

OFFICE OF CHIEF ACADEMIC OFFICER
Summary of State Board of Education Agenda Items
Consent Agenda
May 17, 2018

OFFICE OF FEDERAL PROGRAMS

- D. Approval of State Board Policy Part 3, Chapter 80, Rule 80.4 – Every Student Succeeds Act: Equitable Services Dispute Resolution Policy
(Has cleared the Administrative Procedures Act process without public comment)

Executive Summary

The *Elementary and Secondary Education Act of 1965*, as amended by *Every Student Succeeds Act of 2015 (ESSA)*, acknowledges that disputes may arise between a private school and the local educational agency (LEA) responsible for administering equitable services to the private school under the provisions of *ESSA*. To facilitate the statutory duty of the *ESSA* State Equitable Services Ombudsman to “monitor and enforce” the equitable services provisions of *ESSA*, the following Equitable Services Dispute Resolution Policy has been created. The Policy authorizes the Office of Federal Programs to devise additional procedures to implement the Policy.

Recommendation: Approval

Back-up material attached

Chapter 80 – Rule 80.4

Every Student Succeeds Act: Equitable Services Dispute Resolution Policy

Cite as: *Miss. Admin. Code* 7-3:80.4, State Board Policy Chapter 80, Rule 80.4.

1. INTRODUCTION

The *Elementary and Secondary Education Act of 1965*, as amended by the *Every Student Succeeds Act of 2015 (ESSA)*, acknowledges that disputes may arise between a private school and the local educational agency (LEA) responsible for administering equitable services to the private school under the provisions of *ESSA*. The Mississippi Department of Education’s (MDE’s) *ESSA* State Equitable Services Ombudsman and *ESSA* title-program specialists are available to assist LEAs and private schools with all equitable services concerns. However, in the event of unresolved disputes, the Mississippi State Board of Education hereby enacts the following Equitable Services Dispute Resolution Policy to facilitate the Ombudsman’s statutory duty to “monitor and enforce” the equitable services provisions of *ESSA*.

2. ADMINISTRATIVE POLICY

The Mississippi State Board of Education hereby authorizes the Mississippi Department of Education’s Office of Federal Programs to devise detailed procedures for the resolution of equitable services disputes between LEAs and private schools. These procedures shall include, at a minimum:

A. Moderated Settlement Conference: When an unresolved dispute is announced via the *ESSA*-mandated “Private School Written Affirmation” filed with the State Ombudsman, representatives of the LEA and private school will attend a settlement conference moderated by Office of Federal Programs title-program specialists, to assure that no misunderstanding, misapplication of law or procedure, or other mistake has caused the dispute, and to attempt to reach an amicable resolution. Due to the impending possibility of the Ombudsman’s adjudication of the matter, the Ombudsman shall not participate in the settlement conference.

B. Complaint and Response: If settlement is unsuccessful, the private school may elect to continue the dispute by filing a Complaint to the Ombudsman in writing, including all supplemental materials. The LEA may file a written Response, including all supplemental materials.

C. Decision and Enforcement by Ombudsman: After considering the evidence, the Ombudsman shall decide and resolve the dispute by enforcing the equitable services requirements of *ESSA*.

- i. An in-person hearing may be requested by either party, or the parties may elect for the Ombudsman to decide the dispute based on the Complaint and Response materials alone. If an in-person hearing is requested, the Ombudsman shall preside and is hereby empowered to administer oaths and take witness testimony. A transcript of the proceeding shall be made.

ii. A detailed written decision will be subsequently issued, indicating whether the private school has met its burden of proof to demonstrate, by a preponderance of the evidence, that the LEA is noncompliant with the equitable services provisions of *ESSA*.

iii. If the Ombudsman finds the private school has met its burden of proof, the Ombudsman shall also issue an Order to Remediate, requiring the LEA to take the actions necessary to comply with *ESSA*'s equitable services requirements.

D. Appeal: In compliance with *ESSA*'s appeal provisions, the Ombudsman's Decision and/or Order may be appealed by either party as follows:

i. Within the three (3) business days following the Ombudsman's issuance of the Decision, either party may file notice of appeal to the Mississippi State Superintendent of Education, or designee, who shall, within the ten (10) business days following the filing of said notice, review all materials considered in the case, including the transcript if applicable, and affirm, modify or reverse the Ombudsman's Decision and Order in a written decision issued to the parties.

ii. Either party may appeal the decision of the Mississippi State Superintendent of Education to the Secretary of Education at the United States Department of Education no later than 30 calendar days after the parties' receipt of the State Superintendent's decision, or if no decision is issued within 45 calendar days after the filing of the initial private school Complaint.

Sources:

ESSA § 1117 [20 U.S.C. 6320 (Rev. 2017)] (a)(3)(B) and

§ 8501 [20 U.S.C. 7881 (Rev. 2017)] (a)(3)(B)

ESSA § 1117 [20 U.S.C. 6320 (Rev. 2017)] (b)(6) and

§ 8501 [20 U.S.C. 7881 (Rev. 2017)] (c)(6)

34 C.F.R. § 76.671(b)(3)(ii) et seq. (Rev. 2017)

34 C.F.R. § 76.674(a)(2)(ii) (Rev. 2017)

ESSA § 8503 [20 U.S.C. 7883] (b) (Rev. 2017)

Miss. Code Ann. § 37-3-11(c) (Rev. 2017)

Miss. Code Ann. § 37-1-3 (Rev. 2017)