



Federal Program Compliance Division

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Every Student Succeeds Act (ESSA)

Private Nonprofit (PNP) Equitable Services

Frequently Asked Questions

This document provides the answers to ESSA Private Nonprofit (PNP) Equitable Services-related questions received by the Division during the month(s) noted below. You can also navigate through the document using the Bookmarks in your PDF viewer.

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

For questions or additional information, please contact us at PNPOmbudsman@tea.texas.gov.

October/November 2020

Questions and responses are organized by the following topic areas for October and November 2020:

- [Calculating Allocations for ESSA Equitable Services](#)
- [Carryover of Equitable Services](#)
- [Consultation](#)
- [Determining Nonprofit Status](#)
- [Eligibility](#)
- [Technology](#)
- [Title I, Part A Equitable Services](#)
- [Transferability](#)
- [Virtual Meetings](#)

Calculating Allocations for ESSA Equitable Services

Q1: How does an LEA determine the number of children, ages 5 through 17, who are from low-income families, reside in participating Title I, Part A public school attendance areas, and attend private schools?

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

- A1: The ESEA requires an LEA to determine an accurate count of children from low-income families who attend public and private schools and reside in participating Title I, Part A public school attendance areas in order to allocate the proportional share. With respect to private school students, the ESEA permits an LEA, based on timely and meaningful consultation, to use:
1. **The same measure of poverty used to count public school children.** If the same measure of poverty used to count public school children is available for private school students [e.g., Free and Reduced-Price Lunch (FRPL) data], and an LEA concludes, after consultation with appropriate private school officials, that the data will yield an accurate count of private school students, the Department recommends that the LEA use the same measure.
 2. **Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable.** An LEA may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. [ESEA section 1117(1)(B)]. An LEA should not require that the private school officials give the names of low-income families. The only information necessary for an LEA to collect from such a survey of private school children is—
 - (1) verification of residence in a participating Title I public school attendance area;
 - (2) grade level and age of each child; and
 - (3) income level of parents. If, based on consultation with private school officials, an LEA chooses to extrapolate the survey results to the private school's entire enrollment, the LEA will also need the private school's enrollment. For example, in a private school with an enrollment of 400, if an LEA receives survey data for 300 children that indicate that 150 children are from low-income families (50 percent), to extrapolate the results the LEA would multiply 400 by 0.5 to determine that there are 200 children in the school from low-income families.
 3. **Comparable poverty data from a different source.** An LEA may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same. For example, an LEA uses FRPL data, but private school children do not participate in the free and reduced-price lunch program; however, private school officials are able to provide an LEA with a count of children who are from low-income families using other comparable sources of poverty data such as eligibility for means-tested tuition scholarship programs.
 4. **Proportionality.** An LEA may apply the low-income percentage of each participating Title I public school attendance area to the number of private school children who reside in that school attendance area to derive the number of private school children from low-income families. To do this, an LEA will need the addresses, grade levels, and ages of those students attending private schools. For example, if the percentage of poverty in a public school attendance area is 60 percent and there are 50 private school children residing in

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

the public school attendance area, the LEA would derive 30 private school children from low-income families who reside in the attendance area.

5. An equated measure. An LEA may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, an LEA uses FRPL data, but those data are not available for private school students. However, if Temporary Assistance for Needy Families (TANF) data are available, the LEA could determine an equated measure of poor children in private schools based on FRPL data by correlating the two sets of data as follows:

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

In this example, the LEA may then use the equated number of private school children based on FRPL data (“X”) as the number of private school children from low-income families.

[ESEA section 1117(c)(1); 34 C.F.R. § 200.64(a)(3)(i)].

After consultation with private school officials occurs, an LEA has the final authority to decide which method it will use to calculate the number of children who are from low-income families and attend private schools. [ESEA section 1117(c)(1)].

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Carryover of Equitable Services

Q1: We have a PNP school that is closing at the end of the month. They were participating in ESSA Title II, Part A; Title III, Part A; and Title IV, Part A programs. How does the LEA distribute the closing PNP school’s remaining funds for equitable services?

A1: For programs covered under the Title VIII Uniform Provision, if an LEA provided equitable services for private school students in any given year, any carryover funds for services to private school students would be considered additional funds for that program for public and private school students in the subsequent year. Those funds then would be used, along with any other carryover funds, for both public and private school students on an equitable basis. This situation might occur, for example, if private school students and teachers did not fully participate in the *ESEA* program (e.g., private school teachers opted out of a proposed professional development activity), even though an equitable program was planned and offered for those students and teachers.

– USDE Response

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

Q2: May private schools get a share of carryover funds when public schools do not expend their funds?

A2: No. ESEA Section 8501(a)(4) requires that expenditures for services to private school children and educators be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

Note that private schools do not directly receive equitable services funds. Instead, funds are allocated to the LEA for the provision of equitable services, and the LEA either administers the services, or contracts with a third-party provider to administer the services, to eligible private school students and teachers. – *Office of Attorney General (Jan 2020)*

Q3: May an LEA carry over Title I, Part A unobligated funds despite the statutory requirement regarding obligation of funds?

A3: 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. The ESEA, however, does not prohibit carryover of funds for equitable services and, in most cases, requires it. The following are examples of circumstances that could result in carryover of equitable services funds and how an LEA would use such carryover:

| Reasons for Carryover | Use of Carryover |
|--|---|
| Services for eligible children in one or more private schools are delayed (e.g., based on a natural disaster, delayed consultation, inability to employ qualified personnel, or unexpected procurement challenges). As a result, the LEA is unable to fully provide required equitable services, and some funds are unobligated at the end of the Federal fiscal year. | The LEA must use the funds to provide equitable services to eligible children in the affected private schools the following year. |
| An LEA uses a third-party contractor to provide equitable services, and the invoiced amount for services in one of the private schools is \$1,000 less than anticipated. Because this occurs late in the summer, the LEA is unable to responsibly obligate the funds prior to the end of the Federal fiscal year. | The LEA, in consultation with private school officials, 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 for equitable services 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. |

- Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Consultation

Q1: When and how often does an LEA consult with private school officials?

A1: Consultation between an LEA and private school officials must include early discussions to prepare for the next school year so that there is a timely start of the Title I program. [ESEA section 1117(a)(3)(A) and (b)(3)]. To be timely and meaningful, consultation must occur during the design and development of such agency's programs and before the LEA makes any decision that affects the opportunity for eligible private school children, their teachers, and their families to participate in Title I programs. [ESEA section 1117(b)(3)]. Consultation must also be ongoing throughout the school year to help ensure effective implementation, service delivery, and assessment of equitable services. [ESEA section 1117(b)(3)].

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Q2: Is other documentation that meaningful consultation has occurred helpful?

A2: Yes. It is also good practice for an LEA and appropriate private school officials to maintain a record of notes about topics addressed and decisions made during consultation meetings. Retaining meeting agendas and sign-in sheets is also good practice. In order to verify that it has met the requirement for timely and meaningful consultation and has provided equitable services, as a best practice, an LEA may want to document that it has:

- Annually informed the private school officials of the opportunity to participate in the Title I program and the various services available;
- Engaged in timely consultation, allowing for meaningful discussion between the LEA and appropriate private school officials regarding services and other benefits;
- Identified the needs of private school students, teachers, and families;
- Allocated a per-pupil amount of funds for services to private school students, teachers, and families that is calculated from the proportional share in accordance with ESEA section 1117(a)(4)(A);
- Provided services, programs, materials, and resources;
- Evaluated programs and services for effectiveness; and
- Adequately addressed problems and formal complaints raised by private school officials.

-Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

Q3: What if a PNP school declines to participate in the ESSA programs or does not respond to a district's request for consultation?

A3: The district then has no further responsibility to provide equitable services to students or teachers in that private school. The district, however, must be able to demonstrate that it made a good faith effort to contact all the non-public schools in the district's boundaries.

Determining Nonprofit Status

Q1: What is the definition of nonprofit?

A1: The [Code of Federal Regulations \(CFR\), Title 34, Subtitle A, Part 77.1](#) defines *nonprofit* as an agency, organization, or institution, owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Q2: What is the definition of nonpublic?

A2: The [Code of Federal Regulations \(CFR\), Title 34, Subtitle A, Part 77.1](#) defines nonpublic as an agency, organization, or institution that is nonprofit and not under Federal or public supervision or control.

Q2: How is nonprofit status determined?

A2: Under the [Code of Federal Regulations \(CFR\), Title 34, Subpart A, Part 75](#) nonprofit status is defined as the following:

(a) Under some programs, an applicant must show that it is a nonprofit organization. ([Code of Federal Regulations \(CFR\), Title 34, Subtitle A, Part 77.1](#))

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that:
(i) The organization is a nonprofit organization operating within the State; and
(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

(4) Any item described in paragraphs (b) (1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

Eligibility

Q1: Our PNP school is an accredited preschool ranging in age from 18 months to 5 years, may ESSA equitable services be provided?

A1: Yes, but only if the school serves at least the Kindergarten grade level at the school. Federal funds may not serve stand-alone PK, preschool, or Early Childhood programs without a Kindergarten grade level in the school.

Q2: How would a district handle a request in January from a PNP school to start receiving equitable services under ESSA programs when the PNP has turned down services in the consultation meetings earlier in the year? Posted July 9, 2020

A2: This question is addressed in the [CARES Act Equitable Services FAQ](#) document (11/5/2020) published on the TEA website. The response would also apply to ESSA programs in which PNP equitable services are being provided.

The district should politely notify the private school official that the deadline for requesting equitable services for 2020-2021 has passed and that program funds have been allocated to other uses.

Note: USDE has in the past supported districts in closing the time period for a private school to request equitable services at the end of the fall semester.

Q3: How does an LEA determine what Title I, Part A services to provide participating private school children?

A3: An LEA, in consultation with appropriate private school officials, determines the appropriate Title I services based on the academic needs of the private school students. (ESEA section 1117(a)(1)(A); 34 C.F.R. § 299.64(b)(2)(i)). Title I services may be provided in subject areas or at grade levels that are different from those provided to public school students. These services must hold reasonable promise that the academic performance of private school participants will improve. (34 C.F.R. § 200.64(b)(2)(ii)(B)).

Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

Technology

Q1: LEAs and ESCs have asked if a PNP may use Title I, Part A (eligible students), Title III, Part A (eligible students), and Title IV, Part A (all students) to purchase laptops/electronics? Hotspots are discussed elsewhere in the COVID-19 FAQ but not if an LEA may purchase hotspots for eligible PNP students. Updated May 28, 2020

A1: This question is answered in the [Federal Funding and Grants COVID 19 FAQ](#) document (10/1/2020) published on the TEA website and response is referenced below.

Eligible Uses of Grants Funds Section

Under the current pandemic circumstances, ESSA equitable services funds may be used to purchase technology for instructional purposes. The grant funds may only be used to serve eligible students at the private school and all technology must be maintained in the control of the LEA, on the LEA inventory, and monitored for only non-ideological uses.

Q2: If an LEA purchased 2 chrome books with Title IV, Part A equitable services for a PNP school a few years back and they no longer work, what is required of the LEA? Is the LEA obligated to replace the devices at the district cost? If, the PNP school has Title IV, Part A equitable services available for the current year, may they replace chrome books with this year's equitable services?

A2: The district is required to follow instructions on the *Inventory Disposition Request* form located on the [TEA Grants Administration](#) webpage. Disposition approval is required when equipment originally purchased with federal grant funds is no longer needed for the original project, programs currently funded by other USDE grants, or projects previously supported by USDE grants.

If the PNP school would like to use the current year's Title IV, Part A equitable services to replace the chrome books and the request aligns with their needs assessment/data, meets the program purposes, and is approved by LEA, the purchase is allowable.

Q3: Due to COVID-19, may our PNP school use Title I, Part A equitable services to provide technology schoolwide for all students?

A3: Although we recognize that the current situation with COVID-19 prompted your question, as detailed below, the Elementary and Secondary Education Act of 1965 (ESEA) does not permit a local educational agency (LEA) to purchase technology that a private school would use throughout the school or over which the private school would have control.

As background, the ESEA requires an LEA, in consultation with appropriate private school officials, to provide eligible children attending private non-profit elementary and secondary schools, their

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public-school children, their teachers, and their families. Eligible private school children are children who reside in a participating Title I public school attendance area and are low achieving. An LEA, based on consultation with private school officials, may purchase materials, equipment, or supplies, including technology, that is reasonable and necessary to provide Title I services to eligible private school children. This could include, for example, technology to receive Title I services online if requested by private school officials and agreed to by the LEA that is the equitable services provider. Equitable services under Title I may not benefit the needs of a private school in general.

Any technology the LEA purchases to implement Title I equitable services belongs to the LEA, not the private school. Specifically, ESEA section 1117(d)(1) requires that title to materials, equipment, and property purchased with Title I funds be in a public agency and that a public agency administer the resources. Moreover, ESEA section 8401 prohibits the Department from waiving any equitable services requirements, including ESEA section 1117(d)(1). Thus, the Department lacks the authority to consider any exceptions to this requirement or any other ESEA equitable services requirements through waivers that an LEA or a State educational agency such as the Texas Education Agency may desire. – *USDE Response (4/2020)*

Title I, Part A Equitable Services

- Q1: May Title I funds be used to pay stipends to private school instructional staff who participate in Title I services and activities?**
- A1:** Yes. Title I funds may be used to pay for stipends for private school instructional staff, if reasonable and necessary (e.g., time outside regular employment hours). An LEA must pay such stipends directly to the private school instructional staff and not to the private school.

Transferability

- Q1: When should LEAs calculate equitable shares if they plan to transfer Title IV, Part A funds?**
- A2:** Before a SEA or LEA may transfer funds from a program subject to equitable services requirements, including Title IV-A, it must engage in timely and meaningful consultation with appropriate private school officials ([ESEA Section 5103\(e\)\(2\)](#)). With respect to the transferred funds, the SEA or LEA must provide private school students and teachers equitable services under

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

the program(s) to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer. – *Office of General Counsel (Jan 2020)*

Q2: What are the responsibilities of an SEA or LEA for the provision of equitable services to private school children and teachers with respect to funds being transferred?

A2: Excluding Title I, Part D and Title V, Part B, each program covered by the transferability authority is subject to the equitable services requirements under Title I or VIII, which may not be waived. [ESEA section 8401(c)(5)] Before an SEA or LEA may transfer funds from a program subject to equitable services requirements, it must engage in timely and meaningful consultation with appropriate private school officials. [ESEA section 5103(e)(2)] With respect to the transferred funds, the SEA or LEA must provide private school students and teachers equitable services under the program(s) to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer.

- *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the ESEA, as amended by ESSA (November 2016)*

Q3: May an SEA or LEA transfer only those funds that are to be used for equitable services to private school students or teachers?

A3: No. An SEA or LEA may not transfer funds to a particular program solely to provide equitable services for private school students or teachers. Rather, an SEA or LEA, after consulting with appropriate private school officials must provide equitable services to private school students and teachers based on the rules of each program and the total amount of funds available to each program after a transfer. [[ESEA Section 5103\(e\)\(2\)](#)]

- *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the ESEA, as amended by ESSA (November 2016)*

Q4: If, after timely and meaningful consultation, an LEA transfers funds into Title I under ESEA section 5103(b), are those funds subject to the proportional share in order to provide equitable services?

A4. Yes. [ESEA Section 5103\(e\)\(2\)](#) requires that transferred funds be subject to the rules and requirements applicable to the funds under the provision to which the funds are transferred. Therefore, an LEA must apply the proportional share calculation in ESEA section 1117(a)(4)(A) to any funds transferred into Title I.

For example, if an LEA's initial Title I allocation is \$1,000,000 and, after consultation, the LEA decides to transfer \$50,000 from Title IV, Part A to Title I, Part A the LEA will calculate the Title I, Part A proportional share based on its Title I allocation after the transfer (\$1,050,000).

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Q5: Under ESEA section 5103(b), after timely and meaningful consultation, may an LEA transfer funds into the Title I program solely to provide services for private school students?

A5: No. The ESEA does not authorize an LEA to transfer to the Title I program only the portion of funds available for services for private school students from one or more of the programs whose funds may be transferred. If an LEA decides to transfer funds, it must provide services to public and private school students and teachers in accordance with requirements of the program(s) to which the funds are transferred. [ESEA section 5103(e)(1)].

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Q6: May an LEA, after timely and meaningful consultation, retain funds in a program from which it transfers funds to Title I solely to provide equitable services under that program?

A6: No. Just as an LEA may not transfer funds to a particular program solely to provide equitable services, it may not retain funds solely for this purpose. Thus, if an LEA chooses to transfer its Title II, Part A or Title IV, Part A funds to Title I, Part A, it may not retain a portion of those funds solely to provide equitable services under Title II, Part A or Title IV, Part A. Rather, if an LEA decides to transfer funds into Title I, Part A, it must provide services to public and private school students, their teachers, and their families in accordance with all Title I requirements. [ESEA section 5103(e)(1)].

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Virtual Meetings

Q1: May a district use Facebook or other social media and virtual meeting options to conduct meetings for the required consultation? Posted May 28, 2020

A1: This question is addressed in the [CARES Act Equitable Services FAQ](#) document published on the TEA website. The response would also apply to ESSA programs in which PNP equitable services are being provided.

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

The required consultation may be held in a variety of virtual settings due to the circumstances. Document the meeting and those participating as best as you can. TEA will be flexible in compliance reviews if you document your circumstances and try to meet the intent of the law as best as you can at the time.

December 2020/January 2021

Questions and responses are organized by the following topic areas for December 2020 and January 2021:

- [Title II, Part A Equitable Services](#)

Title II, Part A Equitable Services

Q1: May an LEA use Title II, Part A funds for private nonprofit (PNP) school teacher bonuses and/or staff incentives?

A1: No, an LEA may not use Title II, Part A funds allocated for equitable services to support teacher bonuses or retention incentives in participating private schools. Subsidizing any portion of a private school teacher's salary would be inconsistent with the requirements in section 8501(d) of the Elementary and Secondary Education Act (ESEA) of 1965 regarding public control of funds and the supervision and control of employees or contractors.

In addition, Title II, Part A funds used for equitable services may only be used to meet the specific needs of students enrolled in a private school, rather than the needs of the private school itself or the general needs of the students of the students enrolled in the private school. See 34 CFR 299.8(b). Here, the bonuses or incentives would benefit the school rather than the specific needs of students or teachers, and therefore, Title II, Part A funds may not be used to pay for the bonuses or incentives.

– USDE Office of Attorney General's Response (January 2021)

Q2: What types of Title II, Part A activities may an LEA provide to private school participants?

A2: An LEA may continue to use Title II, Part A funds to provide professional development activities for teachers, principals, and other school leaders to address the specific needs of their students. Additionally, there may be other permissible uses of Title II, Part A funds for the benefit of private school participants. Any use of Title II, Part A funds for the benefit of private school participants must:

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

- Be an allowable local use of Title II, Part A funds under the authorizing statute. [ESEA section 2103(b)(3)]
- Meet the specific needs of students enrolled in a private school, and not the school itself. Title II, Part A funds may not be used to meet the needs of a private school or the general needs of the students enrolled in the private school. In some instances, however, a program or activity that primarily benefits a private school’s students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. ([34 CFR 76.658](#))
- Ensure that the public agency (e.g., an LEA) responsible for providing equitable services retains control of the funds used to provide such services. In addition, equitable services must be provided by either an employee of the public agency or through a contract by the public agency with an individual, association, agency, or organization. These employees, individuals, associations, agencies, or organizations providing the services must be independent of the private school and any religious organization and the employment or contract must be under the control and supervision of the public agency. (ESEA section 8501(d).)

Equitable services under Title II, Part A may not be used for class-size reduction (ESEA section 2103(b)(3)(D)) in a private school because contracts for private school teachers and staff would be inconsistent with the requirements in ESEA section 8501(d) regarding public control of funds and the supervision and control of employees or contractors.

- Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the ESEA, as amended by ESSA (November 2016)

March 2021

Questions and responses are organized by the following topic areas for March 2021:

- [Title II, Part A Equitable Services](#)
- [REAP and Transferability](#)

Title II, Part A Equitable Services

Q1: May a private school use Title II, Part A equitable services for counselor training sessions that result in certification?

A1: As with all equitable services, an LEA must first determine that the activity is allowable under the specific funding stream.

Under [ESEA, Section 2103\(b\)\(3\)\(I\)](#) training may be provided for “school personnel,” including training that leads to certification. However, the trainings must be in— “(i) the techniques and

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

supports needed to help educators understand when and how to refer students affected by trauma, and children with, or at risk of, mental illness; (ii) the use of referral mechanisms that effectively link such children to appropriate treatment and in, intervention services in the school and in the community, where appropriate; (iii) forming partnerships between school-based mental health programs and public or private mental health organizations; and (iv) addressing issues related to school conditions for student learning, such as safety, peer interaction, drug and alcohol abuse, and chronic absenteeism.” It is unclear from your question whether the training could fall into this category.

If the training does not fall into the category above but does meet the definition of professional development in ESEA section 8101(42), it may be an allowable use of funds under ESEA section 2103(b)(3)(E), and therefore potentially an equitable service available for private school teachers, principals and other school leaders. Please note that professional development under section 2103(b)(3)(E) is designated for “teachers, principals, and other school leaders.” There is no use of local Title II, Part A funds that specifically allows providing professional development for counselors.

Since a counselor is neither a teacher nor a principal (at least as indicated by your inquiry), in order to be an allowable use of funds for professional development under Title II, Part A, the counselor must meet the definition of “school leader” in ESEA Section 8101(44).

SCHOOL LEADER.—The term “school leader” means a principal, assistant principal, or other individual who is—

1. an employee or officer of an elementary school or secondary school, local educational agency, or other entity operating an elementary school or secondary school; and
2. responsible for the daily instructional leadership and managerial operations in the elementary school or secondary school building.

In order to be considered a “school leader” and eligible for Title II, Part A funded professional development, the school staff person needs to meet both parts of the above definition, and it is not clear from the information you provided that a counselor in this school meets the second part of the definition. If it is determined that the counselor meets both parts of the definition, then the following information regarding professional development leading to certification should also be considered.

If the counselor meets the definition of “school leader” above, and the professional development meets the definition of “professional development” in ESEA Section 8101(42), then paying for the professional development, including professional development that may lead to certification, would be an allowable use of Title II, Part A funds.

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

An LEA is responsible for determining, based on consultation with private school officials, the specific professional development opportunities available for eligible private school staff based on their identified needs (see [ESEA Section 8501\(c\)\(1\)\(B\)](#)). How those needs are identified is also a topic for consultation between the LEA and private school officials and, as a result, the needs of eligible private school staff may not be the same as those of public school teachers (ESEA section 1117(b)(1)(A) and 8501(c)(1)(A); see also [34 C.F.R. 299.7\(c\)](#)).

As with services for public school teachers, expenditures for private school staff must be reasonable and necessary to carry out the purposes of the program. In addition, the professional development provided must be supplemental in nature and never supplant what the school would otherwise provide for its staff absent the ESEA program (e.g., it would not be permissible to provide professional development that results in a certification that is required for a private school teacher). Finally, an LEA may not reimburse a private school, although it may reimburse a eligible private school staff for an LEA pre-approved, authorized, and allowable activity.

-USDE, Office of Non-Public Education Response, March 25, 2021.

REAP and Transferability

Q1: If an LEA transfers or REAPs 100% of Title IV, Part A funds, is it still required to consult with stakeholders and private school officials?

A1: Yes. The LEA is not exempt from consulting with stakeholders or private school officials. As outlined in the statute, the Title IV, Part A application must be developed through consultation with local stakeholders (section 4106(c)). Therefore, the stakeholder engagement process is an eligibility requirement and must be fulfilled to obtain a Title IV, Part A subgrant. After the subgrant is received, the LEA can make decisions regarding transferring funds or enacting the *Alternative Fund Use Authority* (AFUA) under the Title IV, Part A program.

If the LEA is considering a transfer, they must engage in timely and meaningful consultation with appropriate private school officials before transferring funds (ESEA section 5103(e)(2)).

Additionally, participation in AFUA does not relieve a district of its responsibility to provide for equitable services for private school students and teachers relative to its Title IV, Part A funds. A district participating in AFUA with its Title IV, Part A funds must reserve for the benefit of private school students and teachers the proportion of its Title IV-A funds that is equal to the expenditures (including those under AFUA authority) for the public-school program, taking into account the number and educational needs of the children to be served.

[October/November 2020](#) | [December 2020/January 2021](#) | February 2021 | [March 2021](#) | [April 2021](#)

After timely and meaningful consultation with private school officials (see ESEA section 8501(c)), a district exercising AFUA determines how the reserved funds will be expended for the benefit of private school students and teachers.

-USDE Response, March 22, 2021.

April 2021

Questions and responses are organized by the following topic areas for April 2021:

- [Title I, Part A Equitable Services](#)

Title I, Part A Equitable Services

Q1: Must Title I, Part A equitable services be provided at the same grade level(s) as public schools?

A1: No. Title I services may be provided in subject areas or at grade levels that are different from those provided to public school students. These services must hold reasonable promise that the academic performance of private school participants will improve. (34 C.F.R. § 200.64(b)(2)(ii)(B)).

– Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

Q2: Are PNP teachers (hired by the LEA or third-party contractors) paid with Title I, Part A funds required to be state certified?

A2: Yes, if the private school teacher has met state licensing and certification and is independent of the private school at the time of the provision of Title I, Part A services.

Q3: Has USDE defined what it means for staff to be ‘independent of the private school?’

A3: Yes. “Independent of the private school” means being employed for Title I, Part A services by another entity to provide services outside any contract or work time with the private school.

Q4: If the third-party service provider is a private school employee, must he/she meet necessary conditions to deliver services?

A4: Yes. The PNP teacher hired off contract must be under the direct supervision of an LEA or third-party provider. The staff must provide PNP equitable services outside the regular duty hours listed in the employment contract with the private school.