



Fall Forum 2021
Stimulus Funds and UGG, and You and Me, So Happy (Back) Together



Equitable Services and EANS


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Agenda

- Equitable Services Generally
- CARES Act Equitable Services
- Emergency Assistance to Non-Public Schools (EANS)

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Equitable Services Generally

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Equitable Services – ESSA Rules

ESSA Title I, Section 1117

- LEAs must provide educational services and benefits to eligible private school students (and teachers) that are equitable in comparison to the Title I services provided to public school students. ESSA Section 1117(a)(3).

ESSA Title VIII, Section 8501

- Title I,C – Migrant Children
- Title II,A – Instruction
- Title III,A – English Learners
- Title IV,A – Student Support and Academic Enrichment
- Title VI,B – 21st CCLC

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Equitable Services

- ED's Informational Document Dated October 2019 Supersedes:
 - ED's 2003 Toolkit
 - and**
 - ED's 2016 Guidance

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Determining Equitability

Equal Expenditure

- Total amount of funds expended, in the aggregate, by the LEA for services to eligible private school children must be equal to the **proportion** of funds generated by private school children from low-income families who reside in participating public school attendance areas. 34 CFR 200.64.

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Determining Equitability

Services are equitable if they address specific needs

- Addresses and assesses the specific needs and educational progress of eligible private school children on a basis comparable to public school children. 34 CFR 200.64.
 - For instance, a particular reading program used in the public school does not mean it can simply be applied to the private school program without first analyzing the specific needs and progress of the private school students.

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Determining Equitability

Equitable Opportunity

- Provides private school students with an opportunity to participate that is equitable to the opportunity provided to public school children.
 - Provides reasonable promise of the private school students achieving the high levels called for by the state's standards or equivalent standards applicable to private school students. 34 CFR 200.64.

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Consultation (ESSA Section 1117(b); 8501(c))


- Consultation is still key
- Written affirmation that timely and meaningful consultation occurred
- LEAs must give option to private school officials to indicate belief that timely and meaningful consultation did not occur; or that the program design is not equitable with respect to eligible private school children.
- When disagreement, the LEA must provide in writing:
 - *The basis of the disagreement,*
 - *The LEA's decision, and*
 - *The right to complain.*



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Consultation (cont.)



- LEA initiates annual contact – even if declined past year (A-6)
- Intent to participate form
 - *Best practice*
 - *Can set “reasonable deadlines” for submission*
 - *Send to all privates in district that may have eligible students*

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ESEA Consultation Topics Generally

Children's needs	What services	How, where, by whom	Size and scope
Data to ID students (as applicable)	How and when LEA makes decisions	If LEA disagrees on third-party contract – reasons in writing	School by school or pooling
	Time of day for provision of services	Coordinate with other programs	

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Consultation (cont.)

Documentation – required

- *Written affirmation*
- *Agreement*
- *Reasons for disagreement*
- *Other best practices*

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Consultation (cont.)

A-12. Is other documentation on consultation helpful?

- Yes, LEAs & private schools should maintain a record of notes about issues in consultation meetings
- As a best practice LEA should document that it has:
 - Annually informed private school officials of available services;
 - Engaged in timely consultation;
 - Identified needs of private school student, teachers, families;
 - Allocated amounts appropriately;
 - Provided services;
 - Evaluated programs and services for effectiveness;
 - Adequately addressed problems and formal complaints.

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Private School Documentation

A-15. In general, what documentation does an LEA need from private school officials in order to provide Title I services to eligible students in those schools?

- LEA may request documentation, as needed.
 - Info to ID students who generate equitable services funds
 - Info to ID student eligible for services
 - Names, addresses and grade level of students
 - Eligible students residing in a different LEA



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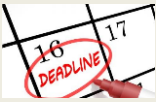
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Newly Opened School

A-16. What is an LEA's obligation to consult with, and provide services to eligible students attending, a new private school that opens after the LEA's deadline for indicating an intent to participate?

- An LEA is NOT required to provide equitable services in the current year if the school opens after the LEA's deadline for indicating an intent to participate.
 - However, LEA can choose to do so
- When contacting schools in the following year, the new school must be included



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Private School Declines to Participate

A-17. What is an LEA's obligation to provide equitable services under Title I if a private school declines to participate or does not respond to the LEA's request to consult?

- LEA has no further responsibility to provide equitable services to students in that school during that school year.
- LEA must demonstrate it made a good faith effort.
- LEA must contact the school again next year.

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Coordination of Services

LEAs need to ensure that students are receiving both ESSA and IDEA services (34 CFR 300.138; ESSA Sec. 1117; 8501)

If a student is eligible for an hour of tutoring/instruction under Title I, and an hour of services identified under IDEA...

Must receive both (2) hours LEA cannot combine services into a single hour

Can coordinate to ensure no overlap

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LEA Maintains Control

- LEA plans, designs, and implements program (through timely and meaningful consultation)
- LEA controls all finances
*Includes maintaining title to materials, equipment, and property purchased with those funds
- When no longer needed for the purposes of the program, equipment and supplies must be removed. 76.661(b); 200.313(a)(1), (c)(1) and 200.314(a)

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Title I, A Proportionate Share Calculation

- Proportionate Share Formula (ESSA Section 1117(a)(4)):
- Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools.
- Figure out the proportion of children in private schools.
- Apply the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate shared.
- Include funds transferred into Title I

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Title I, A Proportionate Share Calculation

Example – Determining the Proportional Share

Public School Attendance Area	Number of Public School Low-Income Children	Number of Private School Low-Income Children	Total Number of Low-Income Children
A	500	120	620
B	300	9	309
C	200	6	206
D	350	15	365
Total	1,350	150	1,500
Proportional Share	90%	10%	
	\$900,000	\$100,000	

Source: The U.S. Department of Education Guidance¹

Example: Total Title I allocation of \$1,000,000

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Pooling



Pooling – Provide equitable services by pooling Title I funds within (or across) the LEA, such as in a group of schools under the authority of a single organization.

- B-8: Need consultation and agreement for any pooling!
 - "agreement" requirement new – places more power in hands of schools
 - But can use "reasonable deadlines" and pooling option to encourage more schools to participate/use offered opportunities?


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Pooling (cont.)

B-9: May an LEA choose unilaterally to pool funds/services?

- No. Proportion of services is intended to be "commensurate with the Title I funds generated by students from low-income families in the school"
- Pooling can be done after meaningful consultation and **mutual agreement** to serve a group of eligible students
 - "LEA and appropriate private school officials must agree through consultation for the LEA to pool Title I funds among a group of private schools because it impacts the services eligible students in a given private school would otherwise receive"



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Poverty Data & Transferability

B-24 & B-25: May an LEA retain funds or transfer funds solely to provide equitable services?

- No.

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Carryover

B-28: How does the 15 percent carryover limitation in ESEA section 1127(a) apply to equitable services carryover?


- "[I]f an LEA exceeds the carryover limitation, and an SEA reduces the LEA's allocation as a result, such reduction may not come from the portion of carryover funds used to provide equitable services."
- (Exception if one or more private schools declines some or all services AND there are no other participating private schools)

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Third Party Contracting (C-28)



- May contract with religious organizations
- *Trinity Lutheran v. Comer* (Supreme Court)
- Any third-party contractor must be independent from private school

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New Q&A – Independent Contractor

C-29. What does it mean for a contractor to be independent of the private school in the provision of equitable services?

- Depends on the extent to which the contractor has administrative or fiscal direction and control over the private school.
- Example 1: an administrative body that oversees a group of affiliated private schools and has control over the schools' curriculum and hiring policies would NOT be independent of a private school subject to its authority.
- Example 2: a membership organization with no authority over the operations of its member schools likely would be considered independent of such schools.

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Ombudsman Requirement

E-1. What are the roles and responsibilities of an ombudsman?

- SEA must designate an ombudsman to monitor and enforce ESEA equitable services requirements under both Title I and Title VIII
 - Serve as general resource for LEAs and private school officials
 - Develop monitoring protocols with SEA
 - Provide technical assistance for SEA staff administering applicable programs, LEA staff, and private school officials

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Complaint Requirements

F-1. What information must a formal written complaint to the SEA include?

- A statement that an SEA or 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.

34 CFR §299.12

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SEA Handling of Complaints

F-3. What options are available to private school officials if the SEA does not answer their complaint in a timely manner or if the SEA's response fails to resolve the problem?

- Private school officials may appeal to ED no later than 30 days following the SEA's resolution of the complaint (or its failure to resolve the complaint within 45 days).
- ED investigates and resolves the appeal no later than 90 days after receipt of the appeal. (ESEA section 8503)

F-4. May an SEA require a private school official to file a formal complaint with the LEA and await the LEA's resolution before filing a complaint with the SEA?

- Yes, but the 45-day limit still applies

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Question

Generally, under the coronavirus relief legislation, grantees must maintain public control of funds?

- A. True
- B. False

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CARES Act Equitable Services


Providing Equitable Services to Students and Teachers in Non-public Schools under the CARES Act Programs: <https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf>

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CARES Act Equitable Services



Section 18005 provides for equitable services

- Applies to the Elementary and Secondary School Education Relief Fund (ESSER) and the Governors Emergency Education Relief Fund (GEER)
- Services should be provided to students and teachers in non-public schools "in the same manner as provided under Section 1117 of the ESEA"
 - Subject to consultation
- Funds must remain "under the control" of the public entity (LEA)


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ED October 2020 Guidance

- Should calculate set-aside based on Title I percentage
 - Can use 19-20 or 20-21
- Once set-aside is calculated, should offer services to all private schools and students *located* in your district
- Can base individual private school portion on total enrollment of schools




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Which Private Schools are Eligible to Participate?

- Non-profit private schools
- In existence prior to March 13, 2020
- Located in the District
 - (October guidance)



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Must the Equitable Services Funding be used for Supplemental Costs?

- No!
- E.g., May use funding to facilitate remote learning for students and teachers in private schools
 - *Purchase laptops*
 - *Increase bandwidth*
 - *Provide improved cyber security or virtual classroom platform licenses*
- But ...
 - *LEA must maintain title to the materials, equipment and property*
 - *LEA must administer the contract, materials, equipment and property*
 - *All services, materials and equipment must be secular*

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Can the LEA use CARES Funds for Repairs, Renovation or Remodeling in a Private School? (E.g., creating outdoor classrooms)

- No. LEA must maintain title to any materials, equipment and property.
- 34 CFR 76.661(c)(2) applies to CARES Act funds – requires equipment and supplies placed in a private school to be removable without remodeling.
- But – nonpermanent improvements, easily removed may be allowable, such as setting up a screening area in a tent; temporary partitions to assist with social distancing; or hand sanitizing stations.

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How Long may Equipment and Supplies Purchased with CARES Act Funds Placed in a Non-Public School Remain There?

- During the period of performance or until the equipment and supplies are no longer needed for the purposes of the CARES Act program.
 - 76.661(b); 200.313(a)(1), (c)(1) and 200.314(a)
- Once no longer needed, the LEA may continue to use the equipment or supplies in the non-public school to the extent they are needed for other allowable purposes under another federal education program (ESEA, IDEA).

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Emergency Assistance to Non-Public Schools

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EANS

- “[T]o provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the qualifying emergency”
- \$2.75 billion in CRRSA
- \$2.75 billion in new money through ARP
- ED outlined requirements in [Federal Register notice](#) and [nonregulatory guidance](#) (last updated 9/17)



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Stimulus Funding... to Private Schools???

- Allocated to States based on their share of low-income children enrolled in non-public schools
 - As determined **by ED** based on "best available data"
 - Guidance: ED will use ACS "Public Use Microdata Sample" (PUMS)
- States will be designated to administer
 - Applications for States must be released within 30 days of enactment
 - State may reserve \$200,000, or 0.5% of its grant, whichever is greater, for administration

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Stimulus Funding...to Private Schools???

- States must
 - Prioritize private schools that enroll low-income students and "are most impacted" by the national emergency
 - Distribute information and make easily available
 - Move quickly to allocate and obligate:
 - Publish applications within 30 days of receiving GEER funding
 - Approve or deny applications within 30 days of receipt
 - Obligate funds within 6 months (or will be returned to Governor for other GEER uses)

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School Qualifications


- School must be non-profit
- Must be accredited/licensed and in existing prior to March 13, 2020
- Must not receive PPP loan concurrently (after December 27, 2020)
- Must meet enrollment/impact qualifications
 - CRRSA: prioritize those that enroll students from low-income families and are most impacted by pandemic
 - ARP: only serve those that enroll a significant percentage of students from low-income families and are most impacted by pandemic
- Does not need to have received federally funded services before (e.g., under equitable services)

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How to Determine Low-Income Enrollment?



- ED guidance: Choose from sources that measure enrollment at or below 185% of poverty level:
 - *Free- and reduced-price meal data*
 - *E-rate data*
 - *Scholarship or financial assistance data*
 - *Data from survey developed by SEA*

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How to Determine Impact?

- SEA can choose a metric which must include one or more of:
 - *Community per-capita infection rates*
 - *Community per-capita death rates*
 - *Data on academic, social-emotional, and mental health impact of lost instructional time*
 - *Data on economic impact*

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Key Differences from Equitable Services

- No consultation requirement
 - *ED guidance: SEA would "benefit greatly" from "timely and meaningful consultation"*
 - *Application is not the same as consultation but "serves similar purpose"*
- No designated appeals process or requirement to establish one
 - *ED guidance: SEA "may choose to establish" process or "may use its regular complaint process" (may be required by State law)*
- EANS I allows for reimbursement for certain expenses dating back to March 2020
 - *ARP-EANS does not allow for reimbursement*

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EANS Timeline

The diagram features a horizontal timeline arrow pointing right. A clock icon is positioned in the center of the arrow. Key events are marked with red dots along the arrow:

- 30 Days out:** ED must release State application for EANS
- 60 Days out:** SEA must publish applications within 30 days of receiving funding
- 90 days out:** SEA must approve or deny applications within 30 days of receipt
- SEA must obligate funds within 5 months of receipt***

Additional information:

- Date of enactment:** Dec. 27 (CRRSA) / March 11 (ARP)

*If SEA does not obligate by 6-month deadline, funds roll over into CEER and are available through September 30, 2023 (CRRSA) or September 30, 2024 (ARP) (including Tydings period)

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EANS Allowable Uses of Funds

- Supplies to sanitize/disinfect/clean
 - *ED guidance: cleaning services not allowable*
- Personal Protective Equipment
- Improving ventilation systems
 - *Includes only installation of supplies and equipment (even if items being installed are not otherwise allowable)*
- Training and PD on sanitization, use of PPE, minimizing spread of disease
- Physical barriers to facilitate distancing

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EANS Allowable Uses of Funds

- "Materials, supplies, or equipment" needed to implement public health recommendations
- Expanding COVID testing capacity
- Education technology
- Reworking instructional plans for remote learning or learning loss
- Leasing space in order to meet distancing guidelines
- "Reasonable transportation costs"
- Support services for remote/hybrid instruction or to address learning loss

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EANS I Reimbursement

- Reimbursement of any allowable expenditures is allowed, **except for**:
 - *Ventilation systems (portable air purification devices are eligible for reimbursement)*
 - *Training and professional development on cleaning, PPE, disease spread, etc.*
 - *Reworking instructional plans*
 - *Initiating and maintaining education and support services*
- Allowable for expenditures back to March 13, 2020
- **ARP/EANS II: no reimbursement allowed**

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Limitations on Services: Guidance



- SEA cannot “artificially limit” services before it knows extent of interest
 - *Types and amount*
- Suggest estimating amount of services or assistance available and reopen process later

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EANS “Public Control” Standard

- Funds must remain under “public control”
- Services can be provided directly or through contracts
 - *Providers must be independent of private school*
- Services must be “secular, neutral, and non-ideological”
- Funds may not be used for vouchers or scholarship programs
 - *Exception: if a student received that assistance under CARES, may use funds to complete school year*



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What Does “Public Control” Mean?

- Generally: can’t hand over funds to private schools, must track and retain title to all items purchased
 - *E.g. track and inventory laptops, air purifiers*
- Once equipment and supplies no longer needed, then SEA must remove them from the school
 - *Including consumables (PPE, cleaning supplies, etc.).*
 - *SEA can then use items there or elsewhere “to the extent needed for other allowable purposes under another federal education program”*

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