teachers of private school students might meet the definition of “other education personnel” and, thus, be eligible to receive Title II, Part A equitable services under section 9501 of the *ESEA*.

Based on the information you provided in your letter and during our discussion, we believe that these individuals are private school “teachers” within the meaning of section 9501 and, thus, may be eligible, like any other private school teachers, to receive Title II, Part A equitable services, subject to timely and meaningful consultation between the LEA and private school officials. Section 9501(a) of the *ESEA* states the following:

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

*Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials **provide to those children and their teachers or other educational personnel**, on an equitable basis, special educational services or other benefits that address their needs under the program (emphasis added).*

The statutory language includes private school students and their “teachers or other educational personnel.” Thus, to the extent the SETSS providers teach private school students, they would be eligible to receive from the LEA Title II, Part A professional development as equitable services to the same extent as any other private school teachers. In this regard, section 2123(a)(3) of the *ESEA* authorizes professional development activities in (1) improving the knowledge of teachers in areas that include core academic subjects; (2) effective teaching strategies; (3) integrating technology; (4) involving parents more effectively in their children’s education; (5) using challenging content and academic achievement standards; (6) addressing the needs of students with disabilities, special learning needs, and limited English proficiency; (7) improving student behavior; and (8) understanding and using data and assessments to improve instruction and student academic performance.

As discussed in the February 6 meeting, the LEA must initiate and conduct consultation with officials of private schools located in the area it serves before making any decisions about the Title II, Part A professional development equitable services it will provide to private school staff. Consistent with section 9501(c) of the *ESEA*, and based on input from private school officials, this consultation must include such topics as: the needs of the teachers and other educational personnel of private school students to be served; the kinds of professional development the LEA will provide in order to address those needs and who will provide these services; the amount of funding available for equitable services; and – most notably given our discussions – which private school teachers, including SETSS providers, will receive this professional development. After discussing key issues such as these in the consultation process, the LEA determines the services and benefits it will provide to private school teachers and other educational personnel.

We hope this response adequately addresses your inquiry and provides helpful information as you continue ongoing consultation with LEAs on behalf of the students and teachers your organizations represent. Should you have any questions or need further clarification on this matter, please do not hesitate to contact us.

Sincerely,



Maureen Dowling, Ed.D.

Director

Office of Non-Public Education