



**Secretariat of Catholic Education
Office of Public Policy**

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Ombudsman Toolkit

The “ombudsman” for private school equitable participation under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), is a new and novel role for states and the Department of Education.

The private school community has a unique opportunity to craft this new role and to ensure its implementation has a positive impact on our students. This opportunity could become a liability if private school advocates do not take proactive steps to make the ombudsman a fair and neutral arbiter. This toolkit is designed to equip advocates with the knowledge and strategies to get the most out of the ombudsman.

What is in ESSA?

The legislative text defining the Ombudsman is short, but is important in its scope. The text (Section 1117(a)(3)(B)):

(B) OMBUDSMAN - To help ensure such equity for such private school children, teachers, and other educational personnel, the State educational agency involved shall designate an ombudsman to monitor and enforce the requirements of this part.

One other mention is made of the ombudsman (Sec. 1117(b)(1)):

[LEAs] 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 ombudsman designated under subsection (a)(3)(B).

In Title VIII of the law, the ombudsman is again referenced in nearly identical language to the first quotation above, and **expanding the scope of the ombudsman to include all equitable service programs: Title I-A, Title II-A, Title III-A, and Title IV-A&B.**

The next important point is that **the state educational agency designates the ombudsman.** This means private school advocates must be in communication with their state-level education officials to ensure the ombudsman is properly designed, appointed, and empowered. We will discuss that in detail below.

The third and final aspect of the legislative text to note is that **the ombudsman has a dual role to “monitor and enforce” the equitable services provisions.** This is what makes the ombudsman such a unique role – there are many references to “monitoring” in ESEA, but almost none to enforcement by state officials.

What Should the Ombudsman Role Look Like?

Private school advocates should be clear and forceful in *what* they believe the ombudsman role will look like and *who* the ombudsman will be. It is important to craft ideas in this regard soon, and to approach state education officials with a united front.

What Role?

- **Ombudsman should be a part of consultation in a meaningful way** - this could mean the ombudsman receives all paperwork exchanged between LEAs and private schools; is in attendance at consultations; generates templates and ‘best practices’ for use by LEAs; is accessible throughout consultation so the private school and LEA may benefit from ongoing oversight – and can avoid resorting to formal complaints.
- **Ombudsman should have real enforcement powers** – for instance, he should be able to settle disputes between LEAs and private schools; have access to all information about proportional share determination and budgets from LEAs and the SEA; overrule LEA decisions that do not comport with ESEA law and regulations.
- **Ombudsman should be paid out of state administrative budget** – similar to other programs under ESEA (see Sec. 1003(b)(2)(B) and Sec. 2101(c)(4)(B)(vi)), the state administrative budget should cover the costs of monitoring and overseeing program compliance.

Who?

- **Ombudsman should have an understanding of private school administration** – if the ombudsman does not have experience with equitable services from the private school practitioner or policy side, he will not be able to serve as a fair arbiter between the LEA and the private school.
- **Ombudsman should not already be involved in the consultation process** – it would not be in keeping with the intent of the law if the same official carrying out consultation of equitable services is also responsible to “monitor and enforce” those same consultations.
- In sum - **Ombudsman should be a neutral third-party to the consultation process.**

Practical Steps

Since the full implementation of ESSA does not begin until the 2017-18 school year, states and LEAs may try to push off consultation changes until then. That means private school students will have “lost” a year of benefits due to them under the new law. Thus, it is important private school advocates urgently push for transition to full implementation.

For the ombudsman, this means **pushing for answers from state officials on “what?” and “who?”** and **discussing with LEAs how full implementation will look** in 2017-18.

At your next consultation (or sooner), engage with the LEA on what they have heard from the state. If nothing is forthcoming from the state to the LEA – speak to state officials. But when you speak to them, **come prepared with your ideas for how the position should be implemented.**

Questions to Guide Discussion

These questions can help private school advocates craft their plan for approaching state officials, designing the ombudsman role, and ensuring the ombudsman is a neutral third-party:

- When will the state put out information about the ombudsman?
- When will the LEA begin transition to ESSA provisions (if they do not transition before 2017-18, it will be harder to demand the ombudsman enforce new provisions)?
- Who does the state think the ombudsman will be?
 - Will it be a stand-alone office or a role attached to an existing official?
 - What will that person's qualifications be?
 - Who will designate that person – will it be a political appointee or a hire?
 - Will there be an entire ombudsman office?
 - Who will he report to – i.e., how will he be hired/fired?
 - Where will he be paid from?
 - How much?
- Who do private school advocates think the ombudsman will be?
 - Do they have a short list of names?
 - A detailed description of qualifications?
 - Input with state education or political leaders to consider this list/description?
 - Will it be a third-party service or an SEA employee?
- How will the ombudsman monitor consultations across the state?
 - Based on your state's size, number of LEAs, number of private schools/consortia, what is practical in your state?
 - Who will the ombudsman report to?
 - Will his findings/reports be publicized?
 - How and when will his reports/findings be publicized?
- What enforcement powers will the ombudsman have?
 - Will he be able to override LEA decisions?
 - Will he be able to sanction or somehow penalize LEAs who do not enforce equitable services provisions?

This is not an exhaustive list of questions, nor are all questions applicable to each state, nor should any of the questions be construed as support for a specific proposal. They are intended to foster discussion among private school advocates when addressing the new ombudsman role.