

# OFP Master Class: Equitable Service

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Office of Federal Programs

[mdek12.org](https://mdek12.org)



MISSISSIPPI  
DEPARTMENT OF  
EDUCATION

September 19, 2023



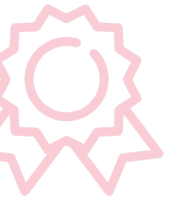
## VISION

To create a world-class educational system that gives students the knowledge and skills to be successful in college and the workforce, and to flourish as parents and citizens



## MISSION

To provide leadership through the development of policy and accountability systems so that all students are prepared to compete in the global community



1

**ALL** Students Proficient and Showing Growth in All Assessed Areas



2

**EVERY** Student Graduates from High School and is Ready for College and Career



3

**EVERY** Child Has Access to a High-Quality Early Childhood Program

**EVERY** School Has Effective Teachers and Leaders

4



**EVERY** Community Effectively Uses a World-Class Data System to Improve Student Outcomes

5



**EVERY** School and District is Rated “C” or Higher

6



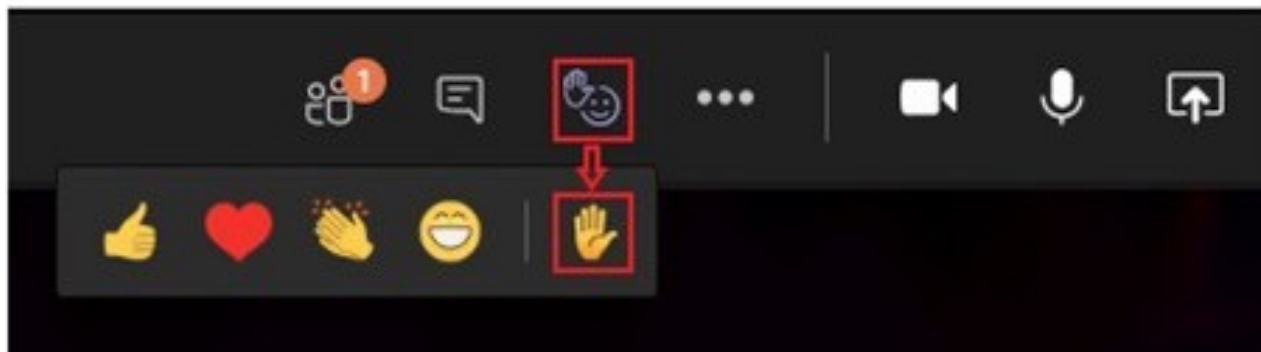
# Microsoft Office Reminders

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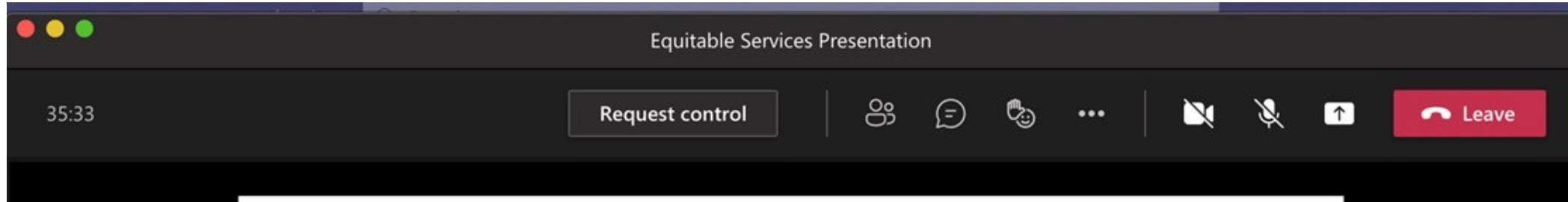
- Please mute yourself unless you have a question to reduce background noise
- Please cut the camera off to save bandwidth to reduce technical glitches
- Please ask questions throughout the presentation via chat or “raise hand” feature

## “Raise Hand” Feature

Just select **Show reactions** 🙌 in the meeting controls, and then choose **Raise your hand** 🙋 . Everyone in the meeting will see that you've got your hand up.



## "Chat" Feature



- To use the **chat** feature in Teams, simply click the “Chat” icon. The **chat box** will appear on the right. Type your message in the chat box and click the “Send” icon to send your question.

- This session will be recorded to increase availability and access to the technical assistance session.
- Recording will be available as a resource.
- Presentation and recording will be updated in MCAPS, MDE Document Library, Technical Assistance Sessions folder, FY24.



# Session Overview

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- The goal of this session is to provide LEAs specific information about required equitable services under ESEA.
- Our objective is to help improve equitable services provided to non-public schools and decrease complaints by 50%.

- Equitable Participation
- Consultation
- Equitable Share
- LEA's Responsibility
- Characteristic of Services
- Formal Complaint
- Transferability & Waivers

# Equitable Services



- "Equitable Share" represents the portion of federal funding generated by participating private school students.
- The LEA is required to sign assurances promising to provide equitable services according to law.
- LEAs are "program administrators" for the equitable services provided to participating private schools in the LEAs attendance area.



1. In key ESEA programs, the law provides for equitable participation of private school students, teachers and other educational personnel, and, in some cases, families.
2. Consultation must be timely and meaningful.
3. Funds generated for equitable services must be equal on a per-pupil basis.
4. A public agency must control funds. Private schools do not receive funds.

5. Services must be secular, neutral, and non-ideological; supplemental; and costs must be allowable, necessary, and reasonable.
6. Private school officials have the right to file a formal complaint.

- To help ensure that private school children, teachers, and other educational personnel receive services equitable to those in public schools, an SEA must designate an ombudsman to **monitor and enforce Title I and Title VIII equitable services requirements.**
- *ESEA Sections 1117(a)(3)(B) and 8501(a)(3)(B)*



- The ESEA requires local educational agencies (LEAs) and other eligible entities (hereafter referred collectively as LEAs) to provide for the equitable participation of private school students, teachers and other educational personnel, and, in some cases, families in some of the ESEA's major programs.
- *ESEA sections 1117 and 8501*

- Title I, Part A – Improving Basic Programs Operated by LEAs
- Title II, Part A – Supporting Effective Instruction
- Title IV, Part A – Student Support and Academic Enrichment
- Title I, Part C – Education of Migratory Children
- Title III, Part A – English Language Acquisition, Language Enhancement, and Academic Achievement
- Title IV, Part B – 21st Century Community Learning Centers

The LEA:

- Assesses, addresses and evaluates the needs of private school students and teachers;
- Provides benefits and services that meet the needs of private school students and teachers;

- Determines an equal amount of funds on a per student basis to provide equitable services; and
- Provides private school students and teachers with an opportunity to participate in activities equitable to the opportunity provided public school students and teachers.

### Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies

- Ensures all children have a fair, equal, and significant opportunity to obtain a high-quality education; and
- Provides equitable services to private school students to improve the achievement of students who are failing or most at risk of failing to meet challenging academic achievement standards and who reside in participating public school attendance areas with high concentrations of students from low-income families.

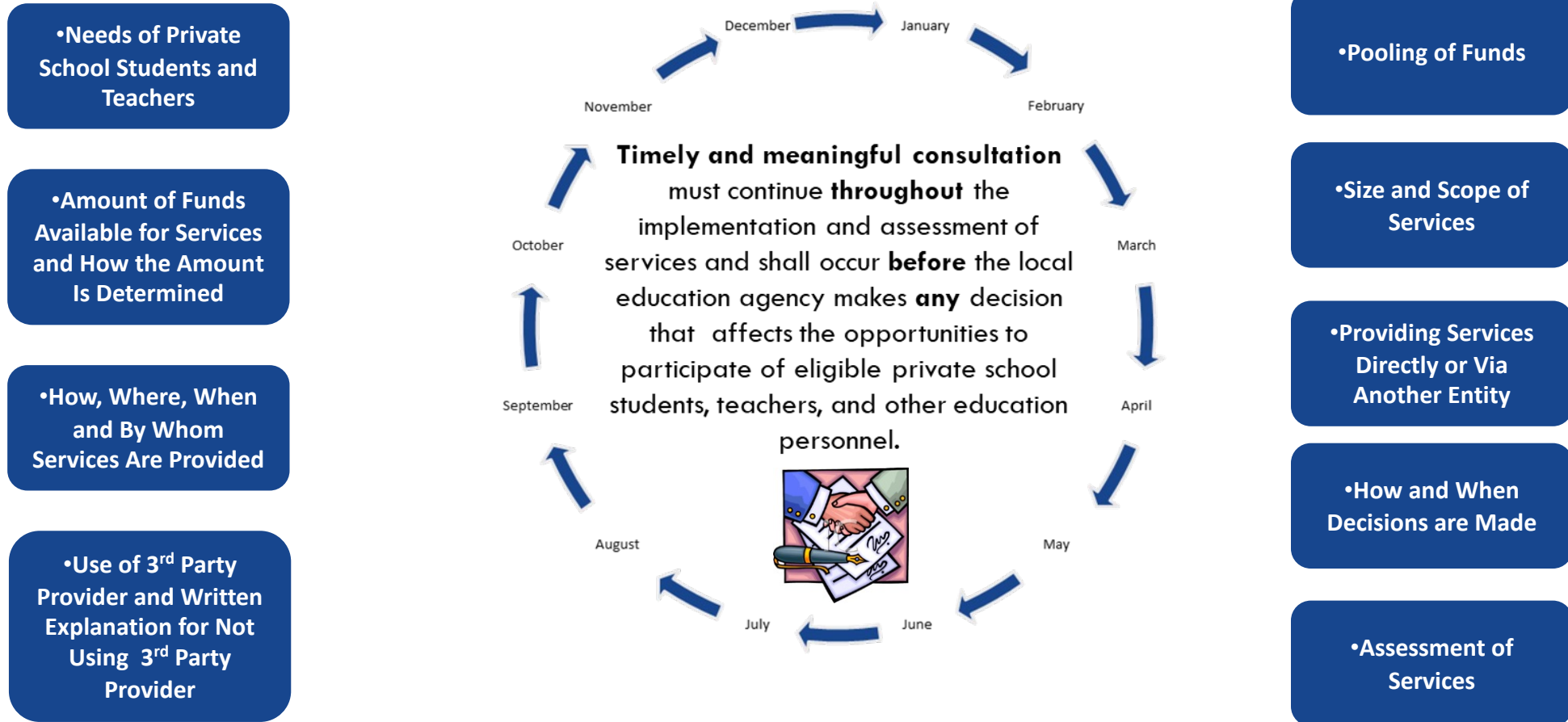
- An LEA is **required to consult** with private school officials regarding the provision of equitable services.
- Consultation must occur during the **design, development, and implementation** of the respective program.
- Consultation must **occur before the LEA makes any decision** that affects the opportunity of eligible private school students and teachers to participate and must **continue throughout** the implementation and assessment of services.

*ESEA sections 1117(b)(3) and 8501(c)(3)*

- Meaningful consultation provides a **genuine opportunity** for all parties to **express their views**, and to have their views **seriously considered**.
- Timely consultation provides **adequate notice** to private school officials.
- Successful consultation establishes **positive and productive working relationships**.

*ESEA sections 1117(b) and 8501(c)*

## Written Affirmation of Consultation Requirement





- An offer of services by an LEA without an opportunity for timely and meaningful consultation with private school officials does not meet the requirement of the law.

- The **goal of consultation is agreement** between the LEA and appropriate private school officials on how to provide equitable and effective programs for eligible private school children.
- *ESEA sections 1117(b)(1) and 8501(c)(1)*

- Each LEA shall maintain in the agency's records, and provide to the State educational agency (SEA) involved, a written affirmation signed by officials of each participating private school that the meaningful consultation has occurred.
- The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

- If private school officials do not provide an affirmation within a reasonable period of time, the LEA shall forward documentation that consultation has, or attempts at consultation have, taken place.

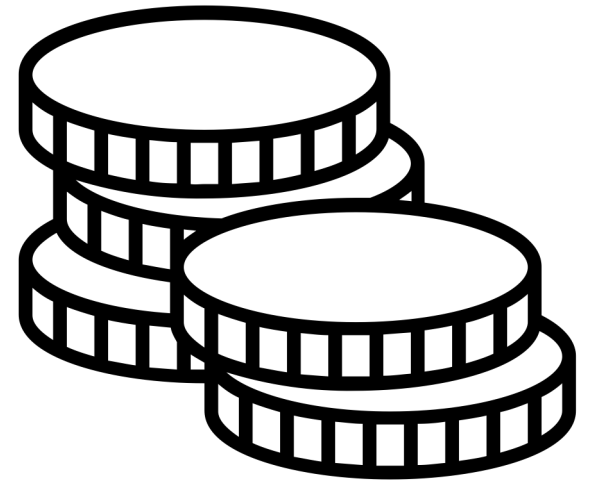
*ESEA sections 1117(b)(5) and 8501(c)(5)*

Month	LEA Activity
August	<ul style="list-style-type: none"><li>• Begin programs and services.</li><li>• Consult with private school officials about current programs and services implementation and modify as necessary.</li></ul>
October	<ul style="list-style-type: none"><li>• Continue consultation about current programs and services implementation.</li></ul>
November - December	<ul style="list-style-type: none"><li>• Consult with private school officials about the status of current programs and services.</li><li>• Obtain complete list of all private schools with appropriate contact names for later use in mailing “Intent to Participate in Federal Education Programs” forms.</li></ul>
January	<ul style="list-style-type: none"><li>• Continue consultation with private school officials about the status of current programs and services.</li><li>• Send “Intent to Participate” forms to all private schools in the LEA with a February deadline for returning the forms.</li></ul>

Month	LEA Activity
February - March	<ul style="list-style-type: none"><li>• Continue consultation with private school officials about the status of current programs and services.</li><li>• Conduct a district-wide consultation meeting with all private school officials and provide a general overview of programs that will be available to their students and teachers in the next school year.</li><li>• Provide private school officials with planning document to prepare them for consultation about next year's programs and services.</li><li>• Consult with private school officials to identify students' and teachers' needs, discuss services and estimated funding figures, design programs, and establish priorities for the next school year.</li></ul>

Month	LEA Activity
April - May	<ul style="list-style-type: none"><li>• Evaluate programs and services for the current school year and make suggestions for modifying programs that will be implemented again in the next school year.</li><li>• Continue consultation and planning for programs and services for next school year.</li><li>• Complete plans for programs and services and set dates for when they will begin in the next school year.</li><li>• Develop consultation timeline for the next school year.</li></ul>
June	<ul style="list-style-type: none"><li>• Finalize actions related to programs and services.</li></ul>
July - August	<ul style="list-style-type: none"><li>• Inform private school officials about the readiness of programs and services for the upcoming school year.</li><li>• Provide programs funding figures or estimates to private school officials for upcoming school year.</li></ul>

- Educational services and other benefits provided to private school students and educators must be equitable in comparison to the benefits for public school students and educators.
- *ESEA sections 1117(a)(3)(A) and 8501(a)(3)(A)*





### Title I Proportional Share

- An LEA must determine the proportional share of Title I funds available for equitable services based on the **total amount** of Title I funds received by the LEA prior to any allowable expenditures or transfers of funds:

- 1) Determine the overall proportion of these children who attend private schools.
- 2) Based on this proportion, determine the amount of funds available for equitable services based on that proportion of the LEA's total Title I allocation.

*ESEA section 1117(a)(4)(A)*

### Title VIII Equitable Share

Expenditures for services for programs for private school students and teachers must be equal to those of public school students on a per-pupil basis, taking into account the number and the educational needs of children to be served.

*ESEA section 8501(a)(4)(A)*

- An **SEA must provide notice** in a timely manner to appropriate private school officials in the State of the **allocation of funds for educational services and other benefits** under each **ESEA program** that an LEA has determined are available for eligible private school children, teachers and other educational personnel, and families.
- *ESEA sections 1117(a)(4)(C) and 8501(a)(4)(C)*

- Child resides in a Title I participating public school attendance area, attends a private school, AND is identified by the LEA as:
- Low achieving on the basis of multiple, educationally related, objective criteria; or
- Homeless, in the prior 2 years participated in Head Start, a literacy program under Title II, a Title I preschool program, or Title I, Part C, or is a child in a local institution or community day program for neglected or delinquent children.

*ESEA sections 1115(c)(1)(B) and 1117(a)(1)*

- Students enrolled in private schools located in the area served by the ESEA program are eligible to participate.
- May be restricted based on the purpose of the ESEA program (ex. Title III, Part A).
- Where funding and resources may limit the number of children who can participate in the program, LEAs must consult with private school officials on this matter.

*ESEA sections 8501(a)(1) and 8501(b)(2)*

- Participation in a Federal or State private school choice program does not affect a private school student's eligibility for equitable services under an ESEA program. Regardless of the source of funds paying a private school student's tuition, a student is eligible for equitable services under the ESEA if the student meets the eligibility requirements of the respective program.

An LEA remains in control of the federal funds and maintains title to materials, equipment and property purchased with such funds.

*ESEA sections 1117(d)(1) and 8501(d)(1)*





- Any equipment, property or materials provided that are not consumed during use remain the property of LEA, entered in the LEA's inventory records, and must be recovered and secured by the LEA when not in programmatic use (for example, if not used during the summer)

- Services, materials, and equipment must be secular, neutral, and non-ideological.
- Services must be supplemental in nature; they may not supplant what the private school would otherwise provide absent the federal education services.
- The services must be allowable, reasonable, and necessary in meeting the needs of private school students and teachers.

*ESEA sections 1117(a)(2) and 8501(a)(2); 34 CFR 299.8; and 2 CFR Part 200.*

Private school officials, or any interested party, have the right to file a formal written complaint with an SEA if they believe that timely and meaningful consultation has not occurred, the LEA did not give due consideration to the views of the private school officials, or that equitable services have not been provided.

*ESEA sections 1117(b)(6) and 8501(c)(6)*

### **A formal written complaint must be addressed to the SEA and include:**

- A statement that the LEA has violated a requirement of a federal statute or regulation that applies to a program requiring equitable participation;
- The facts on which the statement is based and the specific statutory or regulatory requirement allegedly violated; and
- The signature of the complainant.

For all equitable services matters, an Equitable Services Dispute Resolution Policy has been created, adopted by the Mississippi State Board of Education, and entered into the Mississippi Administrative Code at [Title VII, Pt. 3, Ch. 80, Rule 80.4.](#)

Procedures include:

- Private school indication of “disagreement” on an Affirmation of Consultation form (Plan or Transfer), or other private school complaint concerning equitable services, triggers the dispute resolution process.
- Step 1: Informal settlement conference, attempting to resolve the dispute in an OFP-moderated setting (virtual meeting, etc.).
- Step 2: Formal Complaint and Response.
- Step 3: Consideration and written decision by Ombudsman.
- Step 4: Appeals are possible.

# Transferability & Waivers

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Transferability is a tool by which LEAs can transfer funding from Title II-A or IV-A to other Title programs (I-A, I-C, I-D, II-A, III-A, IVA, and V-B). If equitable services are not involved, transfers pose no problems.



Administrative decisions issued by the U.S. Dept. of Ed. indicate that the LEA's desired transfer will survive a private school complaint if consultation was conducted about the transfer with the affected private school, and that consultation:

- (1) was timely – conducted before the transfer decision was made,
- (2) was meaningful, and
- (3) shows due consideration of the private school's views

LEAs consulting about transfers should be mindful of documentation establishing the fact of pre-decision consultation:

- Prior to deciding to submit a funding application incorporating transfer(s), first engage in the required consultation with affected private schools to further inform the LEA's transfer considerations. Document the meeting/communications.
- Consider the private school's views. Consider and discuss alternative courses of action. Document this process.

- Use the Affirmation of Consultation for Transfer form when the final decision is made, showing the funding consequences of the transfer. Attach all documentation of pre-decision discussions.
- The private school will sign this form and agree or disagree with the transfer decision represented on the Affirmation of Consultation for Transfer form. If disagreeing, the private school's complaint will be resolved using the Dispute Resolution Procedure.
- Upload the form and all attached documentation to your LEA Doc Library in MCAPS, to the Equitable Services Plan subfolder.

- A private school's complaint about a transfer decision will initiate the Equitable Services Dispute Resolution Procedure, and a fact-based examination of the "timely," "meaningful," and "due consideration" criteria will occur, with the Ombudsman issuing a written decision.
- Appeals may be taken (consecutively) to the State Superintendent, US ED, and to the federal courts.

Partial Participation is an elective option for a private school not desiring to use its entire equitable share, including possible carryover.

- If a private school determines its educational needs are met by using a certain portion of its equitable share, it may elect to waive the remaining funds.
- The remainder is re-distributed; however, guidance indicates that under certain circumstances the remainder may go entirely to other participating private schools, if present – so contact the MDE.
- The [partial waiver form](#) is available for download from the OFP website (Private Schools section). Contact the MDE, who must approve this transaction.

# Resources

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- [Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements](#)
- [ESEA Title I Part A Equitable Services Non-regulatory Guidance \(October 2019\)](#)
- [DRAFT ESEA Title VIII Equitable Services Non-regulatory Guidance \(March 2022\)](#)
- [ESEA State Ombudsman Corner](#)
- [ESEA State Ombudsman Directory](#)
- [ONPE website](#)

### [U.S. Dept. of Education - Title IV-A Guidance](#)

Excellent IV-A guidance for idea-generation, with detailed category uses

### [Mississippi Administrative Code at Title VII, Part 3, Chapter 80, Rule 80.4](#)

Equitable Services Dispute Resolution Policy



# Questions

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