

# Equitable Services under the CARES, CRRSAA, and ARP Act

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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"
- 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 data
- 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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Equitable Services Generally

<https://www2.ed.gov/about/inits/ed/non-public-education/files/equitable-services-guidance-100419.pdf>

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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 – 21<sup>st</sup> CCLC

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

Consultation is still key

Written affirmation that timely and meaningful consultation occurred

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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## Consultation (cont.)

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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## 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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## 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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## 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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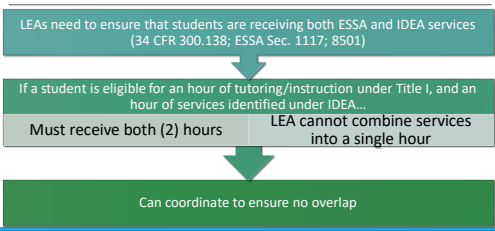
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## Coordination of Services



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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

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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
<b>Total</b>	<b>1,350</b>	<b>150</b>	<b>1,500</b>
<b>Proportional Share</b>	90%	10%	
	\$900,000	\$100,000	

Source: The U.S. Department of Education Guidance<sup>1</sup>

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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## Transferability

LEAs can unilaterally decide to transfer funds out of TII or TIV (after consultation)

- LEAs do not need prior approval from the Department to exercise the transferability authority, but before an LEA can transfer funds from a program subject to equitable services requirements, it must engage in timely and meaningful consultation with appropriate private school officials. (ESEA 5103(e)(2)).

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

- No.

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## Administrative Expenses

B-36. How does an LEA reserve Title I funds for its administration of the Title I program to provide equitable services for private school students?

- After consultation, necessary and reasonable amount
- Title I admin for private schools is a separate cost objective from Title I admin for public schools.

B-40. May an LEA charge indirect costs associated with providing equitable services to the proportional share of Title I funds available for equitable services?

- Yes (but subject to restricted rate under Title I)
- Required consultation topic

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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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## 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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## Carryover (cont.)

B-27: What are the mandates for carryover on the equitable services mandated set-aside?

"If an LEA is providing equitable services as required and meeting the obligation of funds requirement in ESEA section 1117(a)(4)(B), it generally should not have any, and certainly not significant, carryover." However, the ESEA in most cases requires carry over of funds for equitable services.

- In determining how equitable services carryover funds should be used the following year, the LEA must consult with the appropriate private school officials.

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## Carryover (cont.)

How must carryover funds be spent?

Any carryover of funds allocated for equitable services must be used to provide equitable services the following year and should not be re-allocated for a significantly different purpose.

**Example 1:** Reason for carryover – Services were delayed

- Use of carryover – The LEA must use the funds to provide equitable services to the eligible children in the affected private schools the following year.

**Example 2:** Reason for carryover – Services are provided in full, but funds remain.

- Use of carryover – The LEA must use these funds the following year to provide equitable services to students in the affected private school.
- If, after consultation, those private school officials decline such services, the LEA must add the funds to the proportional share available to other participating private schools.
- If there are no other participating private schools, the funds may be used to provide Title I services in public 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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# Equitable Services Audit Objectives

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## Audit Objectives

Determine whether

- 1) The LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children,
- 2) The planned services were provided, and
- 3) The required amount was used for private school children.

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## Suggested Audit Procedures

- a. Verify, by reviewing minutes of meetings and other appropriate documents, LEA conducted timely consultation with private school officials in making its determinations and set aside the required amount for private school children.
- b. Review program expenditures/records to verify that services that were planned were provided.
- c. Verify the appropriate calculation was used.
- d. Verify that the LEA retains proper administration and control by having a written contract that: (1) Describes the services to be provided; and (2) Provides that the agency, consortium, or entity retains ownership of materials, equipment, and property purchased with Federal I funds.

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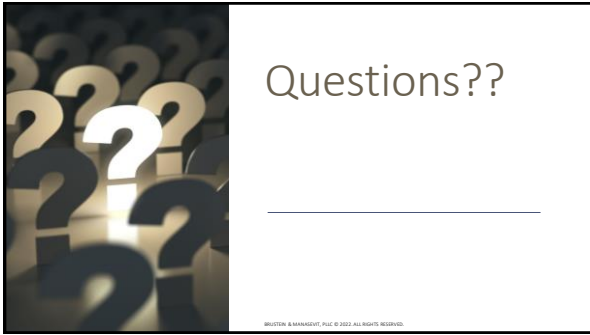
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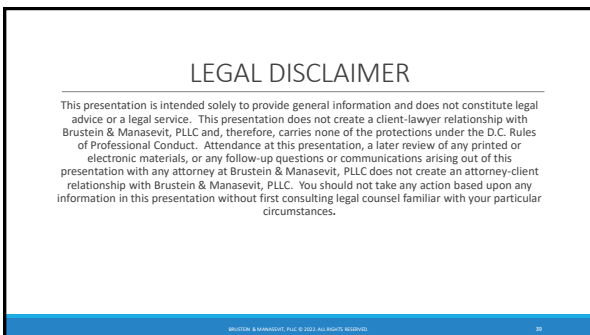
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