



Report to the Chairwoman, Committee
on Education and the Workforce, House
of Representatives

April 2023

K-12 EDUCATION

Additional Guidance Could Improve the Equitable Services Process for School Districts and Private Schools

GAO Highlights

Highlights of [GAO-23-105469](#), a report to the Chairwoman, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

In 2019-20, over 4.6 million students attended private school. Many are eligible for equitable services—such as tutoring—under the Elementary and Secondary Education Act (ESEA). These federally funded services provided by school districts offer critical learning supports at private schools that opt to have their students receive them. ESEA requires states designate an ombuds to monitor and enforce equitable services requirements.

GAO was asked to review state implementation of the ombuds requirement and equitable services more broadly. This report examines (1) states' implementation of the equitable services ombuds and challenges in doing so, (2) how states and Education address equitable services disputes, and (3) challenges that selected private schools and school districts face related to equitable services.

GAO surveyed ombuds in all 50 states, the District of Columbia, and five U.S. territories (52 of 56 responded). GAO also interviewed ombuds, state and school district officials, and private school leaders in five states, selected primarily because they have a large number of private schools. GAO also reviewed relevant federal laws, regulations, and Education documents, and interviewed Education officials.

What GAO Recommends

GAO is making four recommendations, including that Education provide guidance and training opportunities on mitigating workload and impartiality concerns; and meet required timeframes for resolving appeals. Education described steps to implement GAO's recommendations.

View [GAO-23-105469](#). For more information, contact Jacqueline M. Nowicki at (202) 512-7215 or nowickij@gao.gov.

April 2023

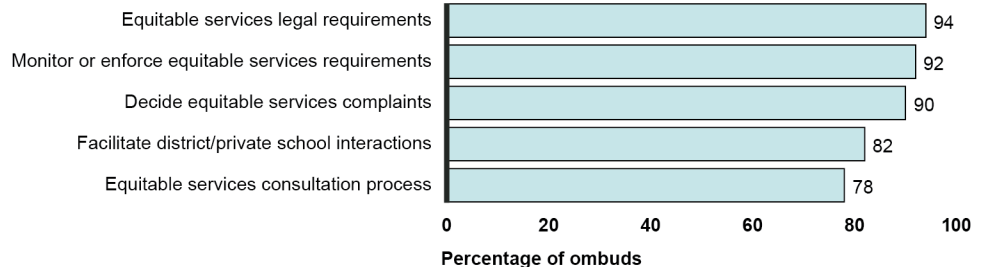
K-12 EDUCATION

Additional Guidance Could Improve the Equitable Services Process for School Districts and Private Schools

What GAO Found

Since 2015, federal law has required states to designate an ombuds to monitor school districts' provision of services to eligible private school children and teachers. Most states implemented this requirement by assigning the role to someone already employed by the state educational agency, according to GAO's survey of all state ombuds. Selected stakeholders generally reported ombuds were helpful, but some raised concerns about ombuds' workload and real or perceived challenges to independence and impartiality. The Department of Education's guidance advises states to consider these issues but provides little information on how to help ensure ombuds have capacity to do their jobs or examples of ways to mitigate impartiality concerns. Further, about 40 percent of ombuds reported in GAO's survey that a lack of training, guidance, or other supports were among the greatest challenges they faced, with several noting they lacked knowledge of their role. Absent more robust guidance and training from Education, private schools and school districts may not fully benefit from ombuds as a resource.

Most Common Topics on Which Ombuds Reported More Guidance or Training Would Be Helpful



Source: GAO survey of state Elementary and Secondary Education Act equitable services ombuds. | GAO-23-105469

Ombuds reported receiving a total of 38 formal equitable service complaints from private schools and private school associations since 2015 about issues including private school students and staff not receiving equitable services. Thirteen of these complaints were appealed to Education. By law, Education has 90 days to investigate and issue a decision in such appeals, but since 2015, it has never met that timeframe. GAO found that Education took a median of 258 days to issue decisions, with the longest taking over 500 days. Without timely decisions from Education, eligible private school students and teachers may not receive all equitable services to which they are entitled.

Many of the more than 30 selected private school leaders and school district officials GAO spoke with described challenges managing equitable services, such as that they are complex and time consuming. Most ombuds agreed, with 35 reporting that administrative burden is the most common reason that private school leaders may choose not to participate in equitable services. Further, all stakeholders cited challenges identifying and counting eligible children and working with multiple school districts or with private schools across school district boundaries. In addition, nearly all of the private school leaders GAO spoke with said private schools faced challenges receiving equitable services, such as the amount or quality of services.

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Abbreviations

Education	Department of Education
ESEA	Elementary and Secondary Education Act of 1965, as amended
ESSA	Every Student Succeeds Act

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April 17, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
House of Representatives

Dear Madam Chairwoman,

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access, including for the more than 4.6 million students in private schools.¹ The federal government has long sought to ensure that students attending nonprofit private schools have access to services that are equitable to those of public school students. To that end, certain titles of the Elementary and Secondary Education Act of 1965, as amended (ESEA), require public school districts that receive ESEA funds to work with nonprofit private schools to offer and provide equitable services to eligible children attending private schools, private school teachers and staff, and, in some cases, families of private school students.² Examples of services include tutoring, English language services, and professional development.

The Every Student Succeeds Act (ESSA), which amended ESEA in 2015, introduced new equitable services requirements. For example, state educational agencies (states) must designate an ombuds to monitor and enforce equitable services provisions.³

¹Department of Education, National Center for Education Statistics, Private School Universe Survey (PSS), 2019–20. These data may include for-profit private school students, who are not eligible for equitable services. The data do not include homeschooled students, who may be eligible for equitable services discussed in this report in some states. There is a standard error for the total number of students of 31,309.

²Throughout this report, we refer to “local educational agencies” as “school districts.” When we refer to “private schools,” we mean “nonprofit private schools.”

³In this report, we use the term “ombuds” to refer to equitable services ombudsmen as other organizations have done. For example, the Coalition of Federal Ombudsmen, which uses the term ombuds, notes that the term is found in the Administrative Dispute Resolution Act of 1996.

You asked us to review how states have addressed this requirement and how the equitable services process functions more broadly. This report examines (1) how states have implemented the role of equitable services ombuds and challenges in doing so, (2) how states and the Department of Education address equitable services disputes, and (3) the challenges that selected private schools and school districts face related to ESEA equitable services.

To address these objectives, we conducted a web-based survey of ombuds in all 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.⁴ The survey collected information about such issues as the ombuds' experience and responsibilities, monitoring of ESEA equitable services, Education's guidance and training, and challenges ombuds have faced. We obtained completed surveys from 52 of the 56 ombuds (American Samoa, Florida, Indiana, and Kentucky did not respond.) Not all survey respondents answered all questions. We took steps to ensure that our survey of ombuds collected accurate and consistent information, including pretesting the instrument. More information about developing and administering the survey is found in appendix I.

To gather more in-depth information from ombuds, as well as the perspectives of other state educational agency officials, public school district officials, and private school leaders about the equitable services process and any challenges they faced, we conducted virtual site visits to five states: California, Florida, Pennsylvania, Texas, and Wisconsin. We selected these states based on a variety of criteria, such as having a large number of private schools and to obtain regional diversity. During our site visits, we interviewed state officials, such as ESEA program coordinators, state ombuds, public school district officials, and private school leaders. We interviewed a total of 12 ombuds. In addition to the five we interviewed during our site visits, we interviewed seven additional ombuds, including three ombuds to inform our survey. We selected these ombuds to provide a range in the size of the state and number of private schools and to obtain regional diversity. We spoke to four additional

⁴When we refer to "states," we are including the 50 states, the District of Columbia, and the five territories. When we refer to "state ombuds," we are including ombuds from all 50 states, the District of Columbia, and the five territories.

ombuds who had specific information they wanted to provide based on our survey.

We interviewed Education officials and representatives from 10 private and two public school associations.⁵ We also reviewed Education guidance and training, and other relevant documents, as well as relevant federal laws and regulations. See appendix I for more information on our objectives, scope, and methodology.

We conducted this performance audit from October 2021 to April 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Several ESEA programs are subject to equitable services requirements, and private schools with eligible students may opt to receive services for their eligible students, staff, and families under one or more titles.⁶ These include Title I,⁷ which is the largest ESEA program and provides supplementary educational and related services to low-achieving students

⁵Many types of organizations may provide support to private schools, for example, membership associations, other nonmembership organizations, and Dioceses or Archdioceses. Some are national while others operate at the state level or across selected states. In this report, we refer to all of these organizations as “private school associations.” According to Education data, about two-thirds of private schools report being members of an association.

⁶The Individuals with Disabilities Education Act also contains requirements related to equitable services; however, this report focuses on the requirements in ESEA only. For information about requirements in the Individuals with Disabilities Education Act, see *GAO, Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*, [GAO-18-94](#) (Washington, D.C.: Nov. 16, 2017) and *School Choice: Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students*, [GAO-16-712](#) (Washington, D.C.: Aug. 11, 2016).

⁷In this report, when we refer to Title I, we mean Title I Part A - Improving Basic Programs Operated By Local Educational Agencies, unless otherwise noted.

and other students attending elementary and secondary schools with relatively high concentrations of students from low-income families.⁸

ESEA-funded programs subject to equitable services requirements outlined in Titles I and VIII of the Act include⁹

- Titles I Part A (Improving Basic Programs Operated By Local Education Agencies) and I Part C (Education of Migratory Children)
- Title II Part A (Supporting Effective Instruction)
- Title III Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- Title IV Part A (Student Support and Academic Enrichment Grants)
- Title IV Part B (Nita M. Lowey 21st Century Community Learning Centers)
- Project School Emergency Response to Violence (Project SERV), which is authorized under Title IV Part F Subpart 3¹⁰

Equitable services for students provided under Titles I and III-A are available only to eligible students, whereas equitable services provided for teachers and other school staff, and other activities under Titles II and IV may benefit all students at private schools, based on needs.¹¹

Flow of Federal Funds and Provision of Equitable Services

Many ESEA programs subject to equitable services requirements provide formula grants to states, which may then provide subgrants to school

⁸More than \$17.5 billion was appropriated for all of ESEA Title I under the Department of Education Appropriations Act, 2022.

⁹Title I contains equitable services provisions specific to the Title I-A program. Title VIII equitable services provisions apply to Titles I-C, II-A, III-A, IV-A, IV-B, and to Project SERV.

¹⁰Other than Project SERV, equitable service provisions do not apply to Title IV-F-3, National Activities for School Safety.

¹¹According to Education data, in 2017-18, 24 percent of private schools had students who received equitable services under Title I, and approximately 4 percent of all private school students received Title I equitable services. A survey conducted for Education in 2005-2006 by the Urban Institute found that, overall, 44 percent of private schools had at least one participant in an ESEA program in 2004-05.

districts or other eligible entities.¹² All federal ESEA funds (as well as ownership of property, equipment, and supplies) subject to equitable services under Title I or Title VIII must remain under the administrative control of the public school district.

School districts must reserve a portion of their ESEA program funds to provide equitable services to eligible private school students and teachers.¹³ Equitable services must benefit eligible private school students, staff, or families, not the private school itself. School districts may provide equitable services directly, or may contract with a third party to provide the services. These services must be secular, neutral, and nonideological.

For programs subject to the equitable services requirements under Title VIII of ESEA, school districts calculate the amount of funds available to provide equitable services based on the percentage of all eligible students in the district attending each participating private school, taking into account the needs of such students. However, funds available to provide equitable services under Title I are based on the proportion of students from low-income families who reside in a Title I participating

¹²Depending on the ESEA program, in addition to a school district, other eligible entities may include community-based organizations, Indian tribes or tribal organizations, other private or public entities, or consortiums of two or more such agencies, organizations, or entities. When we refer to school districts in this report, we mean school districts and other eligible entities, as applicable.

¹³Federal regulations provide that services are equitable, in the case of programs specified in 20 U.S.C. § 7881(b)(1), if recipients of ESEA funds (1) address and assess the specific needs and educational progress of eligible private school children and their teachers and other educational personnel on a comparable basis to public school children and their teachers and other educational personnel; (2) determine the number of students and their teachers and other educational personnel to be served on an equitable basis; (3) meet equal expenditure requirements; and (4) provide private school children, their teachers, and other educational personnel with an opportunity to participate that is equitable to the opportunity and benefits provided to public school children, their teachers, and other educational personnel. 34 C.F.R. § 299.7(b)(2). If the needs of private school children, teachers, and staff differ from those of public school students, teachers, and staff, recipients of ESEA funds shall provide different services that address those needs. 34 C.F.R. § 299.7(c).

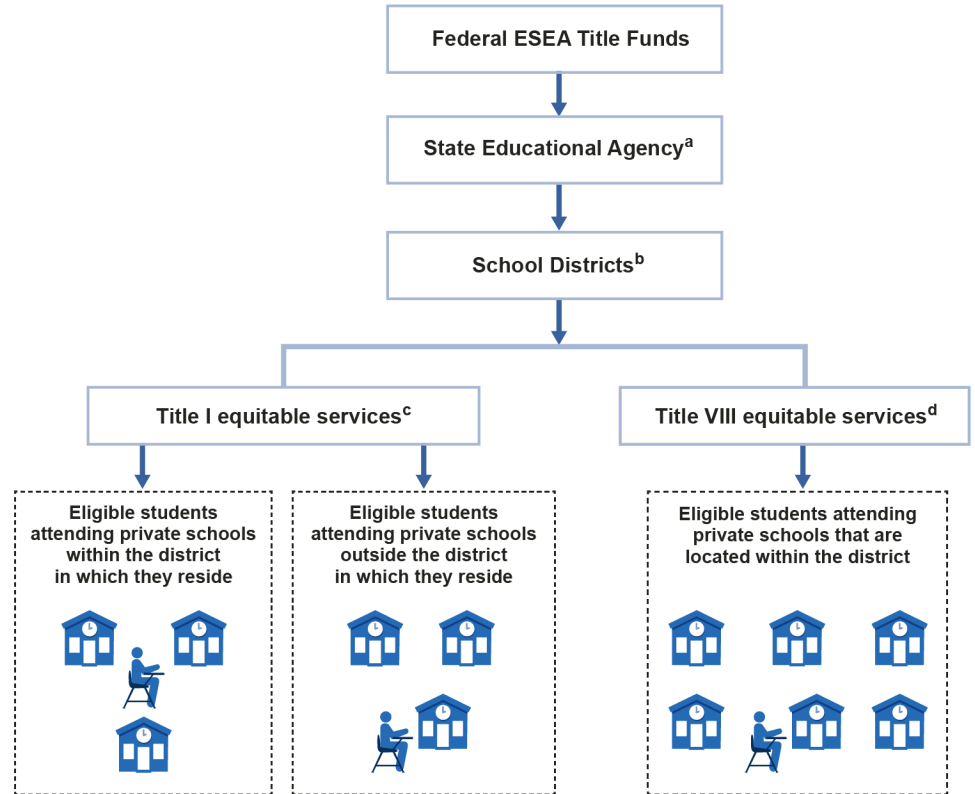
public school attendance area and who attend a private school.¹⁴

Therefore, to determine the proportional share of Title I funds available for equitable services, the school district must determine the total number of students from low-income families who reside in a Title I participating public school attendance area and the total number of those students attending private schools.¹⁵ In addition, unlike under ESEA programs required by Title VIII to provide equitable services to private school students and teachers, under Title I, a school district is responsible for providing equitable services to any eligible student who resides within its geographic boundaries, even if that student attends a private school outside of those boundaries (see fig. 1).

¹⁴In general, to be eligible for Title I services, a private school child must reside in a Title I participating public school attendance area and must be identified by the school district as low achieving. In addition, children who are homeless; children who participate in Head Start in the preceding 2 years, a literacy program under Title II, Part B, Subpart 2, a Title I preschool program, or a Title I, Part C (Education of Migratory Children) program; and children in a local institution for neglected or delinquent children and youth or attending a community day program for such children, are considered eligible.

¹⁵ESEA allows school districts to determine the number of students from low-income families attending private school using one of several methods. These methods include: (A) using the same measure of low income used to count public school children; (B) using comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and extrapolate data from the survey based on a representative sample if complete actual data are unavailable; (C) using comparable poverty data from a different source, such as scholarship applications; (D) applying the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or (E) using an equated measure of low income correlated with the measure of low income used to count public school children. 34 C.F.R. § 200.64(a)(3)(i). The methods or data sources the school districts will use to determine the number of students from low-income families must be part of the consultation process with private schools, but the school district has the ultimate decision-making authority.

Figure 1: Flow of Federal Elementary and Secondary Education Act (ESEA) Funds and Provision of Equitable Services



Source: GAO. | GAO-23-105469

^aProject SERV funding is provided directly to the school districts and does not pass through state education agencies.

^bESEA funds are generally used to implement programs in public schools; some ESEA funds received by school districts may be used to provide equitable services to private school students and teachers.

^cTitle I contains equitable services provisions specific to the Title I-A program.

^dTitle VIII equitable services provisions apply to Titles I-C, II-A, III-A, IV-A, IV-B, and to Project SERV. Note that equitable services under Title II-A support professional development for private school teachers and staff.

Education

Education monitors states, issues guidance on equitable services, responds to questions from stakeholders—including states, school districts, and private schools—and provides information and training to ombuds. Additionally, ESEA generally requires Education to develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or others regarding ESEA equitable

services violations. ESEA provides private schools the right to file a complaint with the state if private school leaders believe that a school district did not engage in timely and meaningful consultation, did not give due consideration to the views of the private school officials, or did not make decisions that treated the private school students equitably. States have 45 days to issue a written resolution to the complaint. If the state does not issue a timely decision, or if a party to the complaint disagrees with the state's decision, the party has 30 days to appeal the decision to Education. Education then has 90 days to investigate and resolve the appeal.

Ombuds

ESEA requires the ombuds to monitor and enforce equitable services requirements. Additionally, Education's guidance states that the role of the ombuds is to serve as the state's primary point of contact to address inquiries and concerns about equitable services from school districts and private schools, and may also serve as an impartial party to assist in reaching agreement when disputes arise.

Education's guidance states that states have discretion in determining whom to designate as an ombuds. In determining the relevant qualifications for the ombuds, Education's guidance states that a state should consult with appropriate private school officials, such as statewide private school coalitions. In addition, when considering whom to designate as the ombuds, the state should consider the individual's knowledge, capacity, and impartiality.

School Districts

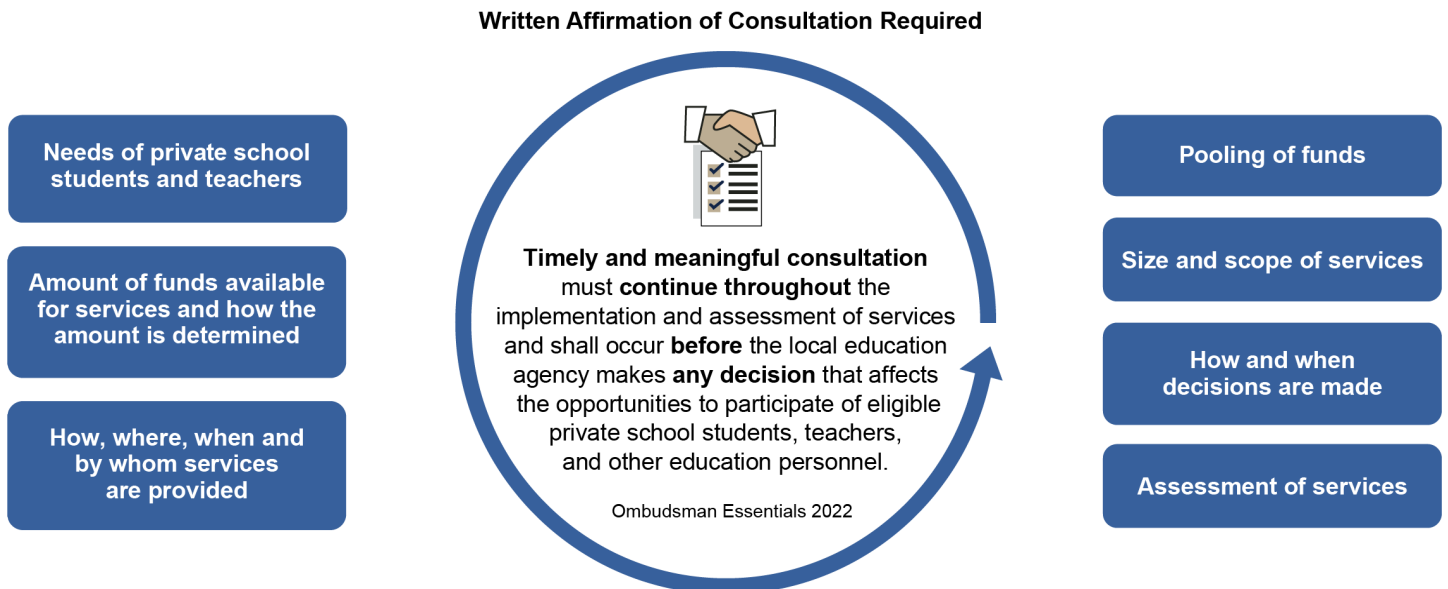
Public school districts have several responsibilities related to equitable services. For example, Education's guidance advises school districts to contact all private schools within their geographic boundaries to determine whether those schools want their students and teachers to receive equitable services, and document the outcome of this outreach. Education guidance also advises school districts to contact any private school attended by an eligible student from a low-income family who resides within the school district's Title I participating attendance area, whether the school is within or outside its boundaries.

ESEA requires school districts to conduct "timely and meaningful consultation" with private schools at which students or teachers are receiving or could receive equitable services. The goal of consultation is to reach agreement between public and private school officials on how to provide equitable and effective programs for eligible private school children and teachers. Consultation must include topics such as how students' needs will be identified; services to be offered; and how, where,

and by whom services will be provided. Under Title I, consultation must also address the methods or sources of data used to determine the number of students from low-income families who reside in Title I participating public school attendance areas and who attend private schools.

In addition, if a school district plans to transfer funds between ESEA titles, as allowed under law, this must be discussed during consultation, as it can affect the programs under which the private school may receive equitable services.¹⁶ Consultation must occur before the school district makes any decision that will affect opportunities for equitable services participation and should be ongoing throughout the year to ensure that services continue to meet the eligible recipients' needs (see fig. 2).

Figure 2: Requirements for School Districts to Consult with Private Schools about Equitable Services



Source: U.S. Department of Education, Office of Non-Public Education; GAO (images). | GAO-23-105469

The school district must obtain affirmation that it consulted or offered to consult with the private school official(s) and that timely and meaningful

¹⁶Because services to private school students and staff must be equitable to those received by public school students and staff, if a public school district does not receive funds under one or more specific ESEA titles, the school district cannot make equitable services available to private school students and teachers under those titles.

consultation occurred. School districts are to maintain a copy of this affirmation in their records and provide it to the state. Under Title I, the school district must transmit the results of any agreements to the ombuds. Under Title I, if the parties disagree about an issue, the school district must explain in writing to the private school why it disagrees.

Selected Ombuds and Stakeholders Identified Challenges to Effectively Implementing the Ombuds Requirement

Many States Took Similar Approaches Implementing the Ombuds Requirement, but Ombuds' Outreach and Monitoring Varied Across States

Most states assigned the equitable services ombuds role to an existing state employee, almost always in addition to their other responsibilities. We found that ombuds' outreach activities and involvement in monitoring varied by state.

Implementation. According to our survey of ombuds, more than three-quarters of respondents (41 of 52) already worked at the state when they became the ombuds, and more than 80 percent of them (34 of 41) were assigned the role, rather than going through a formal application and hiring process.¹⁷ All but one ombuds (50 of 51) had additional responsibilities for the state, such as serving as the Title I grants manager. In the 5 years prior to becoming ombuds, nearly all (48 of 52) had experience working with public schools and one-half (26 of 52) had experience with private schools.

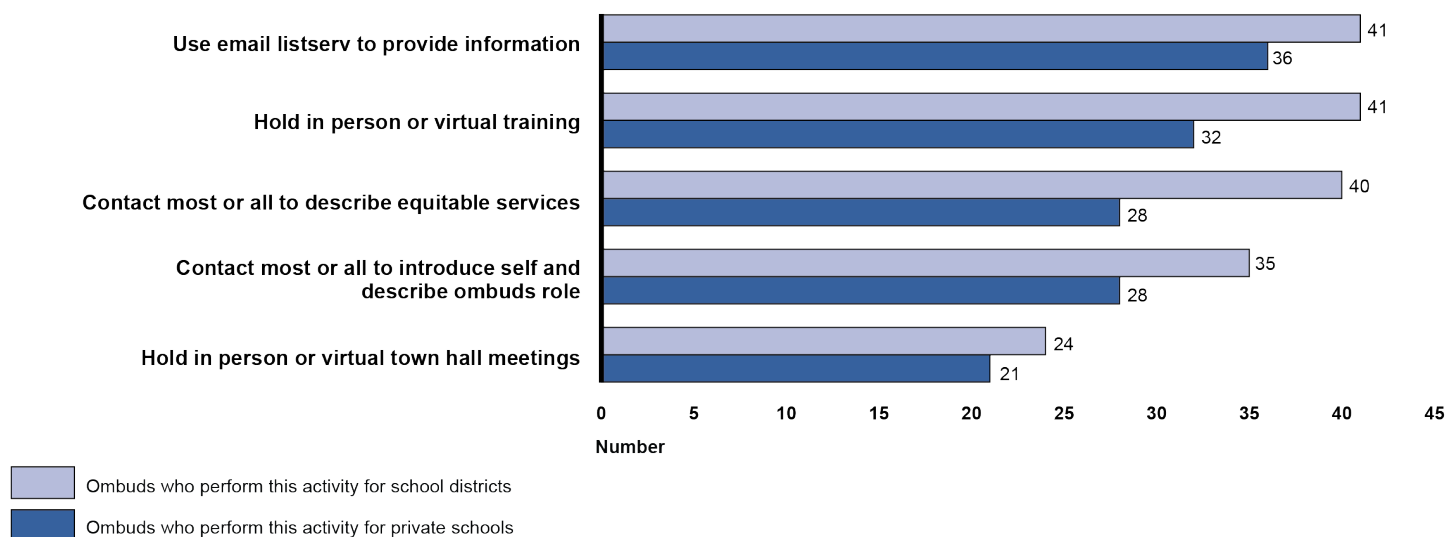
To learn how states involved the private school community in determining the necessary qualifications for an ombuds, we asked state officials in our five site visit states. All but one told us that they either did not consult with private school officials or were uncertain if such consultation occurred.

¹⁷We received completed surveys from 52 of the 56 states to whom the survey was administered. However, not all states responded to all questions. In this report, parentheses following some sentences referring to survey data indicate the number of states providing a response out of those that answered the associated question.

A few states took longer than others to implement the ombuds position and turnover in ombuds has varied, according to ombuds' survey responses. Education guidance specified that states should designate their first ombuds by early spring of 2017.¹⁸ However, four survey respondents who reported being their state's first ombuds did not begin the job until 2018 or later. Nearly one-half of states (24 of 52) have had the same ombuds since the role's inception, while 11 states have had three or more different ombuds.

Outreach. Ombuds are the designated point of contact for school districts and private schools regarding equitable services, according to Education guidance. Seventy-one percent of ombuds reported they contacted most or all school districts to introduce themselves and describe the ombuds' role while 55 percent reported similar contact with private schools. Ombuds also reported providing training to school districts more often than to private schools (see fig 3).

Figure 3: Number of Ombuds Reporting in 2022 That They Generally Perform Select Outreach Activities to School Districts and/or Private Schools



Source: GAO survey of state Elementary and Secondary Education Act (ESEA) equitable services ombuds. | GAO-23-105469

Note: We received survey responses from 52 of the 56 state ombuds. A small number of survey respondents (three or fewer) did not respond to all parts of this question. However, this did not affect the overall patterns we observed.

¹⁸Department of Education, *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA)*(Nov. 21, 2016).

Three of the five ombuds in our selected states told us they have access to their state’s directory of private schools; one of them said she uses it to distribute information like newsletters or notices of upcoming training. The other two told us their states do not maintain such a directory. Additionally, ombuds in two states told us they maintain a list of private school associations and use those contacts to forward information to their affiliated schools.¹⁹ One ombuds told us she does not generally conduct proactive outreach, but rather responds to inquiries or requests for assistance.

Ombuds improved the equitable services process by serving as a single point of contact for equitable services inquiries or issues, providing consistent information, and helping to mediate disputes between school districts and private schools, according to a variety of stakeholders with whom we spoke.²⁰ However, in all five of our site visit states, at least one private school leader we spoke with did not know who their ombuds was, and some of them did not know what the ombuds did or how to contact them. Two of these private school leaders were also confused about or unaware of their eligibility for equitable services. Leaders at these two schools believed their school was not eligible for Title I equitable services because they did not enroll enough low-income students, which is not an applicable requirement. We encountered similar confusion in these states among a small number of school district officials.²¹ For example, officials from one school district were unclear about the role of the ombuds, saying they believed the ombuds worked as an advocate for private schools. Officials in another state told us there is no state policy or expectation that the ombuds reach out to private schools. More than half of the states that responded to our survey have had more than one ombuds since 2015. This, combined with turnover among private school leaders and school district officials and varied outreach efforts among ombuds, increases the risk that all parties involved in equitable services

¹⁹In school year 2019-20, about two-thirds of private schools belonged to a private school association, according to Education’s National Center for Education Statistics. Therefore, not all schools received information through an association.

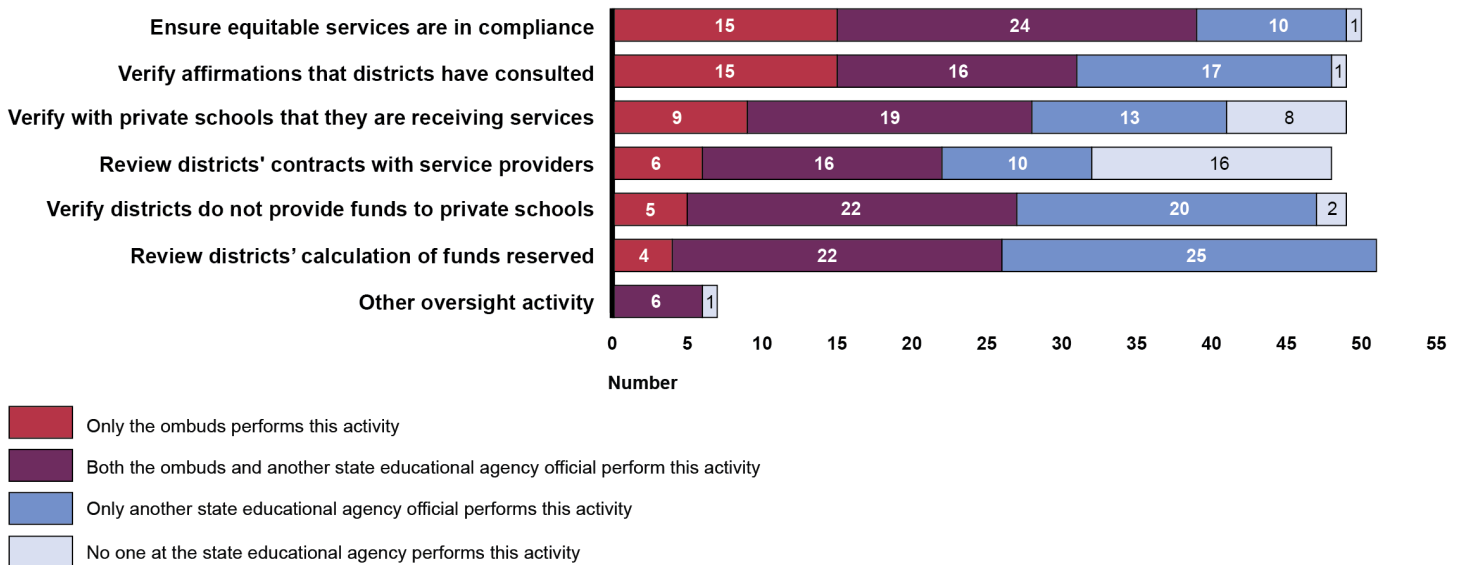
²⁰These stakeholders included one private school leader, four public or private school association representatives, and officials from three school districts, two state educational agencies, and the Department of Education.

²¹We interviewed officials from seven school districts.

may not know about the ombuds and remain unaware of or confused about the supports the ombuds can provide.

Monitoring. The most common oversight activities ombuds reported performing were ensuring equitable services complied with ESEA and verifying affirmations that school districts consulted with private schools (see fig. 4). In interviews, four of the five ombuds in our selected states told us they participated in on-site or virtual monitoring, and three said they provided monitoring teams with questions and required documentation that school districts must provide regarding equitable services. One ombuds reported training state monitoring staff on the equitable service-related elements in the monitoring protocol. In another state, officials told us their ombuds is considered a “consultant stakeholder” but has no formal role in monitoring equitable services.

Figure 4: Number of Ombuds Reporting in 2022 That Selected Monitoring Activities Have Been Performed



Source: GAO survey of state Elementary and Secondary Education Act (ESEA) equitable services ombuds. | GAO-23-105469

Notes: We received survey responses from 52 of the 56 state ombuds. Our survey asked about a number of possible monitoring activities, including ones not required by law. Respondents could select multiple options. A small number of survey respondents (three or fewer) did not respond to all parts of this question or selected “Don’t know.”

Some Stakeholders and Ombuds Raised Concerns about Ombuds' Workload, Independence, and Impartiality

Stakeholders and ombuds have identified several potential impediments to ombuds' effectiveness, specifically around workload and real or perceived threats to their independence and impartiality. A lack of time to devote to the role, and real or perceived threats to ombuds' independence and impartiality, could limit the effectiveness of ombuds in supporting the equitable services process.

Workload. Education's guidance says states should consider capacity when designating their ombuds.²² When asked an open-ended question about the biggest challenges they face in their role as ombuds, more than one-quarter (13 of 46) of ombuds identified a lack of time to carry out their ombuds responsibilities. More than one-half of survey respondents (28 of 52) reported spending less than 25 percent of their time on their ombuds responsibilities, and three-quarters (39 of 52) reported spending 50 percent or less of their time on the role. While Education's guidance does not include a standard or suggestion for how much time an ombuds should spend on the role, one of the ombuds we spoke to told us it would be difficult for an ombuds to carry out their responsibilities effectively while spending less than half of their time focused on ombuds duties. Three ombuds we interviewed said that their responsibilities were manageable, and two others told us they would like to do more regular outreach to private schools, including in-person meetings or visits, but do not have the time to do so. Representatives from four private school associations we interviewed echoed concerns about competing demands, noting that because ombuds have many other responsibilities, some do not have enough time for the role or are not always responsive to inquiries. One private school leader we spoke to praised the state ombuds, but noted that the job is a lot for one person.

Independence and impartiality. Ombuds and private school association representatives raised concerns about ombuds' independence and real or perceived threats to their impartiality. Four ombuds we spoke with told us that impediments to their independence negatively affected their ability to carry out their responsibilities. Two told us that, in their experience, states mainly serve and support school districts, and generally view private schools as a low priority or view equitable services as an optional "add-on" to ESEA programs. One of these ombuds told us that there are often subtle or overt pressures on the ombuds because of this, and that he himself has often felt pressure from other state officials related to his role.

²²Department of Education, *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA)*.

The other said that some state officials view equitable services as solely the ombuds' responsibility, but she and other ombuds to whom she has spoken feel that state officials do not always respect the ombuds' authority. A third ombuds told us state officials discouraged her from contacting Education directly with questions.

According to one ombuds we spoke with, the placement of the ombuds within the state's organizational structure and its effect on ombuds' independence, as well as the other roles the ombuds have, are the main risks to their impartiality. State officials in two states told us that the state had considered where to place the ombuds organizationally in an attempt to support their impartiality. However, officials in the other three states told us the state did not consider, or they were unaware of consideration being given to, the ombuds' ability to be impartial or independent when deciding where to place the ombuds.

State- or Territory-wide School Systems

Hawaii and some U.S. territories operate a single school system, meaning the state or territory operates all public schools and there are no local school districts. In most states, the ombuds mediates disputes between school districts and private schools. In state- or territory-wide systems, an ombuds may mediate disputes between the state or territory itself and private schools, introducing an additional challenge to impartiality.

Source: GAO analysis of state websites and information from state officials. | GAO-23-105469

Private school association representatives, ombuds, and state officials had mixed views on the practice of dual-hatting ombuds.²³ For example, because ESEA programs predominantly fund activities in public schools, private school association representatives we spoke with generally were united in their concerns that dual-hatting could be a challenge to ombuds' impartiality, particularly when the ombuds is also an ESEA program coordinator. For example, one private school association representative told us an ombuds who is also a program coordinator might rely on prior knowledge about programs that primarily serve public schools, without considering or understanding the private school perspective. Another said when a state assigns the role of ombuds to a program coordinator, that person is likely to have pre-existing relationships with school district officials, but not with private school leaders. Four ombuds we interviewed said that, given these issues, they understood why private school

²³According to Education officials, there is no prohibition in law or regulation against ombuds having other roles, such as serving as the program coordinator for one or more ESEA programs.

stakeholders might be concerned about ombuds' impartiality.²⁴ In contrast, state officials in two of our five selected states told us that they chose to assign the ombuds role to a program coordinator because of their familiarity with ESEA and proximity to others with federal program expertise. Education officials told us that they were aware of concerns regarding ombuds' impartiality in some states, given the ombuds' many roles and responsibilities. However, Education officials also said that ombuds' prior experience with ESEA programs can improve their ability to respond to and resolve equitable services complaints.

Education officials also told us they are aware that some ombuds have concerns about their level of independence. While model professional standards for governmental ombuds call for them to function independently of their organization's line and staff reporting structures and to avoid actual conflicts of interest and the appearance of such conflict, these standards do not directly apply in this case, given the parameters of ESEA.²⁵ Education officials noted that ESEA does not require ombuds to function independently from the state educational agency, nor does Education envision ombuds as having full independence from other state officials. However, Education recognizes the importance of having the person serving in this position be impartial when negotiating disputes. To that end, Education's guidance specifically says that states should consider the ombuds' ability to be impartial and their ability to provide guidance to support district and private school officials in reaching agreement. However, Education has chosen not to include in its guidance examples of how states could consider addressing impartiality concerns that may arise as ombuds fulfill their responsibilities. If private school stakeholders do not view ombuds as impartial, they may be reluctant to go to them for information or assistance in resolving disputes with school districts, potentially resulting in private school students and staff not receiving services to which they may be entitled.

²⁴We interviewed private school leaders from 24 private schools and representatives of 10 private school associations. We use the term "private school stakeholders" to refer to these two groups together.

²⁵For example, see: United States Ombuds Association, *Governmental Ombuds Standards* (Dayton, Ohio: Oct. 14, 2003); American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (Revised February 2004).

Ombuds Reported Needing More Federal Guidance and Training to Better Support Private Schools and School Districts

Education has issued various guidance documents on equitable services and undertaken a number of initiatives to support ombuds. For example, in October 2019, Education issued guidance on Title I equitable services that included information on equitable services allocations, the role of the ombudsman, and complaint procedures, and in March 2022 Education issued draft guidance for Title VIII equitable services.²⁶ In November 2022, Education released draft updates to Title I guidance focused on requirements concerning consultation and extrapolation of survey data for the purposes of identifying students from low-income families attending private school.

Education also has several relevant training and technical assistance initiatives, some of which have ended:

- A quarterly Ombudsman Update newsletter to share resources and technical assistance opportunities. The Office of Non-Public Education issued the last newsletter in July 2020, when it shifted focus to COVID relief funds, according to Education officials.
- Ombudsman Update LIVE, an annual conference. Education continues to host the conference, with the most recent one held on September 15, 2022.
- Training webinars and presentations, including on the role of the ombuds and equitable services requirements in ESSA. For example, in July 2022 Education posted on its website ESEA Equitable Services 101 and at the September conference it offered two trainings, When It's Stuck: ESEA Statutory Requirements for Filing Complaints and Appeals and Forward Motion: Spotlight on ESEA Appeals.
- Two technical assistance resources for ombuds—one managed and moderated by Education, and the second, the Ombudsman Hub, an unmoderated peer-to-peer technical resource led by ombuds. Here, ombuds were able to upload material to the Hub without review or approval by Education. Education officials said that ombuds were aware that Education did not vet materials uploaded to either website because they were forums to share resources developed at the state and local levels. Education's contract with the provider managing both

²⁶In November 2016, Education issued *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA)*, which was superseded by the October 2019 Title I guidance. Draft Title VIII guidance had not been finalized as of December 6, 2022.

resources ended in August 2020, marking their close, but resources from these initiatives are still available on Education’s website.

Education has other resources available for ombuds, including an “ombudsman corner” on the Office of Non-Public Education website, which has archived newsletters, a directory of ombuds, and other published resources. In addition, Education sends a welcome email to new ombuds. Education officials said they plan to reach out to ombuds to see which resources are most useful to them going forward.

Equitable Services Ombudsman Collaborative National Workgroup

Independent of Education, ombuds started a state-led initiative in early 2017, the Ombudsman Collaborative National Workgroup, in which a steering committee of state ombuds hosted monthly webinars. The group also maintains a message board. According to our survey, a majority of ombuds (46 of 52) currently participate in the Collaborative and, of those, nearly two-thirds (30 of 46) continue to find the Collaborative to be very helpful to them in their role as the ombuds.

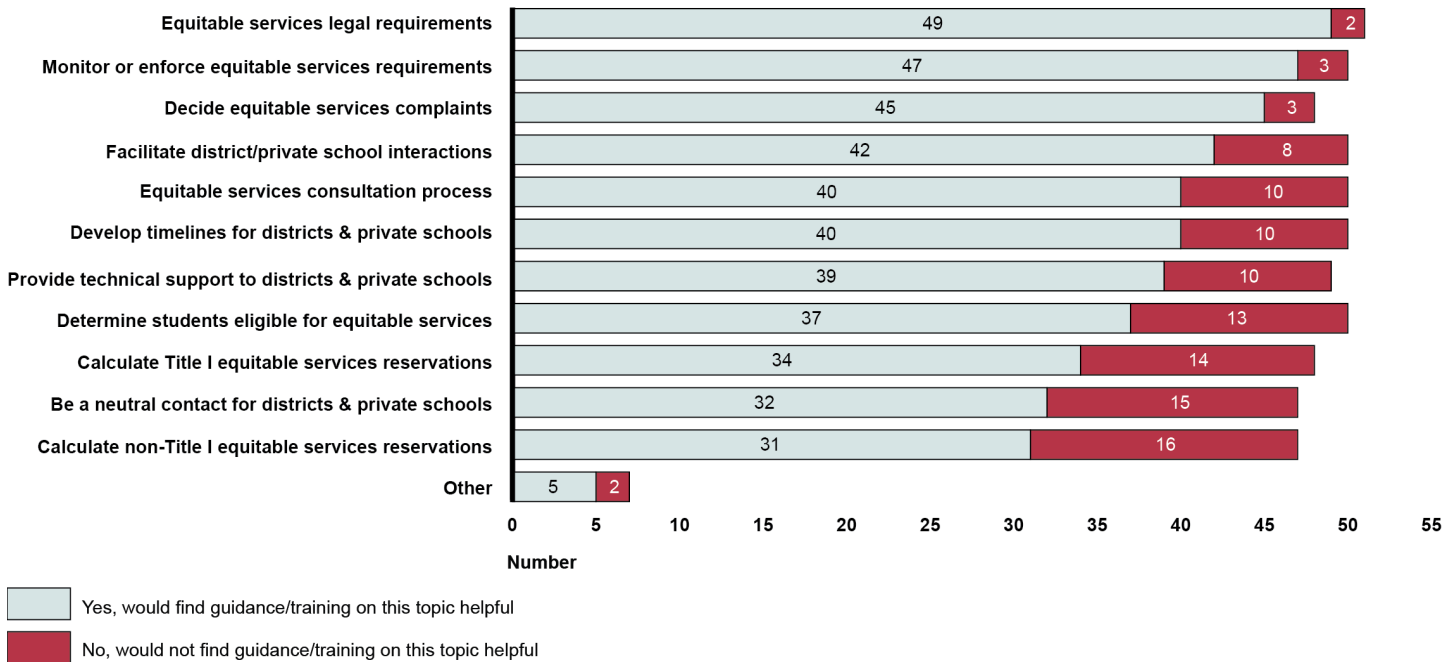
Source: GAO survey of state Elementary and Secondary Education Act equitable services ombuds, Ombudsman Update newsletter, and communication from equitable services ombuds. | GAO-23-105469

In our state survey, most ombuds reported using and finding helpful the guidance, training, and technical assistance from Education. Almost all survey respondents who were their state’s first ombuds (21 of 24) reported that Education’s training about their role and responsibilities as the ombuds was helpful, compared to 13 of 28 newer ombuds who reported the same.²⁷

Most ombuds also reported on our survey that additional guidance and/or training would be useful in a variety of areas (see fig. 5). Further, nearly all ombuds reported wanting additional guidance or training on legal requirements related to ESEA equitable services, monitoring or enforcing the equitable services requirements of ESEA, and deciding equitable services complaints.

²⁷We refer to those who are not their state’s first ombuds as “newer ombuds.” Of the remaining 15 newer ombuds, five reported that Education’s training on this topic was a little or not helpful, four reported they did not know, five reported they had never used the training, and one ombuds did not respond.

Figure 5: Number of Ombuds Reporting in 2022 That Additional Guidance or Training from Education on Various Equitable Services Topics Would Be Helpful



Source: GAO survey of state Elementary and Secondary Education Act (ESEA) equitable services ombuds. | GAO-23-105469

Notes: We received survey responses from 52 of the 56 state ombuds. A small number of survey respondents (three or fewer) did not respond to all parts of this question. Four or fewer selected "Don't know" for some items.

In response to open-ended survey questions, 19 ombuds reported that a lack of training, guidance, and/or other supports from Education were among the greatest challenges they faced in their role as ombuds or with the equitable services process overall, with eight of them noting that they lacked knowledge of the role of the ombuds or ESEA programs. Four private school association representatives also felt that some ombuds lacked knowledge of equitable services, or were familiar with the requirements for certain programs but not others. Two ombuds said that federal training for other state officials would also be helpful. Specifically, they suggested regular training on the role and responsibilities of the ombuds, and one of them suggested that the training should focus on the importance of the ombuds' impartiality and independence.

The mission of the Office of Non-Public Education, Education's liaison to the non-public school community, is to maximize nonpublic students' and teachers' participation in federal education programs and initiatives, in

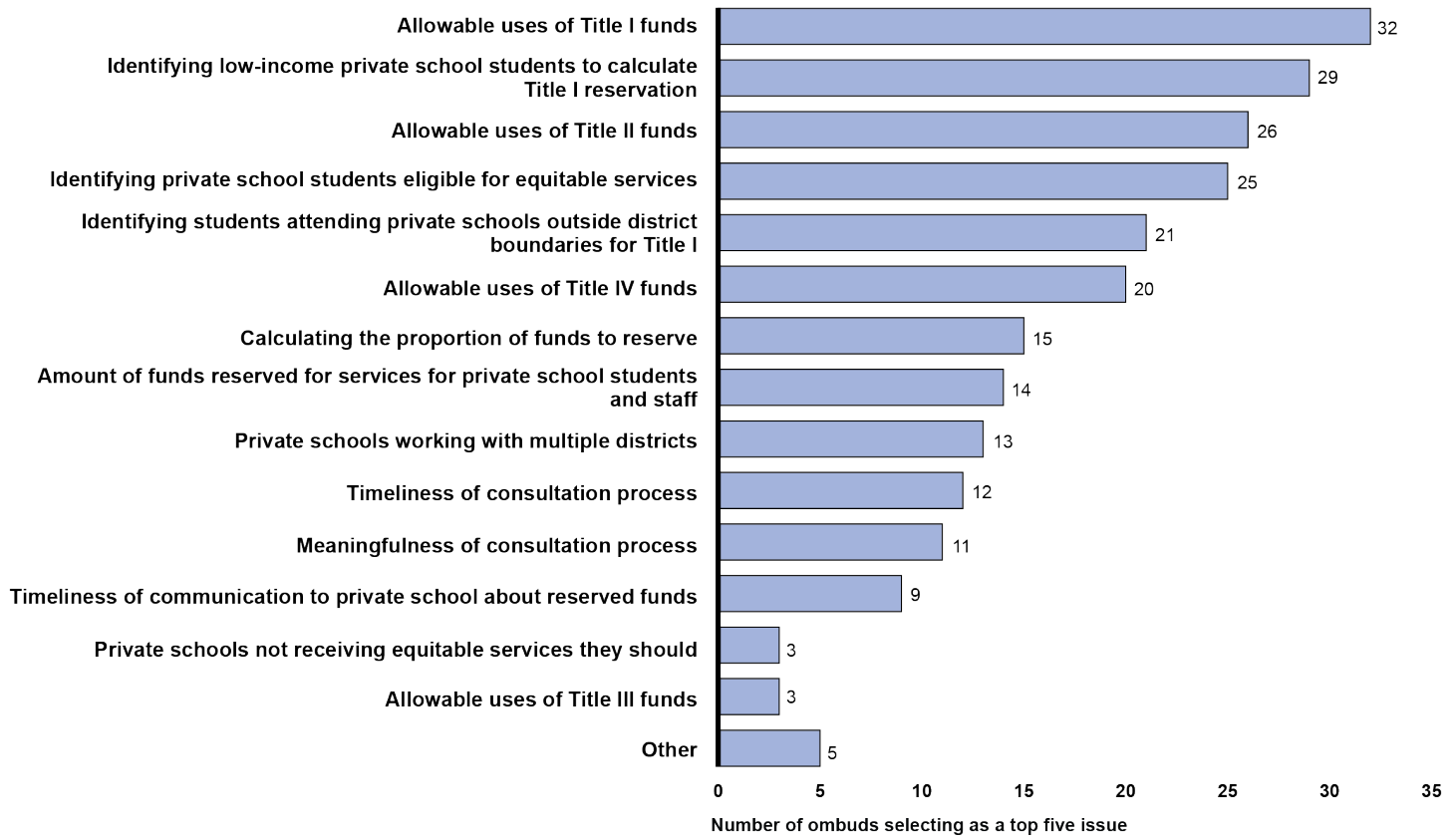
part, through communicating with national, state, and local education agencies and associations. Education guidance states ombuds should be a resource for state and school district officials and private school leaders regarding equitable services requirements. However, nearly all ombuds reported that additional training on topics such as legal requirements related to equitable services and monitoring and enforcing those requirements would be helpful. Without more robust federal guidance and training, ombuds may not be able to fulfill their role as effectively as possible. As a result, private schools and school districts may not fully benefit from the ombuds as a resource to support the equitable services process.

Few Equitable Services Disputes Led to Formal Complaints, and Education Did Not Resolve Appeals in a Timely Manner

Ombuds Fielded a Range of Inquiries and Generally Tried to Resolve Disputes Informally

On our survey, ombuds reported receiving a wide-ranging number of inquiries about ESEA equitable services in 2021, either directly from school districts and private schools or via a federal program coordinator at the state. For example, nearly 20 percent (nine of 51) reported receiving no inquiries at all, almost half (23 of 51) received between one and 100 inquiries, and three received over 500 inquiries. School district employees were the main source of inquiries, and three of the top five most frequent topics of inquiry were related to Title I (see fig. 6).

Figure 6: Most Commonly Reported Topics of ESEA Equitable Services Inquiries since December 2015



Source: GAO survey of state Elementary and Secondary Education Act (ESEA) equitable services ombuds. | GAO-23-105469

Notes: We received survey responses from 52 of the 56 state ombuds. Respondents could select up to five topics in response to the question "Which of the following are the top five most common inquiries you have received about ESEA equitable services, either directly or via one of the federal program coordinators/consultants?"

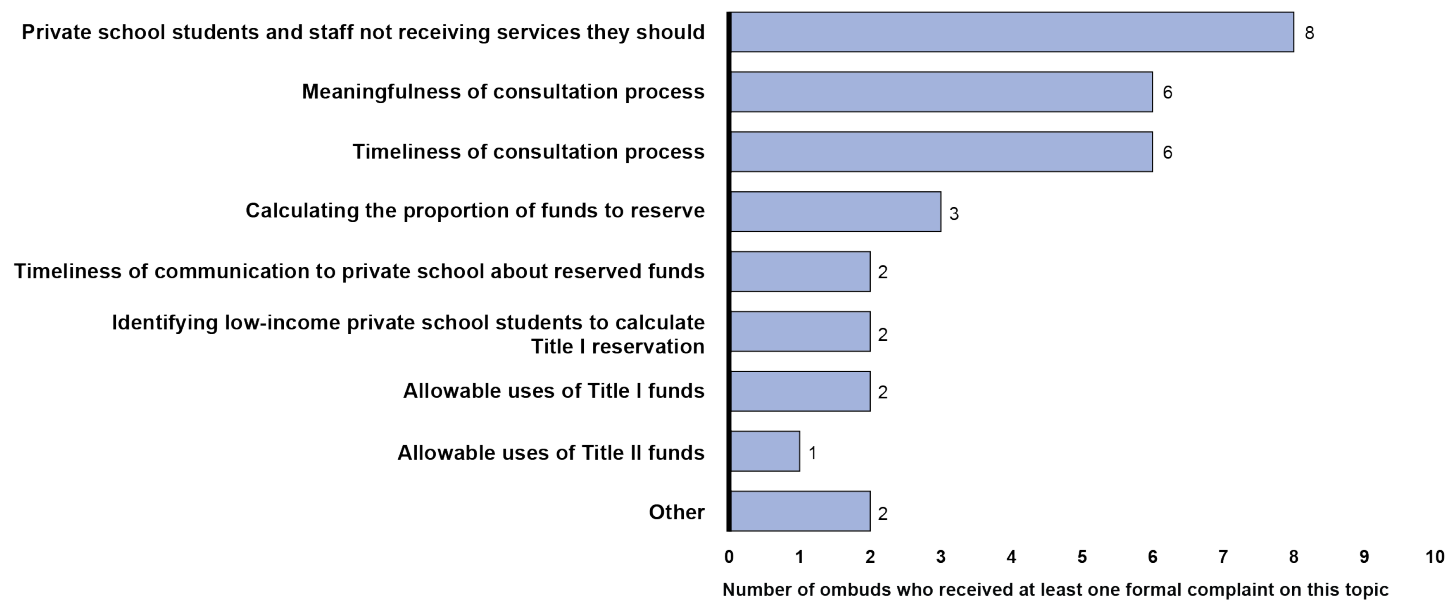
Ombuds and state officials told us that much of the ombuds' job is working to informally resolve disputes between school districts and private schools. If the school district and private school cannot reach a satisfactory resolution, ombuds we spoke with told us they make private schools aware of their right to file a formal complaint.

Few Equitable Services Disputes Resulted in a Formal Complaint to the State

About one-quarter of ombuds (15 of 52) reported that since 2015, their state received a formal complaint related to ESEA equitable services, for

a combined total of 38 formal complaints.²⁸ Complaints were filed by private schools or private school associations. Eight ombuds reported receiving at least one formal complaint related to private school students and staff not receiving equitable services they believe they are entitled to (see fig. 7).

Figure 7: Number of Ombuds Who Reported Receiving At Least One Formal Complaint Related to ESEA Equitable Services, by Topic, since December 2015



Source: GAO survey of state Elementary and Secondary Education Act (ESEA) equitable services ombuds. | GAO-23-105469

Note: We received survey responses from 52 of the 56 state ombuds.

Of the 25 formal complaints for which ombuds reported outcomes, 14 were resolved in favor of the public school district, three in favor of the private school, and eight partially in favor of each party.

When we asked stakeholders about the low number of formal complaints, ombuds and private school stakeholders said a number of factors might

²⁸Four ombuds responded that they did not know if they or a predecessor had received a formal complaint regarding ESEA equitable services since December 2015. According to Education’s guidance, as part of its general ESEA complaint procedures, a state may require an intermediate step (e.g., first filing a complaint with the school district) prior to the state addressing the complaint. With respect to an equitable services complaint, however, the state’s procedures must enable it to resolve the complaint within 45 days of receiving the complaint. Complaints resolved at the district level may be appealed to the state.

make private schools reluctant to file a formal complaint. Representatives from two private school associations told us private schools might lack the resources (e.g., time or legal counsel) to pursue a complaint. This may be especially true for schools that are not part of an association. One ombuds said because ombuds tend to provide more technical assistance to school districts than private schools, private school leaders might feel excluded from the decision-making process. As a result, they may feel filing a complaint would not be worthwhile, even though they never provided their input on the matter in question. Lastly, a private school leader and an ombuds said private schools might not file a formal complaint for fear of damaging their relationship with the school district.

School District-Private School Relationships

Officials from five of the seven school districts we spoke with told us that they had good working relationships with private schools that they provide equitable services to, which facilitates the process. Similarly, seven of the 24 private school leaders we interviewed told us they have good relationships with their school district. For example, officials in one district reported that they have strong relationships with private schools because they are in constant communication with the private schools throughout the school year. This helps the district quickly address any concerns or confusion. A private school leader from another district noted that officials from his district usually answer his questions within 24 hours, or connect him with another staff person who can answer it within 1-2 days.

However, five private school stakeholders and officials from two school districts described challenging relationships. Five ombuds and eight other stakeholders described how having public school districts administer Elementary and Secondary Education Act funds for both public and private schools can create an inherent conflict over funding allocations. Others emphasized that much depends on the personnel in place and their desire and willingness to work together collaboratively. Some also reported that relationships can change quickly when personnel turn over.

Source: GAO interviews. | GAO-23-105469

Education Was Slow to Resolve Appeals of State Decisions

Education has received 13 appeals of state equitable services complaint decisions since 2015, but its appeals resolution has not been timely. Education issued a decision in 10 of these 13 appeals, taking between 94 and 516 days.²⁹ The median length of time to issue a decision was 258

²⁹As of December 6, 2022, Education has not issued a decision in three appeals, which were filed on July 24, 2021, December 10, 2021, and August 15, 2022, meaning that it has taken Education more than 90 days to issue decisions in each of these appeals.

days.³⁰ This is nearly 6 months longer than the 90-day deadline for Education to investigate and resolve appeals required under federal law.

According to Education officials, timely resolution of appeals depends, in part, on the parties involved in appeals providing Education with relevant information. However, Education cited various instances of receiving appeals that are either incomplete or include extraneous materials that require time to sort through, leading to delays in reaching a decision. For example, Education officials said that in some cases the complaint decision they receive from the state is cursory and does not contain a complete record of the evidence, while in other cases, Education receives thousands of pages of extraneous information. Education officials also said that novel legal issues requiring significant analysis can cause delays. Education officials told us they are considering ways to make the appeals process more efficient.

Under ESEA, formal complaint appeals must include a copy of the state's decision and, if there is one, a complete statement of the reasons supporting the appeal. Education has issued guidance with information on complaints and appeals, which outlines timeframes by which states must resolve complaints and by which a dissatisfied party to the complaint must file an appeal. It also states that the complaint must include the allegation that a school district has violated an equitable services requirement and the facts on which the statement is based. However, Education's guidance provides few details and no examples of what a complaint or appeal should include to help expedite review or be considered complete. Education officials told us they regularly give presentations on these topics but, for example, training slides from the September 2022 presentations do not include specific information about what materials should accompany an appeal, and the trainings are not posted to Education's website. Education also does not have separate formal written procedures regarding appeals, and they have not developed model templates, forms, checklists, or other materials to guide appellants on the appropriate materials to submit.

³⁰Education noted that COVID-19 caused additional delays as one or more parties to the complaint requested extensions to submit materials requested by Education during its investigation, and Education dedicated significant time and effort responding to the national emergency and COVID-relief laws. While the length of time between receiving an appeal and issuing a decision has increased during COVID-19 pandemic, Education did not meet the 90-day requirement to issue a decision on appeals for any of the appeals received between 2015 and the beginning of the pandemic.

The Office of Non-Public Education’s mission includes communicating with national, state, and local education agencies and associations on nonpublic education topics. One such topic is appeals related to equitable services. However, because Education has not provided specific guidance outlining what parties should provide as part of their appeals, Education may continue receiving appeals that do not provide relevant information, making it difficult to resolve complaints within the timeframes required by law. Similarly, if Education does not prioritize its review of appeals, it is unlikely to resolve them in a timely manner. Absent timely resolution, private school students and staff may not receive services to which they are entitled for the equivalent of multiple school years, hampering efforts to provide equal access to a quality education for all students.

Selected Private Schools and Districts Faced Multiple Challenges Managing Equitable Services

Selected Private Schools and School Districts Reported Difficulties Managing Equitable Services, Particularly Title I Requirements

Private school leaders and school district officials we spoke with reported that managing equitable services is complex and time-consuming. Over half of the 24 private school leaders we spoke to told us that the equitable services process was challenging. For example, one private school leader told us that her biggest challenge was having the capacity to manage equitable services, because she is overwhelmed with her many other duties. Another stated that while her school should be receiving Title I equitable services from five different school districts, she does not have the capacity to go through the consultation process with more than one. As a result, her school is forfeiting some equitable services that would otherwise be available to students. Ombuds agreed that the burden of managing equitable services is a main reason that some private schools choose not to participate. Results from our survey showed that 35 ombuds reported administrative burden as the most common reason one or more private schools in their state do not participate. In interviews, ombuds reiterated this issue to us, and noted that some private schools do not have the staff or capacity to manage the equitable services process.

Equitable Services to Private Schools

According to our state ombuds survey, more than \$820 million dollars of federal Elementary and Secondary Education Act of 1965, as amended (ESEA) funding were reserved for equitable services in school year 2021-22 (excluding CARES Act and other COVID relief funds). Private school leaders told us these funds supported a variety of education services and supports, such as academic tutoring, digital programming, certifications for English as a Second Language instructors, and other professional development conferences. In one case, a private school leader said that about 40 percent of her students received some equitable services. School leaders told us that these services provided important supports for their students, and some said that the need for equitable services was greater than available funding would support.

Source: GAO survey of state ESEA equitable services ombuds and analysis of interviews with private school leaders.
| GAO-23-105469

Administrative burden was also a challenge for school districts, according to various stakeholders. For example, an official we interviewed at one large school district said that while the district has a large number of Title I public schools to oversee, she spends most of her time focused on the smaller number of private schools receiving equitable services under Title I. A school district administrator from a smaller school district told us that the equitable services process requires duplicative efforts on his part and is time-consuming, since he has to manage his own school district's processes related to ESEA funding, plus that of a private school. He also said that he spends significant time responding to questions from private school leaders related to equitable services.

Additionally, public school association representatives told us that equitable services require considerable capacity at the school district level. One representative said that some large school districts have 10 or more employees working exclusively on managing equitable services, resulting in a significant cost to the district. A representative from another public school association said that officials consistently voice concerns about equitable services paperwork, difficulties collecting data from private schools necessary for the district to determine the amount of funds available for equitable services, and monitoring and auditing equitable services.

Additionally, officials we interviewed from six of the seven school districts told us that obtaining information from private schools, including data on students from low-income families, is challenging. Public school officials from three districts noted that public schools have no authority over private schools, and connecting with private school leaders can be difficult. For example, officials we spoke with from two school districts reported having to go to the private schools in person to obtain necessary forms, such as written confirmation that the schools did not want

equitable services. Officials from another school district said they must obtain information individually from more than 70 independent schools, which is more challenging than getting information from private schools that are members of an association that submits one form on behalf of all their schools.

Further, officials from four school districts noted that private schools can be slow to provide the data needed to calculate the amount of funds available for equitable services for private school students and staff. For example, one school district official said that though he requests data on enrollment and eligibility from private schools over the summer, he often does not receive it until October. According to officials from three school districts, these delays can prevent school districts from filing their consolidated applications for ESEA funding, obtaining preliminary information on schools' title allocations, or completing their budgets or filing timely claims. Another school district official also noted that delays can result in students not receiving services at the start of the year.

Private school stakeholders and school district officials we interviewed cited two specific challenges that, in their view, make it especially difficult to manage Title I equitable services:

- identifying and counting eligible students; and
- for private schools, working with multiple school districts; for districts, working with private schools across district boundaries.

Mixed Views on State-Level Administration of Equitable Services

School district officials and representatives from two public school associations, along with private school stakeholders and ombuds, identified state-level administration of equitable services as a possible remedy to the administrative challenges associated with equitable services, citing the Emergency Assistance to Non-Public Schools (EANS) program as a possible model. EANS was authorized under pandemic-related legislation and gave states responsibility for approving private schools' applications for services or assistance it would provide directly or through contracts, such as improvement of ventilation systems, among other responsibilities typically carried out by school districts under ESEA.

In contrast, Department of Education officials, four ombuds, and other state officials in three states said the EANS model would not be appropriate for equitable services. They expressed concerns about a state-administered process, such as the states' lack of capacity to provide direct services to schools, including completing the necessary consultations regarding student needs; challenges with statewide contracting and procurement; and the possibility of losing the relationship between school districts and private schools that the current equitable services process creates.

Source: GAO analysis of interviews with officials from selected school districts, private schools, and states as well as US Department of Education officials, and relevant laws and guidance. | GAO-23-105469

Identifying and counting students for Title I equitable services calculations. Both private school stakeholders and school district officials told us that identifying and counting students to calculate the amount of Title I funds available for equitable services can be a challenge. Under Title VIII, funds available for equitable services are calculated based on the number and educational needs of eligible students attending private schools within the district's boundaries. However, under Title I, funds available for equitable services are calculated based on the number of students from low-income families who reside in participating public school attendance areas and attend a private school. ESEA allows school districts to select among several methods for counting such students. School districts are required to consult with private schools about the method to use, but the district has the final decision in the matter.

Almost one-third (seven of 24) of private school leaders we spoke with said their school district requires families to complete a survey that asks questions about their income to help the school district determine the amount of funds for Title I equitable services to reserve. Private school stakeholders we interviewed said that this method was both administratively challenging and significantly undercounted students from low-income families because many private school families never return the survey, especially when it comes from the school district. One ombuds we spoke with said that some private schools do not participate in Title I equitable services because they are uncomfortable reporting income data on their families to school districts.

Working with multiple school districts and private schools. Private school leaders and school district officials we interviewed also found Title I equitable services coordination across school districts challenging. Almost one-third (seven of 24) of private school leaders we spoke to said they had to hold consultations with multiple school districts to receive equitable services for their eligible students. For example, one private school leader said that she received services from six different school districts. Another said that at her school of less than 300 students, there were students from 20 different school districts. Six others told us that they only received Title I services from the district in which most of their students lived, despite having eligible students from multiple districts, because they either did not understand how to or did not have the capacity to pursue services from multiple districts. For example, one private school leader told us that it is cumbersome to track where students from different districts would receive services and how they would get to those locations. In the end, she said her school opted to

receive services only from the district in which the majority of her students resided.

Similarly, in some cases, school districts were not aware of students residing within their boundaries who attend private schools in other locations. To help locate students, school district officials from five of the seven districts we spoke with said they use a state-maintained database of private schools or have established agreements with neighboring school districts to provide services to each other's students or notify each other if one of their students is attending a private school within the other's district.³¹

Education officials told us that one way for private schools to mitigate the burden of consulting with multiple school districts is for private schools to request that school districts use ESEA's flexibility to pool their funds to provide Title I services.³² In such cases, private schools might only have to consult with the district in which they are located.

Some Private Schools Reported Difficulties Receiving Equitable Services from School Districts

While Education provides equitable services guidance and resolves appeals, local school districts are responsible for providing equitable services to private schools after consultation. Private school leaders told us these funds supported a variety of education services and supports, but 30 of the 34 private school stakeholders we interviewed told us private schools in some cases faced challenges receiving equitable services. Specifically, private school stakeholders reported challenges with the meaningfulness and timeliness of consultations for equitable services, services not being provided, the amount or quality of services

³¹School districts must annually contact officials of each private school with children who might reside in the district to determine whether the private school leaders want their Title I eligible students to participate in equitable services, according to Education's nonregulatory guidance. Education's guidance advises further that if this contact does not occur, then private school leaders should contact the district or, if no district response is received, the state ombuds for assistance. However, as noted in this report, private school leaders may not be aware of this guidance, that they are eligible for equitable services, or how to contact their ombuds.

³²Education guidance states that school districts have the option to pool Title I funds across multiple school districts. In such cases, the Title I funds generated by eligible private school children from low-income families who reside in a Title I participating public school attendance area may be used to serve eligible children residing in any district that participates in the pooled agreement. The guidance states that school districts also have the option to pool funds to provide services to a group of private schools within a district. The latter option may help ensure eligible students with the greatest need in a district receive adequate services; however, it does not address the challenge of working with multiple school districts.

they received from school districts, or with equitable services under Title II-A of ESEA.

Consultations not meaningful and timely. Private school leaders from 13 of the 24 schools and representatives from seven of the 10 private school associations we spoke with told us that they did not believe consultations were always meaningful or timely. More than one-third of private school stakeholders said that the consultations were not meaningful because they felt that prior to the consultation meeting the school district had already made decisions or determined the services it would provide. Seven private school stakeholders also said that school districts were not transparent about how they determined equitable service allocations or reached other decisions.

More than one-third of the 34 private school stakeholders reported that the consultations did not take place, were not timely, or were not ongoing throughout the year.³³ For example, more than one-quarter (seven of 24) of private school leaders we spoke with said that at least one school district in which a student attending their school resided never contacted them about equitable services. Six of the 24 private school leaders we spoke with were also not aware that these school districts were supposed to contact them and, as a result, eligible students and staff in these schools did not receive services to which they may have been entitled. School leaders described mixed experiences with the timelines of consultations. For example, one private school leader told us that her school received information from the school district on the funds available to provide Title IV equitable services so late in the school year that it had only 1 month to request services. In contrast, officials from one school district reported holding consultations for private schools each September, January, and May to provide them with multiple opportunities to connect with the district.

Services not provided or delayed. Over one-third (14 of 34) of the private school stakeholders we spoke with said there have been times that school districts refused to provide services the private schools believed they should have received, or described delays in service provision. For example, seven private school leaders told us they did not receive services to which they were entitled because the school district or contracted service provider did not have staff to provide the services. Another school leader told us that the school did not receive textbooks it

³³We did not assess school districts' compliance with ESEA.

had requested as an equitable service for more than 6 months. This private school leader also told us that though he has worked to get services from the school district, the district continued to delay until he eventually gave up. Another school leader told us that his school was considering withdrawing from equitable services because of the ongoing difficulty it has had obtaining services from the school district.

Cost or quality of services. Private school leaders sometimes raised concerns about the cost or quality of the equitable services they received. For example, three private school leaders noted that tutors, whether public school teachers or contracted service provider employees, cost more than tutors the private school could hire directly. One of these leaders noted that the cost of the service provider used by her school district was more than her salary as a school administrator. Another private school leader at a rural school said that the district contracted with a services provider who had to travel a long distance to the school to provide tutoring services. Because the provider's travel time was paid for out of the funds available to provide equitable services, this school leader believed that if the district had instead contracted with a service provider nearer the private school, the school could have received additional tutoring services.

Lastly, two private school leaders told us that tutoring received through equitable services was disruptive or not effective. For example, one said that given the small amount of equitable funds available to provide services, her students only receive 20 minutes of group tutoring twice a week. She said this amount of tutoring disrupts students' regular learning but is inadequate to meet their educational needs. Due to this circumstance, her school leadership no longer wants to receive equitable services. Another told us her students receiving Title I equitable services were not making good academic progress and she was unsure how or whether school districts held service providers accountable for performance outcomes related to services they provided.

Transferability

Under the Elementary and Secondary Education Act of 1965, as amended (ESEA), school districts may transfer some or all funds received under Titles II-A or IV-A to fund programs under Titles I-A, I-C, I-D, II-A, III-A, IV-A, or V-B. In response to open ended questions on our survey, eight ombuds reported that this ability to transfer funds between titles was a challenge to the provision of equitable services. According to six ombuds we interviewed, transferability rules can allow school districts to avoid allocating any ESEA funds to equitable services. For example, any private school that only participates in Titles II-A and/or IV-A would lose all equitable services if the district in which the school is located transferred all funds to other programs. School districts are required to hold “timely and meaningful consultations” and to discuss such transfers with affected private schools, but have the final authority to make such transfers.

Department of Education officials stated that they are aware of concerns raised regarding transferability. They told us that such transfers treat public and private school students equitably because both public school and private school students would receive services under the same ESEA titles. Four of the ombuds we spoke with suggested various ways to address such concerns, including requiring school districts transferring funds from Title II or IV to retain the private schools’ equitable services portion of those funds before making the transfer (a process that is currently not allowed).

Source: ESEA, Education guidance, and GAO interviews. | GAO-23-105469

Difficulties with the Title II-A process. Nearly one-half (15 of 34) of private school stakeholders raised concerns about obtaining services under Title II, specifically. These challenges varied but nine of 24 private school leaders and representatives from six of 10 private school associations told us that the process for obtaining approval for professional development opportunities was cumbersome and often required significant advanced planning. Additionally, one school leader said that in his school district, the school or teacher had to pay for professional development upfront and reimbursement from the school district sometimes took 6 months.

Conclusions

Millions of children attend private elementary and secondary schools in the United States each year, many of whom are entitled to receive federally funded equitable services. These services provide critical learning supports and some private schools rely on them to supplement the education and related services they provide.

Generally, an ombuds helps address concerns, complaints, and inquiries, and serves as an impartial party to assist in resolving disputes. The 2015 ESEA amendments required states to designate an ombuds for equitable services, but we identified concerns about their capacity to carry out their responsibilities and their impartiality. Education’s guidance to states advises them to consider these issues but provides little information on

how to ensure ombuds have the capacity to do their jobs or examples of ways to mitigate potential challenges to their independence and impartiality. Further, to help ensure that eligible private school students receive equitable services, the ombuds and all stakeholders in the process must have a thorough understanding of equitable services provisions and the responsibilities of the ombuds. The misunderstandings and inaccurate information about ombuds' role and responsibilities we encountered during our review could jeopardize access to equitable services for eligible children. Absent more robust guidance, ombuds may not operate as effectively as they could.

Additionally, Education is required to resolve appeals of equitable services complaint decisions in a timely manner and any gaps in service delivery could have a negative effect on student learning. While there have been a relatively small number of formal complaints appealed to Education since 2015, Education has not resolved any of these appeals within the 90-day timeframe required by law. Though Education officials described various factors that affect the agency's ability to meet the 90-day requirement, including incomplete case files and voluminous unnecessary documents requiring time to sort through, Education has not made it a priority to process appeals timely nor clarify its expectations for materials to include and exclude from complaints to ease this process. Without guidance to help parties file complete appeals, some students may continue to experience gaps in service that could negatively affect their learning and achievement.

Recommendations for Executive Action

The Secretary of Education should develop additional guidance for states to help ensure ombuds have the capacity to manage their responsibilities and to mitigate real or perceived threats to ombuds' impartiality. For example, Education's guidance could provide examples of ombuds' activities, and advise states to also consider any other responsibilities assigned to the ombuds, and how these may affect the ombuds' capacity and real or perceived impartiality. (Recommendation 1)

The Secretary of Education should provide ombuds with more opportunities for training on topics such as

- monitoring and enforcing requirements related to equitable services;
- the role of the ombuds and ESEA programs; and
- notifying private schools and school districts about the ombuds' existence and role, and the types of issues with which ombuds may

be available to assist—for example, issues related to consultations and delays in receiving equitable services.

(Recommendation 2)

The Secretary of Education should develop and widely circulate guidance, model templates, checklists, or other materials for states and appellants regarding the material to include in ESEA equitable services appeals that will support Education with meeting the 90-day legal deadline for resolution. (Recommendation 3)

The Secretary of Education should prioritize investigations and resolutions of appeals related to equitable services to meet the 90-day legal deadline for resolution. (Recommendation 4)

Agency Comments and Our Evaluation

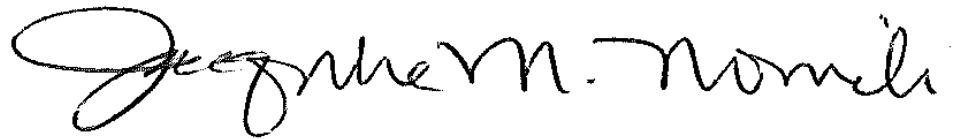
We provided a draft of this report to Education for review and comment. Education provided technical comments, which we have incorporated as appropriate. In its formal comments, which are reproduced in appendix II, Education provided information on the actions the agency plans to take related to our recommendations. Regarding our fourth recommendation, Education said that the complicated nature and volume of appeals affect the agency's ability to meet the 90-day deadline. Education also noted that the majority of appeals it has received since the passage of ESSA in 2015 occurred during 2020 or 2021. We recognize the challenges inherent in addressing these appeals, but note that since 2015, Education has not once met the 90-day deadline for resolving an appeal. Given this, we believe Education should prioritize investigations and resolution of equitable services appeals.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last

page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Jacqueline M. Nowicki". The signature is written in a cursive, flowing style with a large initial 'J'.

Jacqueline M. Nowicki, Director
Education, Workforce, and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

This report examines (1) how states have implemented the role of equitable services ombuds and challenges in doing so; (2) how states and the Department of Education address equitable services disputes; and (3) the challenges that selected private schools and school districts face related to Elementary and Secondary Education Act (ESEA) equitable services.

To address these objectives, we surveyed state ombuds, conducted virtual site visits with five states, and interviewed public school officials and private school leaders, state educational agency officials, and representatives from public and private school associations. We also interviewed Education officials, and reviewed Education’s findings in equitable services complaints appealed to the agency; Education’s related guidance and training; and relevant federal laws and regulations. We did not assess school districts’ compliance with ESEA.

Survey of State Ombuds

To address our objectives, we administered a survey to 56 state equitable services ombuds using Qualtrics software. The web-based survey was sent to ombuds in all 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.¹ We obtained completed surveys from 52 of the 56 ombuds. We did not receive responses from American Samoa, Florida, Indiana, or Kentucky. The survey asked questions about a range of topics, including

- private school participation in ESEA equitable services;
- the ombuds’ tenure, how they were hired, their previous experience, the percentage of their time spent on ombudsman duties, and any other jobs, roles, or responsibilities they have;
- training, guidance, and technical assistance ombuds received from Education and their state, the efficacy of federal training, and whether additional guidance, training, or technical assistance from Education would be helpful;
- monitoring and outreach activities ombuds conduct;
- the number, topics, and sources of equitable services inquiries ombuds received;

¹When we refer to “states,” we are including the 50 states, the District of Columbia, and the five territories. When we refer to “state ombuds,” we are including ombuds from all 50 states, the District of Columbia, and the five territories.

-
- the number, topic, sources, and outcomes of formal equitable services complaints; and
 - challenges ombuds experience.

We administered this survey from April to May 2022.

Because we surveyed all state ombuds, our survey had no sampling error. We took several steps to minimize nonsampling error, including using methods to ensure we sent the survey to the appropriate officials such as identifying state equitable services ombuds using a directory maintained by Education. We also conducted pretests with ombuds from four states to check for the clarity of questions and flow of the survey. We made revisions to the survey based on feedback from those pretests.

We contacted all respondents who had not returned the questionnaire by the date requested by email and/or phone. We also followed up with respondents who submitted answers that required clarification. Not all survey respondents answered all questions.

Site Visits and Other Interviews

To obtain additional information from ombuds and the perspectives of other state officials, school district officials, and private school leaders, we conducted virtual site visits to five states: California, Florida, Pennsylvania, Texas, and Wisconsin. We selected these states based on a variety of criteria. Each of the five selected states were within the top quartile of states for the number of private schools and private school students. According to our analysis of Education data, the five selected states included about 35 percent of all private schools and 33 percent of all private school students in the United States in school year 2019-20. We also selected states that ranged in the percentage of public schools in the state that were eligible for school-wide Title I services and a mix of states that had a private school voucher program and states that did not have such a program. Lastly, we chose states that provided regional diversity.

During our site visits, we interviewed the state's ombuds to obtain more in-depth information than we could through our survey. We also interviewed other state officials, such as department or division leadership, fiscal and program monitors, and ESEA program coordinators, to obtain additional information about how the state implemented the ombuds requirement, equitable services monitoring, and coordination within the state related to equitable services. We also conducted interviews with officials from individual public school districts and private school leaders. In two of our five selected states, we

conducted individual interviews with officials from two private schools and two public school districts; in the other three states, we interviewed officials from one private school and one public school district. In each of the five states, we interviewed private school leaders from at least one school that had filed a formal ESEA equitable services complaint and the school district against which the complaint was filed. For schools in states in which the data were publicly available, we also selected private schools that received equitable services under multiple ESEA titles.²

To obtain broader information about private schools' experiences with equitable services, we conducted one group interview in each state. To identify private schools to include in these interviews, we asked representatives from the Council for American Private Education's (CAPE) state affiliate for assistance. We asked the CAPE affiliates to identify four to five schools that reflected a range of

- amount of equitable services received;
- urban, rural, and suburban settings; and
- services under multiple ESEA titles.

In some cases, we also asked the affiliate to identify a mix of religious and nonreligious private schools.

In some cases, private school association representatives also participated in interviews with private schools. In total, we interviewed private school leaders from 24 schools and officials from seven public school districts.

In addition, to inform the development of our survey and address all research objectives, we conducted interviews with representatives from public and private school associations, such as The School Superintendents Association and the National Catholic Educational Association.³ We held additional more focused interviews with four

²We were able to consider this criterion, and select private schools that participated in equitable services under multiple ESEA titles, in two of our five states.

³Many types of organizations may provide support to private schools—for example, membership associations, other nonmembership organizations, and Dioceses or Archdioceses. Some are national while others operate at the state level or across selected states. Some of the organizations we spoke with have broader missions than supporting private schools, but they all play some role in private education. In this report, we refer to all of these organizations as “private school associations.”

ombuds after the survey to discuss issues raised in response to the survey, or to learn about state-specific issues.⁴ We also interviewed Education officials at various points and obtained answers in writing from Education to several sets of questions.

Review of Documents

To collect information on Education's review of ESEA equitable services complaint appeals, we obtained Education's final decision in each of the 10 resolved appeals.⁵ Using these documents, we determined the length of time between when the appeal was filed and when Education issued a decision. We also reviewed Education's nonregulatory guidance, as well as other training, templates, and related documents available on Education's website.

We conducted this performance audit from October 2021 to April 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁴In total, we interviewed 12 ombuds: three to obtain general background information and assist us in survey development, five during our virtual site visits, and four on a subset of narrower topics. At the time we interviewed them, one ombuds had recently left their position.

⁵According to Education officials, at the time of our work, there were three outstanding appeals that Education is still reviewing and on which it has not yet issued a decision.

Appendix II: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 21, 2023

Jacqueline M. Nowicki, Director
Education, Workforce, and Income Security
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548
nowickij@gao.gov

Dear Director Nowicki,

Thank you for the opportunity for the U.S. Department of Education (Department) to provide comments on, and respond to the recommendations made in, the Government Accountability Office's (GAO) draft report titled, *K-12 Education: Additional Guidance Could Improve the Equitable Services Process for Public and Private Schools* (GAO-23-105469). As Deputy Assistant Secretary of the Office of Elementary and Secondary Education (OESE), I am pleased to respond on behalf of the Department.

OESE is responsible for administering programs under the Elementary and Secondary Education Act of 1965 (ESEA), including those that require equitable services. OESE works closely with the Office of Non-Public Education (ONPE), the Department's liaison to the nonpublic school community, and other Department offices such as the Office of the General Counsel (OGC) and leads technical assistance efforts to ensure the appropriate implementation of ESEA equitable services. In the implementation of ESEA equitable services, funds must remain in the control of a public entity, generally a local educational agency (LEA). Private schools do not receive funds. Rather, their eligible students and educators receive services and benefits as determined by statute and regulations. Below, we provide some important background information and address the four recommendations in the draft report. We are also including an enclosure with technical comments and suggested edits to the draft report to provide clarification on some issues. We would be glad to work with you on those matters.

The Department appreciates the information and data that GAO collected from State ombuds,¹ private school officials, and other State and local education officials regarding the challenges with implementing ESEA equitable services for private school students and teachers. Such information is helpful as we continue to administer these programs and provide technical assistance to State educational agencies (SEAs), LEAs, ombuds, and public and private school officials involved with the implementation of ESEA equitable services. In addition, the Department is grateful for the insights, concerns, and recommendations that these stakeholders have shared as we seek to ensure that those responsible for administering ESEA programs and

¹ In this response letter, consistent with the approach in the GAO report, we use the term "ombuds" to refer to the statutory term "ombudsman."

**Appendix II: Comments from the Department
of Education**

monitoring and enforcing the ESEA equitable services provisions in States and LEAs are aware of the guidance, technical assistance, and resources available to them.

At the same time, while the report focused primarily on challenges that private schools and State ombuds have encountered related to the implementation of ESEA equitable services, it does not address the overall impact of the role of the ombuds and others who work with them, including the Department, that contributed to the many successes in this area. The Department believes it is important to note that the designation and work of the ombuds to monitor and enforce the ESEA equitable services requirements has had a very positive impact on the implementation of ESEA equitable services and in fostering relationships among States, LEAs, and private school officials. Having a designated point of contact for ESEA equitable services at the State level serves to facilitate communication among all necessary parties, including the Department. It is important to note the relatively low number of formal complaints private schools have submitted for resolution relative to the high number of school districts in which equitable services are provided, and we think this may be indicative of, among other factors, the productive relationships among many States, school districts, and private schools. The Department is pleased to note that there have only been 38 total formal complaints across more than 14,000 school districts in the eight years since the passage of the Every Student Succeeds Act (ESSA), which indicates that formal complaints are very rare. Most of those complaints were resolved by the SEAs.

We also note that the data in your report shows that State ombuds received inquiries to which they responded and that the ombuds are able to informally resolve those inquiries. We think this is indicative of good relationships between school districts and private schools in many places and is a sign that the system to provide equitable services to eligible private school students and their teachers is generally working. We believe it is also a sign that the regular and ongoing guidance and support we have provided to State ombuds specifically and State and LEA officials has typically been successful in supporting the implementation of the equitable services requirements. We will continue supporting the field with this important aspect of the law, building on the successes that we have had, including the effective technical assistance to date.

With this in mind, we respond below to the four recommendations made by GAO to the Department:

Recommendation 1: The Secretary of Education should develop additional guidance for states to help ensure ombuds have the capacity to manage their responsibilities and to mitigate real or perceived threats to ombuds' impartiality. For example, Education's guidance could provide examples of ombuds' activities, and advise states to also consider any other responsibilities assigned to the ombuds, and how these may affect the ombuds' capacity and real or perceived impartiality.

ED Response: The Department has provided significant guidance and supports to States regarding the requirements for equitable services under the ESEA. We will continue to work with States to identify areas where additional guidance is needed. While State ombuds have a critical and key role in monitoring and enforcing the ESEA equitable services provisions, that

**Appendix II: Comments from the Department
of Education**

responsibility is not theirs alone. SEAs are the primary agents for ensuring implementation of ESEA programs for public and private school students. Thus, State federal program directors (e.g., State Title I Directors) also share in the responsibility to ensure that the federal education programs they administer are implemented as required by statute and regulation. We believe collaboration between ombuds and State program directors is critical to the effectiveness of the role of the ombuds.

Recommendation 2: The Secretary of Education should provide ombuds with more opportunities for training on topics such as:

- monitoring and enforcing requirements related to equitable services;
- the role of ombuds and ESEA programs; and
- notifying private schools and school districts about the ombuds' existence, role, and the types of issues with which ombuds may be available to assist, for example, issues related to consultations and delays in receiving equitable services.

ED Response: As noted in the report, the Department has hosted a variety of training and assistance opportunities for State ombuds. The Department is pleased to learn that most ombuds reported using and finding helpful the Department's guidance, training, and technical assistance. The Department will continue to meet annually with State ombuds to provide support and training to them on a host of topics, including those recommended above by GAO, to support their work. Staff from OESE, ONPE, and OGC will continue to participate and present on equitable services at public and private school association conferences. In our work with national organizations that provide technical assistance to their members on federal education programs, the Department will also consider, as appropriate, how ESEA equitable services can be integrated into presentations and webinars. The Department will continue to host its "Ombudsman Corner" webpage, which includes an ombuds contact directory, an archive of the Ombudsman Update newsletter, and other published resources. The Department updates the directory regularly to ensure accuracy and directs ombuds and private school officials to this page. Through the ONPE and Title I Listservs, the Department will continue to provide information, resources, and technical assistance to ombuds and other key stakeholders. In its role as liaison, ONPE will send and regularly review for relevancy the "Welcome" email to new ombuds that includes helpful information, links to relevant guidance and resources, and identification of Department points of contact for ESEA equitable services questions and guidance. Finally, we will host the Ombudsman Update Live conference in fall 2023 and consult with ombuds on topics they would like the Department to address in training to ensure we are providing relevant and timely technical assistance.

Recommendation 3: The Secretary of Education should develop and widely circulate guidance, model templates, checklists, or other materials for states and appellants regarding the material to include in ESEA equitable services appeals that will support Education with meeting the 90-day legal deadline for resolution.

ED Response: The challenges that the Department may face in meeting the 90-day deadline depend on the unique circumstances of each appeal and the completeness of the record.

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of Education**

Notwithstanding the variety of circumstances that we must address, the Department will consider developing additional information regarding the appeal process, such as templates, that might help alleviate some of the challenges.


Recommendation 4: The Secretary of Education should prioritize investigations and resolutions of appeals related to equitable services to meet the 90-day legal deadline for resolution.

ED Response: The Department has and will continue to review and respond to appeals that it receives as quickly as possible. The complicated nature and volume of appeals received within a given year, as well as the need to request clarifying information from parties to the appeal, impacts the Department's capacity to respond within the 90-day deadline. We note that most of the appeals the Department has received since the passage of ESSA (9 of the 13 total appeals) were submitted from 2020 through 2021; 7 of those 9 originated from a single school district.

Thank you for your consideration of the Department's feedback to the four recommendations made in GAO's draft report.

Respectfully,

RUTH
RYDER

 Digitally signed by RUTH
RYDER
Date: 2023.03.21
16:51:03 -0400

Ruth Ryder
Deputy Assistant Secretary
Office of Elementary and Secondary Education

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Jacqueline M. Nowicki, (202) 512-7215 or nowickij@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Scott Spicer (Assistant Director), David Barish (Analyst-in-Charge), Julie Anderson, Grace Cho, and Maria Gadel made key contributions to this report. Also contributing to this report were John Bornmann, Caroline DeCelles, Andrew Emmons, Kirsten Lauber, Ying Long, Amy MacDonald, Mimi Nguyen, Aaron Olszewski, Jessica Orr, Joy Solmonson, Almeta Spencer, Margaret Weber, Adam Wendel, and Eve Weisberg.

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