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DATE: August 8, 2016

FROM: Zach Wichmann
Director of Government Relations
Catholic Conference of Illinois

RE: Every Student Succeeds Act & Nonpublic Schools

The following are important changes for nonpublic schools, staff and families in the new Every Student Succeeds Act (ESSA). Please recognize these changes in the implementation of ESSA, the state plan and in communications to local school districts.

- Require the proportional share of federal money for services to private school students and staff in Title IA and Title IIA be determined based on the full amount received by the local education agency (LEA = local school district) and before set asides.
- Require the state to designate an Ombudsman to monitor and enforce the requirements imposed on LEAs to ensure equitable services to private school students and teachers.
- Require the state education agency (SEA = Illinois State Board of Education) to inform private school officials "in a timely manner" the amount of funds that LEAs determine are available for services and benefits to private school students and teachers.
- Require LEAs to spend the funds allocated for the benefit of private school children during the same fiscal year in which those funds are received.
- Specify that the goal of consultation between LEAs and private school officials shall be to reach "agreement on how to provide equitable and effective programs for eligible private school children."
- Require the expansion of timely and meaningful consultation beyond Title I and requiring new topics, including (1) how the proportion of funds for services to private school children should be determined, (2) whether services should be provided directly by the LEA or through a third-party and (3) whether or not to pool funds for services.

- Establish a new “Student Support and Academic Enrichment” grant program to provide states and school districts with flexibility in directing funds to a broad array of educational purposes. The new program is covered by uniform provisions in Title VIII that require equitable services to address the needs of private school students and teachers.
- Require equitable services to private school students and teachers in programs relating to community learning centers, the education of migratory children, and English language learners.

These changes are very important to nonpublic school students, teachers and families! To follow, you will find a more in-depth analysis of the positive changes in the relevant provisions of ESSA.

EQUITABLE PARTICIPATION

- The General Requirement for the participation of private school students in Title programs under the Act has been strengthened. Private school students shall, after timely and meaningful consultation, be provided, individually or in combination, special educational services, instructional services (including evaluations to determine the progress being made in meeting such students’ academic needs), counseling, mentoring, one-on-one tutoring, or other benefits available under the Act.
- The equitable services that are to be provided private schools students, families and staff by LEAs will be monitored by a newly required state Ombudsman.
- In general, there is much stronger language in the Act regarding the proportionate share of funds that must be spent by LEAs on private school students to ensure equitable participation:
 - In Title IA, the proportional share of funds must be determined based on total amount received by LEAs before any allowable expenditures or transfers of the money.
 - In Title IIA, the proportional share of funds must be determined based on a district’s full allocation rather than only what the district sets aside for professional development.
 - Funds allocated to an LEA for educational services to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.
 - The State shall provide notice in a timely manner to the appropriate private school officials in the State of the allocation of funds for educational services and other benefits under this part that the local educational agencies have determined are available for eligible private school children.
 - The LEA may determine the equitable share used to serve private school students each year or every 2 years.

TIMELY & MEANINGFUL CONSULTATION

- ESSA continues to include the requirement that consultation must occur before the district makes any decision that affects the opportunities of private school children to participate;

consultation must continue throughout the implementation and assessment of services; and that consultation must include a discussion of service delivery mechanisms that can be used to provide services to private school students.

- Consultation under ESSA continues to include topics such as how the children's needs will be identified; what services will be offered; how, where, and by whom the services will be provided; how the services will be assessed and how the assessment will be used to improve services; the size and scope of the equitable services and the proportion of funds allocated; the method or sources of data used to determine the number of children from low-income families attending private schools and residing in public school Title I attendance areas; how and when the agency will make decisions about the delivery of services, including a thorough consideration and analysis of the views of private school officials on the use of a third party.
- ESSA's text regarding consultation has been strengthened to emphasize that the LEA and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be transmitted to the state Ombudsmen.
- Moreover, the terms of consultation have been strengthened and expanded in the new Act. Consultation between LEAs and private school representatives will now include:
 - not just the proportional share of funds to serve eligible private school students but also the manner in which that share was determined;
 - whether the agency shall provide services directly through a separate government agency, consortium, entity, or third party contractor;
 - whether to provide equitable services to eligible private school children:
 - by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools [allowing federal funds to be pooled to serve eligible private school children is a topic of consultation but not required]; or
 - in the agency's participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools;
 - the approximate time of day, services will be provided; and
 - whether to consolidate and use funds provided under subsection (a)(4) in coordination with eligible funds available for private schools services under applicable programs (Titles I, II and III) to provide services to eligible private school children.
 - While consolidating funds is not an approved activity until ESSA goes into effect – and exactly how this can play out remains to be seen – it is appropriate to discuss pooling funds and determine in consultation the schedule for provision of services.
- In Title I, if an LEA disagrees with the views of private school officials in the consultation process, the LEA shall provide in writing to such private school officials the reasons why the local educational agency disagrees.

- The consultation’s documentation requirement will continue to require LEA’s to attain the private school officials sign off. However, the sign-off shall now explicitly state the consultations were meaningful and allow private school officials to indicate their belief that timely and meaningful consultation did not occur or that the program design was not equitable with respect to eligible private school children.
- This written affirmation requirement, which had been limited to Title I, now extends to all programs requiring equitable participation.

COMPLAINT PROCEDURES

- The complaint procedure has been expanded from Title I to the general provisions of the new Act. Private school officials are guaranteed the right to file a complaint with the State Education Agency (SEA) asserting that the LEA (1) did not engage in consultation that was meaningful and timely, (2) did not give due consideration to the views of the private school official, or (3) did not make a decision that treats the private school students equitably.
 - Moreover, if the complaint demonstrates that the LEA involved has not met the consultation requirements and the private school officials correctly file the complaint and request it, the SEA shall provide services under this section directly or through contracts with public or private agencies, organizations, and institutions.
 - Under the new law, the SEA has 45 days to respond to most filed complaints.
 - If the complaint is properly appealed to the Secretary of Education, the Secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal.

NEW PROGRAMS

- The new law establishes a brand new “Student Support and Academic Enrichment Grants” program for states and school districts that provides flexibility in directing funds to a broad array of educational purposes. This new program is required to provide equitable services to students and teachers in private schools.
 - Allowable activities under the program, authorized at \$1.65 billion for FY 2017, include those relating to health and safety, the use of technology, foreign language instruction, STEM education, and various other purposes.
- The legislation also authorizes \$250 million annually for preschool development grants to states. One purpose of the grants is to “maximize parental choice among a mixed delivery system of early childhood education program providers.”

CONCLUSION

Thank you for your attention to these changes. If you have any questions or concerns, please contact me at wichmann@ilcatholic.org or 217-528-9200.