



Fall Forum 2023  
Bracing For Significant Regulatory Changes

# ESEA EQUITABLE SERVICES AND EANS

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# AGENDA


ESEA Equitable Services

- Overview
- Title I
- Title VIII

EANS

- Overview

FAQs



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# WHAT ARE EQUITABLE SERVICES?

Requirement under ESEA for educational entities receiving ESEA funds to provide services to “eligible” children and educators at non-public schools that are equitable in comparison to the services provided to public school students for the given program

- Share of funding allocated to the provision of these services is determined based on [the number? The percentage?] of “eligible” children

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**EQUITABLE SERVICES – THE BASICS**

Two Equitable Services programs under ESEA

- Title I-A → Section 1117
- Title VIII → Section 8501
  - Apply to...
    - Title I-C
    - Title II-A
    - Title III-A
    - Title IV-A
    - Title IV-B
    - Title IV-F (Project SERV)

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**EQUITABLE SERVICES – THE BASICS**

- LEAs must calculate the “proportional share” of funding for equitable services under each covered program
- \*\*\*Calculation for Title I differs from the programs covered under Title VIII



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**EQUITABLE SERVICES – THE BASICS**

- If a covered program has eligibility/participation restrictions (e.g., Title III-A for ELs), the restrictions also apply to equitable services
- All services and benefits provided must be “secular, neutral, nonideological”
- LEA must maintain control of funds!
  - Share of funds for private schools is used to provide services and benefits
    - Funds are never distributed to the private schools

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## EQUITABLE SERVICES – THE BASICS



- Consultation, consultation, consultation!
- LEAs must consult with private schools in an ongoing, meaningful, and timely manner

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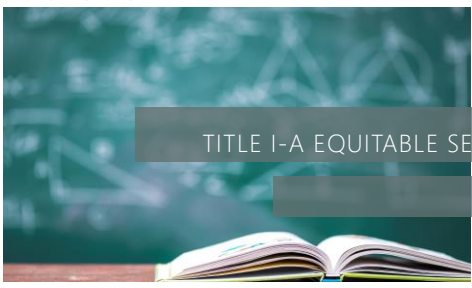
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## TITLE I-A EQUITABLE SERVICES



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## TITLE I EQUITABLE SERVICES CALCULATION

Proportionate Share Formula (ESSA Section 1117(a)(4)):

1. Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools
2. Figure out the proportion of those children in private schools
3. Apply the private school proportion to the LEAs total Title I allocation to determine the equitable services proportionate share

\*Include funds transferred into Title I\*  
Must occur before any required reservations

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### TITLE I EQUITABLE SERVICES CALCULATION

How does the LEA determine the number low-income students attending private schools?

1. The same measure of poverty used to count public school children (Free and Reduced-Price Lunch, etc.)
2. Comparable poverty data from a survey
3. Comparable poverty data from a different source
4. Proportionality
5. An equated measure

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### TITLE I EQUITABLE SERVICES CALCULATION

Data source must be discussed during timely and meaningful consultation!!

"LEA cannot conclude that a survey is the best source of poverty data without at least consulting about other sources that may exist." –Title I ES Guidance

BUT, LEA has the final authority to decide which method it will use

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### COMPARABLE POVERTY DATA FROM A SURVEY

- Must protect identity of families to the extent possible
- Should not require that private school officials give the names of low-income families
- Only required information:
  1. Verification of residence in a participating Title I public school attendance area;
  2. Grade level and age of each child; and
  3. Household income

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### COMPARABLE POVERTY DATA FROM A SURVEY

**NEW!** Updated Title I ES Guidance May 2023

- If LEA cannot obtain complete data and decides to use survey data, must extrapolate (only if LEA has "representative sample")
- No definition of "representative sample" but guidance says...
  - survey data from 300 students out of 400 → representative
  - sample data for 25 out of 100 students → not representative
- Presumption is that if a survey is conducted it is representative

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### COMPARABLE POVERTY DATA FROM A SURVEY

**NEW!** Updated Title I ES Guidance May 2023

- IF private school officials disagree with presumption of representative sample (during consultation)...
- LEA must further review the representativeness
  - What degree are respondents similar to non-respondents?
    - Can use neighborhood or Title I public school attendance area characteristics

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### COMPARABLE POVERTY DATA FROM A SURVEY

**NEW!** Updated Title I ES Guidance May 2023

- Then, LEA must share conclusions and rationale with private school officials
- If LEA analysis = not representative, LEA must use other sources of data in combination with survey data
  - Examples: E-Rate, scholarships, proportionality

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## COMPARABLE POVERTY DATA FROM A DIFFERENT SOURCE

- LEA may use a data source for private school children that is different than the source used for public school children
  - As long as income threshold in both sources is "generally the same"

Ex: FRPL data for public school and means-tested scholarship data for private school

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## PROPORTIONALITY

- Apply the low-income percentage of each participating Title I public school attendance area to the # of private school children who reside in that area to derive the # of private school children from low-income families

Example:

- 60% poverty in public school attendance area
- 50 private school children residing
- 50 students X .60 = 30 private school students from low-income families

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## AN EQUATED MEASURE

LEA may correlate sources of data

- Determine proportional relationship between two sources of data on public school children and apply that ratio to a known source of private school children data

$$\frac{TANF \text{ (public)}}{FRPL \text{ (public)}} = \frac{TANF \text{ (private)}}{X \text{ (private)}}$$

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### EQUITABLE SERVICES CONSULTATION

- LEA must initiate contact annually
  - May choose to send "intent to participate" form
- LEA may set reasonable timelines (e.g. for intent to participate)
- Must include early discussions to prepare for school year AND be ongoing throughout school year
- Maintain documentation!
  - \*Always goal of reaching agreement\*

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### EQUITABLE SERVICES CONSULTATION TOPICS

- Childrens' needs and how they are identified
- What services will be provided
- How, where, and by whom services are to be provided
- Size and scope of program
- Data to ID students
- How and when LEA makes decisions
- If services are to be provided directly or through a third party (if LEA disagrees on use of third-party contract - reasons in writing)
- If provided school by school or pooling
- Time of day for provision of services
- Any coordination with other programs

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### EQUITABLE SERVICES CONSULTATION TOPICS

- Administrative costs of providing equitable services
- Indirect costs
- Services and activities for teachers of participating private school students
- Family engagement activities
- Any funds available for carryover
- Transferring funds from Title II, Part A or Title IV, Part A into Title I, Part A



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## PROVISION OF SERVICES

LEA must establish "multiple, educationally related, objective criteria" to determine which students are eligible for Title I-A services within the overall eligible group

→ Services should be targeted to students with greatest need



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## PROVISION OF SERVICES - POOLING

- Options for providing services:
  - School-by-school
  - Pooling within an LEA
    - LEA must establish criteria (in consultation) to determine students with greatest educational need to receive services
  - Pooling across LEAs
    - Same criteria as pooling within an LEA
- Must be discussed and agreed to in consultation!!

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## TITLE VIII EQUITABLE SERVICES

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### TITLE VIII EQUITABLE SERVICES CALCULATION

Different from Title I calculation!

- Based on where the student **attends** private school, not where the student lives
- Eligible children = children and educators in nonprofit private elementary and secondary schools in the LEA's service area
  - If program has participation restrictions (e.g. Title III-A for ELs), the restrictions also apply to equitable services

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### TITLE VIII EQUITABLE SERVICES CALCULATION

- Based on data from prior year
  - Use same year data for public and private numbers
- Use only the number of children or eligible children in private schools that **wish to participate**
- Not the total number of private school children in the LEA

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### TITLE VIII EQUITABLE SERVICES CALCULATION

How are administrative costs calculated?

- LEA reserves admin costs (including indirect) from program's total allocation (off the top) before the LEA determines allocation for public and private school children and educators
  - Admin reservation covers costs of both public and private school components

Different from Title I ES!

- Proportional share calculated BEFORE any reservations

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### TITLE VII EQUITABLE SERVICES

- What requirements/options are the same as under Title I??
  - Consultation
    - Must be ongoing, timely, and meaningful
    - Must include all required topics
    - Must maintain documentation
  - Pooling options

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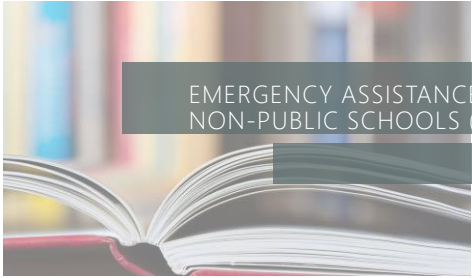
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### EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS (EANS)

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### EANS – THE BASICS

- Authorized by the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA)
  - Extended by the American Rescue Plan Act
- Funding to provide services to eligible non-public schools to address COVID-19 educational disruptions
- CARES Act → Equitable services
- CRSSAA and ARP → EANS

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## EANS – THE BASICS

- Awarded by formula to Governors; SEAs charged with administration
- Eligible schools had to submit application to State
  - Was made available by State within 30 days of receiving funds
  - State had 30 days to approve or deny application
  - State required to "obligate" funds within 6 months of receipt
    - Any remaining funds after 6 months revert to GEER
- Period of availability
  - CRSAA EANS: through Sept 30, 2023
  - ARP EANS: through Sept 30, 2024

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## EANS – THE BASICS

- As with equitable services...
  - Funds must remain under public control
  - Services must be secular, neutral, and non-ideological
- Consultation is highly encouraged but not required by statute
- Services provided must be informed by application and consultation (if it occurs)
- State allowed to reserve \$200,000 or 0.5% (whichever is greater) for admin

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## EANS – ALLOWABLE USES OF FUNDS

- Supplies to sanitize, disinfect, and clean school facilities
- Personal protective equipment (PPE)
- Improving ventilation systems, including windows or portable air purification systems
- Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases
- Physical barriers to facilitate social distancing
- Other materials, supplies, or equipment recommended by the CDC for reopening and operation of school facilities to effectively maintain health and safety

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## EANS – ALLOWABLE USES OF FUNDS

- Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus
- Ed tech (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning, or to address learning loss
- Leasing sites or spaces to ensure safe social distancing
- Reasonable transportation costs
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

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## WHAT DOES OBLIGATED MEAN FOR PURPOSES OF EANS?

"The regulations at 34 C.F.R. § 76.707 govern when an obligation of Federal funds by an SEA occurs.

- Services or assistance provided through a contract, the obligation is made on the date that the SEA makes a binding written commitment to obtain the services, work, or products.
- For rental or lease of real or personal property, the obligation is made when the property is first used.
- An SEA's approval of a non-public school's application for EANS services or assistance does not constitute an obligation of EANS funds." B-11 EANS guidance

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## REIMBURSEMENT

- CRRSA EANS: Reimbursement allowed for expenditures going back to March 13, 2020, except for:
  - Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
  - Any expenses reimbursed through a loan guaranteed under the PPP prior to December 27, 2020.
  - Staff training/professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
  - Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
  - Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.
- **ARP-EANS: No reimbursement allowed!!**

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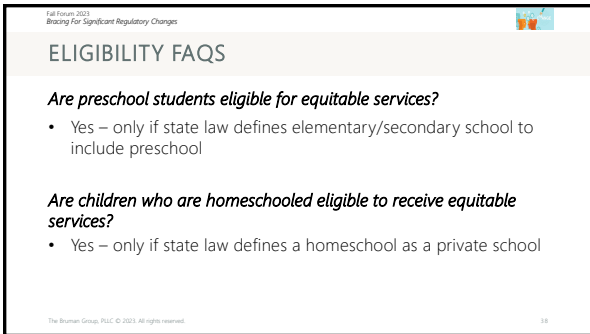
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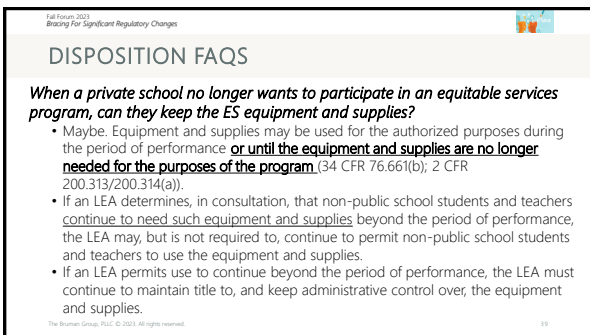
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## DISPOSITION FAQs

**What if the equitable/supplies are no longer needed what can the LEA do?**

- If no longer needed, then the equipment and supplies:
  - Can be used for another federally-funded program at the private school (i.e., another equitable services or applicable program);
  - Can be transferred to the LEA or other public entity for purposes of another federally funded program; or
  - Can be otherwise disposed of based on fair market value (disposition policies and procedures).

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## DISPOSITION FAQs

**Can the LEA decide to move the equipment/supplies even if the private school says the property is needed despite not participating in the program?**

- Yes. The equipment/supplies can be transferred to the LEA or other public entity for purposes of another federally funded program.

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## PROVISION OF SERVICES FAQs

**C-19. To meet the equitable services requirements under Title I, may an LEA just provide a private school with instructional materials and supplies paid for with Title I funds?**

No. It does not meet the LEA's obligation to provide equitable services because it is neither a proper Title I program implemented by the LEA nor does it meet the requirement that services be equitable. (ESEA section 1117(a)(1)(A), (a)(3)(A)).

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### PROVISION OF SERVICES FAQs

**Does the LEA have to provide transportation if services are provided at another site?**

Yes. Transportation costs must still be reasonable and necessary to provide services. Considered an administrative cost

- Title I → paid from proportional share
- Title VIII → Taken "off the top of an LEA's total allocation."



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### PROVISION OF SERVICES FAQs

**Are charter LEAs required to provide equitable services?**

- No for *formula* programs– the traditional LEA with physical catchment area is responsible
- For discretionary programs and 21<sup>st</sup> CCLC: YES, unless these children or educators are served under the same program by the traditional LEA in the area. A charter school LEA may limit consultation and services to private schools within a "reasonable proximity" of the charter school (A-3)

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### PROVISION OF SERVICES FAQs

**(1) Can the private school request we use their staff?**

a. Yes, but the staff have to be under supervision of the LEA, not replacing payroll or supplanting existing services. The LEA has the final say here.

**(2) If we use other staff, can the private school request they sign an agreement (code of conduct)?**

a. While the contents may be fine, signing a code of conduct for the school feels like it is undermining the requirement that staff are under direct supervision of the LEA.

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## CARRYOVER FAQS – TITLE VIII

**How is carryover treated?**

- ED: Should not have any/ any significant carryover, but not prohibited
- If services are delayed or incomplete, keep them in the same schools
- If services cost less than what was budgeted, can roll over into general expenditures for the following year
- Different from Title I!

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## CARRYOVER FAQS – TITLE I-A

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

- “[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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## RESOURCES

Title I-A Guidance: <https://oese.ed.gov/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf>

Title VIII Guidance: <https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf>

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## Save The Date!!!

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