

# Title VIII: General Provisions

## What the Federal Law, Regulations, and Guidance Says

### Federal Statute

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Title VIII within the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), provides the general provisions that apply to all the Titles found within the Act. Refer to the [Overview of Key General Provisions Sections](#) portion of this document for a high-level overview of the major sections within Title VIII.

### Federal Regulations

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[32 CFR 299](#) includes the regulations pertaining to the general provision of ESEA. The regulations expand upon the statute and include sections on [Consolidation of State and Local Administrative Funds](#), [Fiscal Requirements](#), [Services to Private School Students and Teachers](#), and [Complaint Procedures](#).

### Federal Guidance

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The U.S. Department of Education has issued various guidance documents regarding the general provisions found within Title VIII of the ESEA.

- [Non-Regulatory Guidance: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel](#)
- [Dear Colleague Letter: Consultation with Indian Tribes and Tribal Organizations](#)
- [Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools](#)
- [Non-Regulatory Guidance: Unsafe School Choice Option](#)
- [Dear Colleague Letter: Unsafe School Choice Option](#)
- [Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act](#)
- [Dear Colleague Letter on ESEA Section 8546 Requirements \(prohibit the aiding and abetting of sexual abuse\)](#)

## Overview of Key General Provisions Sections

As previously mentioned, Title VIII of the ESEA has many requirements pertaining to all ESEA funding. Below are several of the main provisions; however, districts are encouraged to review Title VIII in its entirety.

### Definitions

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Section 8101 of the ESEA provides the definitions that apply to all ESEA programs, unless otherwise specified within a specific program. For example, several ESEA programs reference providing children with a “well-rounded education.” Section 8101(52) provides the definition of “well-rounded education” as it pertains to the ESEA.

## Consolidation of ESEA Funds for the Administration of ESEA Programs

Section 8203 of the ESEA allows school districts to consolidate funds from multiple ESEA programs for the purpose of covering the costs associated with administering those programs. This section lists several rights and restrictions for districts consolidating funds for administration, including the following:

- A district may consolidate and use for the administration of one or more programs under this Act not more than the percentage, established in each program, of the total available for the local educational agency under those programs.<sup>1</sup>
- A district that consolidates administrative funds under this section for any fiscal year shall not use any other funds under the programs included in the consolidation for administration for that fiscal year.<sup>2</sup>
- A district that consolidates administrative funds under this section may use the consolidated funds for the administration of the programs and for uses, at the school and district levels, comparable to those described in Section 8201(b)(2).<sup>3</sup>
- A district that consolidates administrative funds under this section shall not be required to keep separate records, by individual program, to account for costs relating to the administration of the programs included in the consolidation.<sup>4</sup>

For more information on how to apply to consolidate ESEA funds for administration, refer to the current year's [Consolidated ESEA Programs Application Handbook](#).

### **Administration Limits**

Regardless of whether a district chooses to consolidate ESEA funds for administration, districts must ensure that the costs for administration are reasonable and necessary and that they adhere to any cap limitations outlined in statute or regulations.

Program	Cap?	How is the cap determined?
<b>Title I, Part A</b>	No	Reasonable and necessary test
<b>Title I, Part C</b>	No	Reasonable and necessary test
<b>Title I, Part D</b>	No	Reasonable and necessary test
<b>Title II, Part A</b>	No	Reasonable and necessary test
<b>Title III, Part A</b>	Yes, 2%	Each eligible entity receiving funds under section 3114(a) for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart. <sup>5</sup>
<b>Title IV, Part A</b>	Yes, 2%	Of the amount received under subsection (a)(2), a local educational agency may reserve not more than 2 percent for the direct administrative costs of carrying out the local educational agency's responsibilities under this subpart. <sup>6</sup>
<b>Title IV, Part B</b>	No	Reasonable and necessary test
<b>McKinney-Vento</b>	No	Reasonable and necessary test

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<sup>1</sup> ESEA Section 8203(a)

<sup>2</sup> ESEA Section 8203(c)

<sup>3</sup> ESEA Section 8203(d)

<sup>4</sup> ESEA Section 8203(e)

<sup>5</sup> ESEA Section 3115(b)

<sup>6</sup> ESEA Section 4105(c)

## **Allowable Uses of Consolidated Administrative Funds**

Districts can spend consolidated administrative funds on:

- The administration of any consolidated program<sup>7</sup>, and
- Administrative activities designed to enhance the effective and coordinated use of funds under the consolidated programs such as:
  - Coordinating those programs with other federal and non-federal programs,<sup>8</sup>
  - Establishing and operating peer-review mechanisms under ESEA,<sup>9</sup>
  - Administrative activities under Title VIII (General Provisions) of ESEA,<sup>10</sup>
  - Disseminating information about model programs and practices,<sup>11</sup>
  - Technical assistance under any ESEA program,<sup>12</sup>
  - Local-level activities designed to carry out Title VIII (General Provisions) of ESEA,<sup>13</sup>
  - Training personnel engaged in audit and other monitoring activities,<sup>14</sup>
  - Implementing cooperative audit resolution,<sup>15</sup> and
  - Implementing fiscal support teams that provide technical fiscal support assistance, which includes evaluating fiscal, administrative, and staffing functions, and any other key operational function.<sup>16</sup>

## **Equitable Services**

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Sections 1117 (Title I, Part A) and 8501 (Title VIII) of the ESEA requires districts to provide equitable services for eligible private school children, teachers and other educational personnel, and families. Equitable services are provided from applicable federal program funds in private schools that choose to participate in these services. The following programs have equitable service requirements:

- Title I, Part A – Improving the Academic Achievement of the Disadvantaged
- Title I, Part C – Education of Migratory Children
- Title II, Part A – Supporting Effective Instruction
- Title III, Part A – Language Instruction for English Learners and Immigrant Students
- Title IV, Part A – Student Support and Academic Enrichment
- Title IV, Part B – 21st Century Community Learning Centers

Every year, each district that receives an allocation under any of these programs must consult with interested private schools within their district. If the private school wishes to participate, and enrolls eligible students, the district must set-aside a portion of those funds, referred to as the equitable share, to be used to provide equitable services. The services must address the specific strengths and needs of eligible students, and their educators and families, if applicable, and may not benefit the private school

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<sup>7</sup> ESEA Section 8201(b)(1)

<sup>8</sup> ESEA Section 8201(b)(2)(A)

<sup>9</sup> ESEA Section 8201(b)(2)(B)

<sup>10</sup> ESEA Section 8201(b)(2)(C)

<sup>11</sup> ESEA Section 8201(b)(2)(D)

<sup>12</sup> ESEA Section 8201(b)(2)(E)

<sup>13</sup> ESEA Section 8201(b)(2)(F)

<sup>14</sup> ESEA Section 8201(b)(2)(G)

<sup>15</sup> ESEA Section 8201(b)(2)(H)

<sup>16</sup> ESEA Section 8201(b)(2)(I)

as a whole. The types of services provided to private school participants are determined during consultation.

For more information on the ESEA the equitable services requirements, refer to DEED’s [Equitable Services for Private School Students and Teachers](#) webpage and the U.S. Department of Education’s [Title VIII Non-Regulatory Guidance on Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel](#).

## Consultation with Indian Tribes and Tribal Organizations

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Section 8538 of the ESEA requires districts to consult with appropriate officials from Indian tribes, or those tribal organizations approved by the tribes located in the area served by the district, prior to submitting their ESEA Consolidated Application or other application including ESEA funds.

The tribal consultation requirement applies to a district if the district:

- has 50 percent or more of its student enrollment made up of American Indian or Alaska Native students; or
- received an Indian education formula grant under Title VI of the ESEA, in the previous fiscal year that exceeds \$40,000.<sup>17</sup>

The term “appropriate officials” means:

- tribal officials who are elected; or
- appointed tribal leaders or officials designated in writing by an Indian tribe for the specific consultation purpose under this section.<sup>18</sup>

In general, this requirement is designed “to ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students.” The consultation must be done “in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute” to the ESEA Consolidated application or other application including ESEA funds.<sup>19</sup> Districts are required to maintain in their records written affirmation signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes that the consultation has occurred.<sup>20</sup> A [template](#) for the affirmation of consultation can be found on department’s [ESEA General Provisions](#) webpage.

For more information on the ESEA the tribal consultation requirements refer to DEED’s [ESEA General Provisions](#) webpage and the current year’s [Consolidated ESEA Programs Application Handbook](#).

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<sup>17</sup> ESEA Section 8538(c)(1)

<sup>18</sup> ESEA Section 8538(c)(2)

<sup>19</sup> ESEA Section 8538(a)

<sup>20</sup> ESEA Section 8538(b)

## Maintenance of Effort (MOE)

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Under Section 8521 of the ESEA and 32 CFR 299.5, school districts must demonstrate they are maintaining consistent investment in education from state and local (non-federal) funds. This is known as Maintenance of Effort (MOE).

To meet MOE, a district's most recent audited expenditures from state and local funds must be at least 90% of what was spent in the preceding fiscal year, measured either by total spending or per student spending. The penalty for not meeting MOE is a reduction of funds from the relevant program by the percentage by which the district failed to meet MOE.

The Alaska Department of Education and Early Development reviews district financial data each year to determine compliance with MOE requirements.

## Military Recruiters & Institutions of Higher Education

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Section 8528(a) of the ESEA requires districts to provide, upon a request made by a military recruiter or an institution of higher education, access to the name, address, and telephone listing of each secondary school student served by the school district, unless the parent of such student has submitted an opt-out request.

School districts must notify parents of secondary school students that they may submit a written request to the district that the student's name, address, and telephone listing not be released to military recruiter or an institution of higher education without prior written consent of the parent. Upon receiving such request, the district may not release the student's name, address, and telephone listing for such purposes without the prior written consent of the parent.

A Military Recruiters & Institutions of Higher Learning Opt-Out Form [template](#) can be found on DEED's [ESEA General Provisions](#) webpage.

## School Prayer

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Section 8524(b) of the ESEA requires districts receiving ESEA funds to certify in writing to the Alaska Department of Education and Early Development that no policy of the district prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools. The certification shall be provided by October 1 of each year. DEED must report to the Secretary by November 1 of each year a list of those districts that have not filed the certification or against which complaints have been made to DEED that the districts are not in compliance with this section.

DEED collects this certification from districts within the ESEA Consolidated Application Assurances Packet annually.

For more information on School Prayer, refer to the U.S. Department of Education's [Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools](#).

## Equal Access to Public School Facilities

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Section 8525 of the ESEA requires that no public elementary school, public secondary school, school district, or State educational agency that has a designated open forum or a limited public forum and that receives funds made available through the U.S. Department of Education shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in title 36 (as a patriotic society).

## Prohibited Uses of Funds

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Section 8505 of the ESEA prohibits the making of any payment under this Act for religious worship or instruction.

Section 8526 of the ESEA prohibits the use of ESEA funds:

- for construction, renovation, or repair of any school facility, except as authorized under this Act;
- for transportation unless otherwise authorized under this Act;
- to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual;
- to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;
- to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence;
- to operate a program of contraceptive distribution in schools; or
- for the provision to any person of a dangerous weapon, as defined in section 930(g)(2) of title 18, United States Code, or training in the use of a dangerous weapon, except that this paragraph shall not apply to the use of funds under this Act for activities carried out under programs authorized by this Act that are otherwise permissible under such programs and that provide students with educational instruction or educational enrichment activities, such as archery, hunting, other shooting sports, or culinary arts.

## Unsafe School Choice Option

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Section 8532 of the ESEA requires each State to establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

## ***Alaska Statewide Policy***

Alaska's statewide policy is found within the Alaska Department of Education and Early Development's regulations:

- [4 AAC 06.200. Safe schools.](#)
- [4 AAC 06.210. District response.](#)
- [4 AAC 06.220. Department response.](#)
- [4 AAC 06.230. Victim of a violent criminal offense.](#)
- [4 AAC 06.240. Parent's Response.](#)
- [4 AAC 06.250. Reporting.](#)
- [4 AAC 06.260. Additional requirements.](#)

For information on how schools are identified as persistently dangerous in Alaska, refer to DEED's [Persistently Dangers Schools](#) webpage. Additional information can also be found on DEED's [Unsafe School Choice Options](#) webpage.

## **Prohibitions on Discrimination**

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Sections 8533 and 8534 of the ESEA state that nothing in this Act may be construed to permit:

- A district or school to grant to a student, or deny or impose upon a student, any financial or educational benefit or burden, in violation of the fifth or 14th amendments to the Constitution or other law relating to discrimination in the provision of federally funded programs or activities.
- Discrimination on the basis of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act.

## **Prohibition on Aiding and Abetting Sexual Abuse**

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Section 8546 of the ESEA requires States, State educational agencies (SEAs), and local educational agencies (LEAs) that receive ESEA funds to have policies in place to prohibit the aiding and abetting of sexual abuse. For more information, refer to the U.S. Department of Education's [Dear Colleague Letter on ESEA Section 8546 Requirements](#).

## **Gun-Free Requirements**

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Section 8561 of the ESEA includes the "Gun-Free Schools Act". In general, each State receiving Federal funds under any title of this Act shall have in effect a State law requiring districts to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of districts in that State, except that such State law shall allow the chief administering officer of a district to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

Districts annually sign assurances regarding the Gun-Free Schools Act in their ESEA Consolidation Application assurances packet.

For more information, refer to the U.S. Department of Education's [Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act](#) and DEED's [Reporting Suspensions and Expulsions](#) webpage.

Alaska Department of Education & Early Development

## **Nonsmoking Policy for Children's Services**

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Section 8573 of the ESEA states that no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

## **Preemption**

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Section 8574 of the ESEA states that Title VIII, Part F does not preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this part.