



Federal Program Compliance Division

PNPOmbudsman@tea.texas.gov

ESSA Private Nonprofit (PNP) Frequently Asked Questions

This document provides the answers to program-related questions received by the Division. You can also navigate through the document using the Bookmarks in your PDF viewer. The newest questions that have been added will be noted by "*" and in *blue font*.

For questions or additional information, please contact us at PNPOmbudsman@TEA.Texas.gov or ESSASupport@TEA.Texas.gov.

Questions and responses are organized by the following topic areas:

- [Eligibility For Equitable Services](#)
- [Calculating Allocations for ESSA Equitable Services](#)
- [Timely and Meaningful Consultation](#)
- [Supplement, Not Supplant](#)
- [Carryover of Equitable Services](#)
- [LEA Pooling of Title VIII Funds for Equitable Services](#)
- [Technology](#)
- [REAP and Transferability](#)
- [Title I, Part A Equitable Services](#)
- [Title I, Part C Migrant Equitable Services](#)
- [Title II, Part A Equitable Services](#)
- [Title III, Part A Equitable Services](#)
- [Title IV, Part A Equitable Services](#)
- [Title IV, Part B Equitable Services](#)
- [Staff Providing PNP Equitable Services](#)
- [Travel and Professional Development](#)
- [Evaluations for Equitable Services](#)
- [Virtual Meetings](#)

Eligibility For Equitable Services

Q1: What is the Every Student Succeeds Act (ESSA)?

A1: Signed into law in December 2015, ESSA is the current reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). The titles of ESSA provide the statutory authorization for various education grant programs that states are required to make available with federal grant dollars.

Among other requirements, ESSA mandates that students and teachers at eligible private nonprofit schools (PNPs) receive equitable services under the following title programs:

- Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies (LEAs)
- Title I, Part C: Education of Migratory Children
- Title II, Part A: Supporting Effective Instruction
- Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement: English Learners (EL) and Immigrants (IMM)
- Title IV, Part A: Student Support and Academic Enrichment Grants
- Title IV, Part B: 21st Century Community Learning Centers

Q2: What are private school equitable services?

A2: Through ESSA, federal grant funding is made available every year to serve students who meet certain criteria, such as economically disadvantaged. Those grant funds are awarded to TEA, which administer the funds directly to LEAs, including school districts. However, the law requires that eligible students and teachers at eligible private schools also receive access to equitable services of those programs and services provided by the district.

The term “private school equitable services” refers to the process of providing students, teachers, staff, and families at eligible private schools fair access to federally funded education programs and services, as appropriate. The process depends on a “timely and meaningful consultation” between LEAs and those of eligible private schools. However, federal funds may not be awarded or paid to the private school.

Q3: How are private school equitable services requirements defined in ESSA Sections 1117 and 8501?

A3: [ESSA Section 1117](#) defines equitable services requirements for Title I, Part A. [ESSA Section 8501](#) defines requirements for Title VIII equitable services, which apply to the following Title programs: Title I, Part C; Title II, Part A; Title III, Part A; Title IV, Part A; and Title IV, Part B.

Q4: Who is required to provide PNPs with equitable services: school districts, open-enrollment charter schools, or both?

A4: The equitable services requirement applies to local independent school districts (ISDs) only. Open-enrollment charter schools are not required to provide PNPs with equitable services because they do not have defined geographic boundaries like school districts.

Q5: May a homeschool participate and receive equitable services?

A5: A homeschool may be eligible to participate *only* if it can provide documentation of 501(c)(3) nonprofit status and the students meet program eligibility.

Q6: What is the definition of nonprofit?

A6: The definition of a nonprofit entity is defined in the [Code of Federal Regulations \(CFR\), Title 34, Subtitle A, Part 77.1](#). It 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.

Q7: How is nonprofit status determined?

A7: 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
 - (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.

Q8: What is the Code of Federal Regulations and how does it apply to private school equitable services?

A8: The *Code of Federal Regulations* (CFR) is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the federal government. Several sections of the CFR contain requirements specific to private school equitable services. The PNP FAQ shares a few applicable CFR citations and requirements applicable to fiscal agents (i.e., LEAs, ESCs) providing private school equitable services.

Q9: What is a summary of the Code of Federal Regulations responsibilities of an LEA providing Title I, Part A equitable services to private schools?

A9: A summary of the *Participation of Eligible Children in Private Schools* for the Title I, Part A program may be found in [34 CFR 200.62-200.69](#).

Q10: What is a summary of the Code of Federal Regulations responsibilities in 34 CFR 299.6 of an LEA for providing Title VIII equitable services to children and teachers in private schools?

A10: A summary of responsibilities related to equitable services as listed in the *Code of Federal Regulations* is as follows:

- (a) An entity receiving funds under applicable programs [[34 CFR 299.6\(b\)](#)], after timely and meaningful consultation with appropriate private school officials, shall provide special

educational services or other benefits on an equitable basis to eligible children enrolled in private schools, and to their teachers and other educational personnel.

(b) Applicable Title VIII programs:

- Title I, Part C – Migrant Education
- Title II, Part A – Supporting Effective Instruction
- Title III, Part A – English Acquisition, Language Enhancement, and Academic Achievement
- Title IV, Part A – Student Support and Academic Enrichment Grants
- Title IV, Part B – 21st Century Community Learning Centers

Q11: What Code of Federal Regulations (CFR) requirements must an LEA adhere to and ensure funds do not benefit a PNP school? [[34 CFR 299.8\(a-b\)](#)]

A11: The summary of requirements an LEA must follow to ensure federal funds do not benefit a private school is as follows:

- (a) Federal funds shall be used to provide services that supplement, and in no case supplant, the level of services that would, in the absence of services provided under that program, be available to participating children and their teachers and other educational personnel in private schools.
- (b) Federal funds must be used under a program to meet the special educational needs of participating children who attend a private school and their teachers and other educational personnel, but may not use those funds for:
 - (1) The needs of the private school; or
 - (2) The general needs of children and their teachers and other educational personnel in the private school.

Q12: What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers according to the [CFR 299.9](#)?

A12: A summary of the requirements is as follows:

- (a) LEA must keep title to, and exercise continuing administrative control of all property, equipment, and supplies that it acquires with funds under applicable programs for the benefit of eligible private school children and their teachers and other educational personnel.
- (b) LEA may place equipment and supplies in a private school for the period of time needed for the program(s).
- (c) LEA shall ensure that the equipment and supplies placed in a private school-
 - (1) Are used only for proper purposes of the program; and
 - (2) Can be removed from the private school without remodeling the facility.
- (d) LEA must remove equipment and supplies from a private school if-
 - (1) The equipment and supplies are no longer needed for the purposes of the program; or
 - (2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than the purposes of the program.
- (e) No funds may be used for repairs, minor remodeling, or construction of private school facilities.

Q13: Our PNP school is an accredited preschool ranging in age from 18 months to 5 years, may ESSA equitable services be provided?

A13: 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.

Q14: Are parents or families of private school children eligible to receive Title VIII equitable services?

A14: ESEA section 8501, Title VIII, does not require an LEA to provide equitable services to parents or families of eligible children. However, to the extent a covered ESEA program allows for the participation of parents or families, the LEA may provide services to parents and families of private school children based on timely and meaningful consultation between the LEA and private school officials, taking into consideration the needs of the parents and families and the eligible children and educators in the private school and the amount of funds available to provide services. To the extent that an LEA serves eligible children whose parents or families are limited English proficient, requirements of Title VI of the Civil Rights Act of 1964 to provide meaningful language access apply.

Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q15: Does TEA maintain a list of private nonprofit schools?

A15: No. The [Texas Private School Accreditation Commission \(TEPSAC\)](#) maintains comprehensive data on accredited nonpublic schools throughout Texas.

There are also non-accredited private schools that are eligible for equitable services.

Q16: What is the [Texas Private School Accreditation Commission \(TEPSAC\)](#) and what information can it provide on private schools?

A16: The [TEPSAC](#) is a confederation of associations whose primary purpose is to maintain private school accreditation standards. These standards of accreditation are comparable to TEA standards and preserve the integrity of the member organization and the schools it accredits.

Q17: Does TEA collaborate with [TEPSAC](#) regarding the provision of equitable services to private schools?

A17: Yes, TEA collaborates with the TEPSAC and [Texas Private Schools Association \(TPSA\)](#) representatives and attend TEPSAC meetings. TEPSAC representatives also participate in the TEA Private School Equitable Services Workgroup.

Q18: Are there websites an LEA may search to locate Texas private schools?

A18: Yes, one outreach method an LEA may perform is to search private school and private accrediting agency websites. However, not all private schools may be listed on a website or eligible for Title program equitable services if listed. Therefore, an LEA should use multiple private school outreach methods (i.e., local area newspaper ads, searching local directories, emails, postal mail., etc.) and keep documentation on file.

An LEA must ensure a private school has documentation of nonprofit status and that it meets requirements for eligibility to receive equitable services. Below are just a few, of many websites, an LEA may search for private nonprofit schools within Texas:

- [Cognia Accredited Schools](#)
- [Council for American Private Education \(CAPE\)](#)
- [Great Schools - Texas Private Schools](#)
- [Independent Schools Association of the Southwest \(ISAS\)](#)
- [National Association of Independent Schools \(NAIS\)](#)
- [National Center for Education Statistics \(NCES\)](#)
- [National Council for Private School Accreditation \(NCPSA\)](#)
- [Southwestern Association of Episcopal Schools \(SAES\)](#)
- [Texas Comptroller of Public Accounts](#)
- [Texas Private School Accreditation Commission \(TEPSAC\)](#)
- [Texas Private Schools Association \(TPSA\)](#)
- [Texas Alliance of Accredited Private Schools \(TAAPS\)](#)
- [USA Texas Schools](#)

Q19: How might an LEA verify if a Texas private school has been provided federal nonprofit 501(c)(3) status?

A19: The LEA may search the [Texas Comptroller of Public Accounts](#) and [Internal Revenue Service \(IRS\) Tax Exempt Organization Database](#) to verify if the private school has received state and/or federal nonprofit status.

***Q20: How does an LEA identify which private school officials to contact for programs that are under Title VIII?**

*A20: Which private school officials to contact will depend on the nature of the program and the entity responsible for providing equitable services. For example, programs such as Title II, Part A and Title IV, Part A, an LEA generally would contact and begin consultation with school officials representing all private schools located within its boundaries. The LEA might make contact for all covered programs for which it receives funds.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

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?**

(Revised and additional Q1 responses based on ED's updated Title I, Part A Equitable Services Non-Regulatory Guidance on May 17, 2023, are noted in 'blue').

***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\(c\)\(1\)\(B\)](#)]. 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~~ **household income.**

If, in using a survey, an LEA is unable to obtain complete, actual data for private school children who reside in a Title I public school attendance area, but the LEA has a representative sample of survey data and decides to use the survey data for the count of private school children, the LEA must extrapolate full results based on the representative sample from the survey.

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.

See additional information and examples for comparable data being extrapolated at #B-11 in the [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 \(Updated May 17, 2023\)](#).

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 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 **residing in participating Title I public school attendance areas** 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 (Updated May 17, 2023).

Q2: How does an LEA determine the number of identified Title I, Part C Migrant PNP students attending a private school, located within district boundaries, to generate equitable services on the ESSA Consolidated Application Grant’s PS3099 Private School Schedule?

A2: The identified Title I, Part C Migrant PNP student enrollment is used on the *ESSA Consolidated Application Grant’s PS3099 Private School Schedule* to calculate district equitable services. Federal

funds may not serve stand-alone PK, preschool, or Early Childhood programs without a Kindergarten grade level in the school. PNP prekindergarten students may only be counted in the student enrollment if the school serves at least the kindergarten grade level at the PNP school. The citation for Migrant funding eligibility may be found in ESEA [section 1303\(a\)](#). The definition of migratory child may be found in ESEA [section 1309\(3\)](#).

Q3: How does an LEA determine the number of identified Title III, Part A- English learner (EL) and Title III, Part A-Immigrant PNP students attending a private school, located within district boundaries, to generate equitable services on the ESSA Consolidated Application Grant’s PS3099 Private School Schedule?

A3: The identified Title III, Part A PNP student enrollment counts are used on the ESSA Consolidated Application Grant’s PS3099 Private School Schedule to calculate district equitable services. The LEA uses the total identified English Learner (EL) student enrollment from *prekindergarten enrollment* through grade 12. Federal funds may not serve stand-alone PK, preschool, or Early Childhood programs without a Kindergarten grade level in the school. The 3- and 4-year prekindergarten enrollment can only be included in the equitable services calculation if the PNP school offers at least a Kindergarten grade level. PNP prekindergarten students may only be counted in the student enrollment if the school serves at least the kindergarten grade level at the PNP school. The definitions for EL and Immigrant children may be found in ESEA [section 3201\(4-5\)](#).

Q4: When determining equitable shares, the ESSA Consolidated Application rounds up and does not include cents. Our LEA has historically calculated equitable shares which includes the equitable shares amount with cents. Which amount is correct?

A4: The LEA must use the rounded equitable services share that is calculated on the ESSA Consolidated Application.

Q5: What ages must be used when entering LEA and eligible PNP student enrollment data on the ESSA Consolidated Federal Grant Application, PS3099 Private School Schedule to calculate PNP equitable services?

A5: Student ages that must be used to calculate PNP equitable services on the PS3099 are below.

| Program | Identified Student Groups | Ages used for determination |
|-----------------------|-------------------------------|-----------------------------|
| Title I, Part A | Eligible Low-Income Children | Ages 5-17 |
| Title II, Part A | Total Student Enrollment | Ages 5-17 |
| Title IV, Part A | Total Student Enrollment | Ages 5-17 |
| Title I, Part C | Identified Migrant Children | Ages 3-21 |
| Title III, Part A-ELA | Identified English Learner | Ages 3-21 |
| Title III, Part A-IMM | Identified Immigrant Children | Ages 3-21 |

Q6: What happens if, during consultation, officials of one or more private schools choose not to seek Title VIII program equitable services for their eligible children or educators?

A6: In general, an LEA needs to include the total number of children or the number of eligible children, as applicable, enrolled in only participating private schools in the calculation for equitable services to ensure that the most accurate per-pupil allocation is determined.

If a private school decides not to participate after Title VIII program allocations have been determined, the LEA may then treat the funds initially allocated for any Title VIII program equitable services as additional funds that would be equitably redistributed for services for both public and participating private school children.

Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q7: What happens if a PNP equitable service purchase is deemed unallowable during a TEA random validation and/or audit? Does the PNP pay it back or is the LEA responsible for that unallowable cost?

A7: The LEA would be responsible for unallowable costs since it maintains public control and responsibility for ensuring allowability of all equitable services expenditures under the program.

***Q8: How are Title VIII programs' administrative costs and other costs of providing services to public and private school children determined?**

*A8: An LEA reserves funds for administrative costs, including indirect costs, from a program's total allocation (off the top) before the LEA determines the allocation for services and benefits for public and private school children and educators [34 C.F.R. section 299.7(a)(2)]. In some cases, the statute for a covered ESEA program specifies the maximum percentage of a program's total allocation that an LEA may use for administrative costs. All costs must be necessary, reasonable, and allocable to the program.

A contract to provide equitable services may include reasonable and necessary costs associated with providing services. These costs would not be included in the LEA's reservation of funds to administer the covered ESEA program. Rather, such costs would be built into the contract – i.e., as program service costs.

Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Carryover of Equitable Services

Q1: We have a PNP school that is closing at the end of the month. They were participating in one or more of the ESSA Title VIII programs (i.e., Title II, Part A; Title III, Part A; and Title IV, Part A). 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*

Q2: May private schools get a share of carryover funds when public schools do not expend 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 and Title VIII 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* sections [1117\(a\)\(4\)\(B\)](#) and [8501\(a\)\(4\)\(B\)](#), 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 Title I, Part A and/or Title VIII carryover of equitable services funds and how an LEA would use such carryover:

| Reasons for Title I, Part A and Title VIII Carryover | Use of Title I, Part A and Title VIII Carryover |
|--|--|
| <p>Title I, Part A and/or Title VIII equitable 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.</p> | <p>The LEA must use the Title I, Part A and/or Title VIII funds to provide equitable services to eligible children in the affected private schools the following year.</p> |
| <p>An LEA uses a third-party contractor to provide Title I, Part A and/or Title VIII 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.</p> | <p>The LEA, in consultation with private school officials, must use these Title I, Part A and/or Title VIII equitable services funds the following year to provide equitable services to students in the affected private school.</p> <p>If, after consultation, those private school officials decline such services, the LEA must add the Title I, Part A funds to the proportional share available for equitable services to other participating private schools.</p> |

| | |
|--|---|
| | <p>If there are no other participating private schools, the funds may be used to provide Title I, Part A services in public schools.</p> |
| <p>An LEA provided Title VIII equitable services to private school children or educators, but the services cost less than what was budgeted, or the private school decided not to participate in planned activities. Based on timely and meaningful consultation, the LEA and private school officials agree there are no additional needs.</p> | <p>Any Title VIII equitable services carryover funds become part of the general pool of funds available for expenditures for public schools and participating private schools for the next year.</p> |

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) and Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q4: The LEA anticipates expending all funds by the ESSA grant expiration date. However, the PNP schools have not used all equitable services. Must the LEA continue the ESSA grant through the carry forward year and allow PNP schools to use the remaining equitable services through September 30?

A4: Yes. The ESSA grant period of availability is through September 30. The LEA must keep the ESSA grant open, continue ongoing consultation, and provide equitable services to participating private schools through September 30.

Supplement, Not Supplant

Q1: How does the principle of supplement not supplant apply to equitable services under Title VIII programs?

A1: With respect to equitable services, [34 C.F.R. § 299.8\(a\)](#) requires that an LEA use funds under a covered ESEA program to provide equitable services that supplement, and in no case supplant, the services that would, in the absence of services provided under that program, be available to participating private school children and educators. An LEA must use funds under a covered ESEA program to meet the identified educational needs of eligible private school children and educators and not to meet the needs of the private school or the general needs of children and educators in the private school. [\[34 C.F.R. § 299.8\(b\)\]](#). In some instances, however, a program or activity that primarily benefits a private school’s children or educators (because it addresses specific, rather than general, needs of children or educators being served) will also incidentally benefit the school.

USDE Draft Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel (March 2022)

Q2: May an LEA use Federal funds to purchase textbooks for eligible private school children’s use in their regular classroom?

A2: In general, Federal funds may not be used to purchase general education textbooks for use by eligible private school children in their regular classroom because materials, programs, and benefits purchased with Federal funds must be supplemental and may not supplant what the private school would otherwise provide in the absence of Federal funds. ([34 C.F.R. § 299.8](#))

Q3: What are some examples of the Title III, Part A services that an LEA may provide to private school English learners (ELs), their teachers, and other educational personnel?

A3: Some examples of the Title III, Part A services that an LEA may provide to private school ELs, their teachers, and other educational personnel include:

- Tutoring for ELs before, during, or after school hours;
- Professional development for private school teachers of ELs;
- Summer school programs to provide English language instruction for ELs;
- Administration of an ELP assessment for identification of ELs and/or for the purpose of evaluating the effectiveness of services, including the provision of test booklets, teacher training, and stipends to teachers to administer assessments; and
- Provision of supplemental instructional materials and supplies. These materials and supplies must be clearly labeled and identified as the LEA’s property, and must be secular, neutral, and non-ideological. The LEA is required to maintain oversight of all materials and supplies purchased with Title III, Part A funds.

As with all services and materials provided with Title III, Part A funds, any materials, supplies, and services must be supplemental to what the private school would otherwise provide in the absence of the Title III, Part A services.

USDE Draft Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel (March 2022)

Timely and Meaningful Consultation

Q1: What is consultation?

A1: Timely and meaningful consultation with appropriate private school officials is an essential requirement in the implementation by an LEA of an effective covered ESEA program for eligible private school children and educators. Consultation involves discussions between public and private school officials on key issues that affect the ability of eligible private school children to participate equitably in covered ESEA programs. Successful consultation establishes positive and productive working relationships, makes planning effective, continues throughout implementation of equitable services, and serves to ensure that the services provided meet the needs of eligible children and educators. A unilateral offer of services by an LEA with no opportunity for discussion or the application of a blanket rule, is not adequate consultation. Only after discussing key issues relating to the provision of equitable services may an LEA make its final decisions with respect to those services.

Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q2: When and how often does an LEA consult with private school officials?

A2: 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 sections [1117\(a\)\(3\)\(A\)](#) and [1117\(b\)\(3\)](#) and [8501\(a\)\(3\)\(A\)](#), [8501\(c\)\(3\)](#)]. 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\(b\)\(3\)](#) and [8501\(c\)\(3\)](#)]. Consultation must also be ongoing throughout the school year to help ensure effective implementation, service delivery, and assessment of equitable services. [ESEA section [1117\(b\)\(3\)](#) and [8501\(c\)\(3\)](#)].

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) and Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q3: Is other documentation that meaningful consultation has occurred helpful?

A3: 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).

Q4: What if a PNP school declines to participate in the ESSA programs or does not respond to a district’s request for consultation?

A4: 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.

Q5: How should an LEA handle a request from a PNP school to start receiving equitable services late in the school year when it turned down services earlier?

A5: The LEA should politely notify the private school official that the deadline for requesting equitable services for the current school year has passed and program funds have been allocated to other uses. The LEA must also notify the PNP school official of scheduled consultation dates for the following year so it could be included, if desired.

Q6: What is an LEA's obligation to provide equitable services if a private school declines to participate or does not respond to the LEA's request to consult?

A6: An LEA must be able to demonstrate that it made a good faith effort to contact all eligible private schools that may enroll eligible private school students. If a private school declines to participate in Title programs or does not respond to an LEA's request to consult in the given timeframe regarding the provision of services in a particular year, the LEA has no further responsibility to provide equitable services to students in that school during that school year.

The LEA must contact each private school every year, however, to determine the private school's intent to participate in Title programs.

Q7: May an LEA deny a private school participation in equitable services when that private school does not submit documentation in time for the LEA to submit its application to TEA?

A7: LEAs must be able to demonstrate that they made a good faith effort to contact all the private schools in their district or service area. During timely and meaningful consultation, the goal of which is agreement, an LEA may wish to discuss with private school officials a reasonable date by which private school staff will submit materials and information needed for adequate consultation. Particularly if a date is agreed to, as part of consultation and in the context of the requirement to obligate funds generated for equitable services in the current fiscal year, it would be reasonable for the LEA to inform private school officials that if their staff members do not submit materials by the agreed upon date and the LEA is not notified of this by private school officials in a timely manner, the LEA may need to consider that the private school has declined services in order to meet its requirement to obligate funds allocated for equitable services in the current fiscal year.

If a private school declines to participate in covered ESEA programs or does not respond to an LEA's request to consult in the given timeframe regarding the provision of services in a particular year, the LEA has no further responsibility to provide equitable services to children and educators in that school during that school year. The LEA must contact each private school each year, however, to determine the private school's intent to participate in covered ESEA programs.

U.S. Department of Education, Title II, Part A staff, Teachers, Leaders, and Special Populations Team, Office of School Support and Accountability. (October 2021)

Q8: What documentation of consultation must an LEA maintain?

A8: The ESEA requires an LEA to maintain, and provide to the TEA, the following documentation about the consultation process:

Written Affirmation: Each LEA must maintain in the agency’s records, and provide to the TEA, a written affirmation signed by officials of each participating private school that meaningful consultation has occurred. The written affirmation must provide the option for private school officials to indicate such officials’ belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children and educators.

If PNP school officials do not provide such affirmation within a reasonable period of time, the LEA must keep documentation on file that such consultation has, or attempts at such consultation have, taken place and have it readily available for TEA auditors, if requested.

Reason for Disagreement on Use of Contractor (if applicable): If an LEA disagrees with the views of the private school officials on the provision of services through a contract, the LEA must provide in writing to such private school officials the reason why the LEA has chosen not to use a contractor. An adequate explanation would address concerns expressed by private school officials about the LEA’s direct services and fully explain the reasons why the LEA chose not to use a third party, such as any financial, administrative, regulatory, or statutory impediments, or the ability of the LEA to provide the services directly. The written explanation should not simply reiterate the LEA’s decision but also provide reasons for the decision.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance, revised summary of A-13 with TEA guidance, (March 30, 2022 – draft).

Q9: What is an LEA’s obligation to consult with appropriate private school officials, and provide services for eligible children and educators in a new private school that opens after the LEA’s deadline for indicating an intent to participate?

A9: An LEA is generally responsible for contacting a new private school, along with all private schools, to determine its intent to participate. An LEA is not required to provide equitable services in the current year to eligible children and educators who attend or work at a new private school if the school opens after the LEA’s deadline for indicating an intent to participate in equitable services, but the LEA may do so.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

***Q10: May an LEA set a deadline for private school officials to indicate their intent to participate?**

***A11:** Yes. An LEA may set a reasonable deadline, taking into consideration private school schedules, for private school officials to indicate their intent to participate. An LEA should provide clear and sufficient notice of the deadline, identify potential consequences for not meeting the deadline, and give adequate time for private school officials to respond.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School

***Q11: Is the district required to pick up the supplies, materials, and equipment from participating PNP schools during extended breaks and summer?**

*A11: Yes. If there is an extended break or summertime when the materials and equipment are not being used, the district must pick them up, inventory them, and check for any needed repairs before re-issuing them to the participating PNP at the start of the next instructional setting. Supplies and materials that are considered consumables are not required to be picked up.

***Q12: How is equipment defined by federal statute?**

*A12: *Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See additional federal definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in the [Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200, Subpart A, Section 200.1](#)

***Q13: How are supplies defined by federal statute?**

*A13: *Supplies* means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in the [Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200, Subpart A, Section 200.1](#).

***Q14: When and how often does an LEA consult with private school officials?**

*A14: Consultation between the 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 covered ESEA programs. 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 and educators to participate in covered ESEA programs [ESEA section 8501(c)(3)]. Consultation must also be ongoing throughout the school year to help ensure effective implementation, service delivery, and assessment of equitable services. To ensure timely consultation, LEAs in consultation with private school officials may develop yearly consultation timelines listing the date and location of each meeting along with specific agenda topics.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

LEA Pooling of Title VIII Funds for Equitable Services

Q1: What are the options available to an LEA for providing equitable services to eligible private school children and educators?

A1: Consistent with ESEA section [8501\(c\)\(1\)\(H\)](#), following consultation with, and the agreement of, private school officials, *an LEA may choose* one of the following options for providing equitable services to eligible private school children and educators.

(1) School-by-School

Provide equitable services, as applicable, to eligible private school children and educators in each school based on the amount of funds generated by the total number of children or number of eligible children, as applicable, enrolled in the school.

(2) Pooling Within an LEA

Provide equitable services, as applicable, to eligible private school children and educators in a private school that is part of a group of private schools (such as a group of schools under the authority of single organization) by pooling the funds generated by the total number of children or number of eligible children, as applicable, enrolled in private schools in the group. The LEA, in consultation with appropriate private school officials, must establish criteria to determine how services will be allocated for eligible private school children and educators in schools within the pool. The services provided to private school children and educators in a particular school do not depend on the amount of funds generated by children enrolled in that school; rather, the services are based on the criteria developed for allocating services among the eligible private school children and educators. If private school officials representing different groups of private schools request pooling, the LEA may establish a separate pool for each requesting group.

(3) Pooling Across LEAs

Provide equitable services, as applicable, to eligible private school children and educators in a private school that is part of a group of private schools (such as a group of schools under the authority of a single organization) located in multiple LEAs by pooling the funds generated by the total number of children or number of eligible children, as applicable, enrolled in private schools in the group.

The LEAs, in consultation with appropriate private school officials, must establish criteria to determine how services will be allocated for eligible private school children and educators in schools across all participating LEAs within the pool. The services provided to eligible private school children and educators in a particular school or LEA are not dependent on the amount of funds generated by eligible children enrolled in that school; rather, the services are based on the criteria developed for allocating services among the private school children and educators across LEAs. Based on consultation with private school representatives, the LEAs participating in the pool may arrange to have one LEA, another public entity, or a third-party contractor provide services for eligible private school children and educators in private schools participating in the pool.

The following example shows the differences among the school-by-school approach, pooling within an LEA, and pooling across LEAs.

In this example:

- LEA A has a responsibility to provide Title IV, Part A equitable services to eligible children and educators in Private Schools 1 and 2, and LEA B has a responsibility to provide equitable services to eligible children and educators in Private School 3.

- In LEA A, private school children who attend Private School 1 generate \$50,000 for Title IV, Part A equitable services. Private school children who attend Private School 2 generate \$5,000 for Title IV, Part A equitable services.
- In LEA B, private school children who attend Private School 3 generate \$25,000 for Title IV, Part A equitable services.

Scenario 1: No pooling (school-by-school approach)

Eligible private school children and educators in a particular school receive services based on the amount of funds generated by the total number of children or number of eligible children, as applicable, in that school. For example, eligible children in Private School 1 receive \$50,000 in services, administered by LEA A; eligible children in Private School 2 receive \$5,000 in services, administered by LEA A; and eligible children in Private School 3 receive \$25,000 in services, administered by LEA B.

Scenario 2: Pooling funds among private schools within a single LEA

In consultation with LEA A, private school officials representing Private Schools 1 and 2 request that the LEA pool the Title IV, Part A funds generated by their children, and LEA A agrees. LEA A combines the total amount of Title IV, Part A funds generated for services in Private School 1 (\$50,000) and Private School 2 (\$5,000). The LEA then has \$55,000 to spend on Title IV, Part A services for eligible private school children and educators in these schools regardless of the amount of funds generated by children in a particular school. In consultation with private school officials (from both PNP schools 1 and 2), the LEA then decides how the funding will be allocated for services to meet the various needs of the children and educators in these schools. Under this option, the services provided to children and educators in a particular private school are not dependent upon the amount of funding generated for services by children in that school (e.g., if the needs are greater in Private School 2, the LEA may spend more than \$5,000 of the \$55,000 in this school). Children in Private School 3 receive \$25,000 in services, administered by LEA B, and are not included in the pool under LEA A.

Scenario 3: Pooling funds among private schools across LEAs

In consultation with LEAs A and B, private school officials representing Private Schools 1, 2, and 3 request that the LEAs pool the Title IV, Part A funds generated by their children, and both LEAs agree. The LEAs combine the total amount of Title IV, Part A funds generated for services in Private School 1 (\$50,000), Private School 2 (\$5,000), and Private School 3 (\$25,000). The LEAs have \$80,000 to spend on Title IV, Part A services for all eligible private school children and educators in these schools regardless of the amount of funds generated by children in a particular school. In consultation with all private school officials, the LEAs then decide that LEA A will provide services and how the funding will be allocated for those services to meet the needs of the eligible private school children and educators in the three schools. Under this option, the services provided to children and educators in a particular private school are not dependent upon the amount of funding generated for services by the children in that school (e.g., if the needs are greater in Private School 2, LEA A may spend more than \$5,000 of the \$80,000 in this school).

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q2: May an LEA combine funds from multiple ESEA programs within a pool?

A2: No.

Q3: May an LEA make a unilateral decision to pool funds among several private schools to provide equitable services?

A3: No. As a general rule, ESEA section 8501 requires an LEA to provide equitable services to eligible children and educators in a private school commensurate with funds generated by the total number of children or the number of eligible children, as applicable, enrolled in the school.

Pooling is an alternative to this general rule and permits an LEA, *after timely and meaningful consultation with appropriate private school officials*, to provide services to eligible private school children and educators among a group of schools with funds generated by the total number of children or the number of eligible children, as applicable, who attend those schools. Which children and educators to serve is determined, in consultation with appropriate private school officials, among all private schools in the pool. Thus, children and educators in a given private school may not receive services commensurate with the funds generated by children in the school; some may receive more services, and some may receive less. Rather, services are dependent on the need among all children or educators in the schools in the pool.

Because pooling is an alternative to the general rule, despite an LEA's authority to make the final decisions with respect to the services it will provide to eligible private school children or educators, appropriate private school officials must agree through consultation for the LEA to pool funds among a group of private schools because it impacts the services eligible children and educators in a given private school would otherwise receive. Without such agreement which the LEA must maintain as documentation, an LEA must follow the general rule in section 8501(c)(1)(H)(ii) and provide equitable services to eligible private school children and educators in each school commensurate with the funds generated by children in that school.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q4: If an LEA, after consultation with appropriate private school officials, decides to establish a pool or pools of funds allocated for eligible private school children and educators, and later, one or more private schools in the pool decline services for eligible children or educators in the school(s), what happens to the funds generated by children in the private school(s)?

A4: The ESEA requires that an LEA consult with private school officials regarding the size and scope of equitable services to be provided to eligible private school children and educators in a single school or pool of schools; the amount of Title VIII program funds available for those services; and how that amount is determined. (ESEA section 8501(c)(1)(E)). Consistent with this requirement, if a private school that initially is part of a pool later declines services, an LEA must consult with appropriate private school officials regarding how funds generated by children in that school will be used for services for other eligible private school children and educators in other schools in the pool.

Generally, the applicable Title VIII program funds generated remain within the pool. However, after consultation with private school officials, an LEA might determine that the amount generated by children who attend schools declining services results in a total amount for the pool that substantially exceeds the amount needed to provide equitable services to eligible private school children and educators in the pool's participating schools (e.g., where a significant amount of funds is generated by children in schools declining services, but other schools in the pool include only a small number of eligible private school children and

educators). In this situation, the LEA may allocate the excess applicable Title VIII program funds to provide services to eligible children and educators in public and private schools that are not part of the pool.

U.S. Department of Education, Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Technology

Q1: 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?

A1: 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.

Q2: Due to COVID-19, may our PNP school use Title I, Part A equitable services to provide technology schoolwide for all students?

A2: 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 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)*

REAP and Transferability

Q1: When should LEAs calculate equitable shares if they plan to transfer Title II, Part A and/or Title IV, Part A funds?

A1: Before an LEA may transfer funds from a program subject to equitable services requirements, including Title II, Part A and/or Title IV, Part 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 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 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 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 [ESEA Section 5103\(e\)\(2\)](#)] With respect to the transferred funds, the 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 LEA transfer only those funds that are to be used for equitable services to private school students or teachers?

A3: No. An LEA may not transfer funds to a particular program solely to provide equitable services for private school students or teachers. Rather, an 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, Part A 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, Part A.

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).

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 Title I, Part A and/or Title VIII programs solely to provide services for private school students?

A5: No. The ESEA does not authorize an LEA to transfer or retain only the portion of funds available for equitable services for eligible private school students and educators from one or both 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 Title I, Part A and/or Title VIII 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) and Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q6: 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?

A6: 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 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 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, considering the number and educational needs of the children to be served.

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.

Title I, Part A Equitable Services

Q1: How does an LEA determine what Title I, Part A services to provide participating private school children?

A1: 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).

Q2: Must Title I, Part A equitable services be provided at the same grade level(s) as public schools?

A2: 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).

Q3: Are PNP teachers (hired by the LEA or third-party contractors) paid with Title I, Part A funds required to be state certified?

A4: 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.

Q4: Has USDE defined what it means for staff to be ‘independent of the private school?’

A4: 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.

Q5: If the third-party service provider is a private school employee, must he/she meet necessary conditions to deliver Title I, Part A services?

A5: Yes. The PNP teacher hired off-contract must be under the direct supervision of an LEA or third-party provider. The staff must provide Title I, Part A PNP equitable services outside the regular duty

hours listed in the employment contract with the private school.

Q6: May an LEA carry over unobligated Title I, Part A funds despite the statutory requirement regarding obligation of funds?

A6: If an LEA is providing Title I, Part A 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 [USDE Title I, Part A Equitable Services Non-Regulatory Guidance](#) document provides more details.

Q7: What is the recommended TEA guidance regarding a Title I, Part A direct administrative cap amount which may be reserved from the PNP equitable services share?

A7: Generally, a district reserves up to 5-7% of Title I, Part A for administrative costs. If greater than 10% is reserved from the total PNP equitable share, the district is at higher risk for a TEA audit.

Q8: To meet the equitable services requirements under Title I, Part A, may an LEA only provide a private school with instructional materials and/or supplies paid for with Title I funds?

A8: No. Simply providing a private school with instructional materials and supplies does not meet the LEA's obligation to provide equitable services because it is neither a proper Title I, Part A program implemented by the LEA, nor does it meet the requirement that services be equitable.

Q9: What private school students are eligible for Title I, Part A equitable services?

A9: In general, to be eligible for Title I, Part A services a private school child must reside in a participating Title I public school attendance area and must be identified by the LEA as low achieving on the basis of multiple, educationally related, objective criteria.

In addition, children may be identified as eligible for equitable services solely by virtue of their status as follows: homeless children; children who in the preceding 2 years had participated in Head Start, a Title I preschool program, or a Title I, Part C Migrant education program; children in a local institution for neglected or delinquent children and youth or attending a community day program for such children. Poverty is not a criterion for eligibility for equitable services.

Q10: How does the principle of supplement not supplant apply to equitable services under Title I, Part A?

A10: With respect to equitable services, 34 C.F.R. § 200.66 requires that an LEA use Title I funds to provide equitable services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children. The regulations make clear that an LEA must use Title I funds to meet the identified educational needs of participating private school children and not to meet the needs of the private school or the general needs of children in the private school. An LEA must also ensure that the equitable services it provides under Title I supplement services a private school would otherwise provide and may not replace the education for participating students that the private school provides all students.

Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable

Q11: How might a Title I teacher coordinate Title I services with private school teachers for the benefit of participating private school students?

A11: To facilitate the delivery of well-coordinated and high-quality services, a Title I teacher would likely meet and discuss the design of the Title I program with private school teachers of participating students to ensure that the Title I program supplements and is coordinated with the regular classroom instruction received by the private school participants. Such coordination should continue regularly throughout the provision of Title I services. For example, a private school classroom teacher could provide the Title I teacher with a copy of the weekly lesson plan in relevant subjects so that Title I instruction supports regular classroom instruction. On a weekly basis, for example, a regular classroom teacher could also provide the Title I teacher with a simple form indicating a child's individual needs and the content and skills being taught in the regular classroom, so that Title I services better meet the participating child's individual needs.

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).

Q12: May a Title I teacher use the same textbooks as those used by the private school students in their regular classroom?

A12: Yes. A Title I teacher may use the same textbooks and materials as those used in the regular private school classroom so long as the textbooks and materials are secular, neutral, and non-ideological, and the instructional services supplement and do not replace the instructional program in the participants' regular classrooms. (ESEA section 1117(a)(2); 34 C.F.R. § 200.66(a)).

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).

Q13: Must the LEA always use the funds allocated for private school children to provide instructional services?

A13: No. After consultation with private school officials, an LEA may provide Title I, Part A services other than direct instruction if the provision of services – such as counseling, activities for staff to improve instruction, and parent engagement activities beyond what are otherwise required—is appropriate to assist those children identified as low achieving. This may be particularly appropriate in situations in which the funds allocated for private school children are not sufficient to provide instructional services. Regardless of the services provided, the LEA must measure the effect of the services on the academic achievement of participating children. (ESEA section 1117(a)(1)(A), (b)(1)(D)).

However, this assumes that the private school shares surveys or other data with the LEA to establish a Title I, Part A low-income student count so an equitable share can be established. If the private school does not share data for an LEA to generate Title I, Part A equitable services, it may not participate with any other services listed in #A13 above.

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).

Q14: Our LEA transferred 100% of Title IV, Part A funds to Title I, Part A. The PNP would like to participate in Title I, Part A equitable services. May a PNP use Title I, Part A equitable services for Title IV, Part A-related security items below?

Requested Title I, Part A PNP Equitable Services:

- Gateway Door Latch Strike Plate
- Gateway Security Strike Kit
- Prime lock Door Reinforcement Lock
- Schlage Universal Keyed Entry Door Handle

A14: No. Funds transferred into the Title I, Part A program must follow the Title I, Part A program's intent and purposes. In addition, the PNP may not use Title IV, Part A equitable services either, since listed security items are permanent and the LEA must keep title and control of federal purchases.

***Q15: How does an LEA determine the amount of Title I, Part A funds to be used for parent and family engagement (PFE) activities for participating private school students?**

***A15:** ESEA section 1116(a)(3)(A) requires an LEA to reserve and spend at least 1% of its Title I, Part A allocation to carry out mandatory Title I, Part A PFE activities if the LEA's Title I allocation exceeds \$500,000. This means that the ESEA requires such an LEA to reserve at least 1% from the proportional share allocated for equitable services and at least 1% of the total remaining amount for Title I, Part A activities in public schools.

For example, an LEA's total Title I, Part A allocation is \$1,000,000. From that amount, \$100,000 (10%) is allocated for all Title I equitable services activities and \$900,000 (90%) for all Title I activities in public schools. Therefore, with respect to equitable services, the LEA must spend at least 1% (\$1,000 from the \$100,000 proportional share) to provide engagement activities for the parents and families of participating private school students (leaving \$99,000 for other equitable services activities).

If an LEA's Title I, Part A allocation does not exceed \$500,000, the LEA may still reserve a portion of the proportional share to provide engagement activities for the parents and families of participating private school students. The amount reserved by the LEA would be based on timely and meaningful consultation with 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).

***Q16: How does an LEA provide equitable services for parents and families of private school students participating in the Title I, Part A program?**

***A16:** An LEA must ensure that parents and families of participating children participate, on an equitable basis, in services and activities developed pursuant to ESEA section 1116. Activities for Title I, Part A parents and families of private school participants must be planned and implemented after meaningful consultation with private school officials and parents and families.

Examples include parent meetings; parent-teacher conferences; communication between the Title I, Part A teachers and parents on students' academic progress; parent education; parent training activities on how to work at home with children on content and skills; reasonable access to Title I staff to receive information about their child's progress; and private school parent representation on a

district-wide private school working group. As appropriate, these activities may include light refreshments for parents and families at Title I, Part A meetings in order to facilitate attendance at those meetings.

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).

***Q17: May an LEA use more than 1% of the Title I, Part A proportional share for parental and family engagement (PFE)?**

***A17:** Yes. Based on consultation with private school officials, an LEA may use more than 1% of the Title I, Part A proportional share for PFE activities.

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).

***Q18: If there are parent and family engagement (PFE) funds remaining for equitable services in a participating PNP school, how are the PFE equitable services used the following year?**

***A18:** The LEA, in consultation with PNP school officials, must use carryover funds the following year for PFE activities in the same private school. However, if, after consultation, the PNP school declines a portion, or all, of the carryover funds for PFE equitable services, the LEA should add the carryover funds to the proportional share available for PFE services to other participating PNP schools. If, after consultation with other participating PNP schools, none requests the use of PFE equitable services, the funds may be used to provide Title I, Part A PFE services in public schools.

***Q19: What topics must an LEA address during consultation regarding the Title I, Part A program?**

***A19:** The ESEA requires an LEA to consult with private school officials on the following Title I, Part A equitable services topics:

- How the children's needs will be identified;
- What services will be offered;
- How, where, and by whom the services will be provided;
- How the services will be academically assessed and how the results of that assessment will be used to improve those services;
- The size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated for such services, and how that proportion of funds is determined;
- The method or sources of data that are used to determine the number of children from low-income families in participating school attendance areas who attend private schools, including whether the LEA will extrapolate data if it uses a survey – i.e., depending on if there is a representative sample;
- How and when the LEA will make decisions about the delivery of services to eligible children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential 3rd-party providers;
- How, if the LEA disagrees with the views of the private school officials on the provision of services through a contract, it will provide in writing to such private school officials an analysis of the reasons why it has chosen not to use a contractor;
- Whether the LEA will provide services directly or through a separate government agency,

consortium, entity, or 3rd-party contractor;

- Whether to provide equitable services to eligible private school children by creating a pool or pools of funds with all of the funds allocated based on all the children from low-income families in a participating school attendance area who attend private schools with the proportion of funds allocated based on the number of children from low-income families who attend private schools;
- When, including the approximate time of day, services will be provided; and
- Whether to consolidated and use funds in coordination with eligible funds available for services to private school children under applicable programs, as defined in ESEA [section 8501\(b\)\(1\)](#), to provide services to eligible private school children participating in those programs.

Because an LEA must consult with appropriate private school officials during the design and development of the LEA’s Title I, Part A program and before it makes any decision that affects the opportunities of eligible private school students to participate, other topics of consultation must include, as appropriate:

- 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; and
- Transferring funds from Title II, Part A or Title IV, Part A into Title I, Part A.

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 (Updated May 17, 2023).

***Q20: What constitutes meaningful consultation with respect to methods and sources of poverty data for Title I, Part A services?**

*A20: ESEA section 1117(b)(1)(F) requires an LEA to consult with private school officials on “the method or sources of data that are used...to determine the number of children from low-income families in participating school attendance areas who attend private schools” in order to calculate the proportional share of Title I, Part A funds available for equitable services. Such consultation must occur before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the Title I, Part A program. The LEA must give ‘due consideration’ to the views of private school officials, with the goal of reaching agreement on how to provide equitable and effective programs to eligible private school children.

For consultation regarding the method(s) or source(s) of data an LEA will use to determine the number of private school children from low-income families to be meaningful, the Department interpretation of ESEA section 1117(b)(1)(F) requires the LEA to discuss the allowable measures of poverty. This recognizes that private schools may have sources of poverty data, such as E-Rate data, available that would be comparable to the source an LEA uses to count public school children (i.e., FRPL) and that an LEA cannot conclude that a survey is the best source of poverty data without at least consulting about other sources that may exist. Accordingly, although an LEA makes the final decision about the measure(s) of poverty to use in determining the proportional share, meaningful consultation requires the LEA to consider available sources of data if presented by a private school.

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 (Updated May 17, 2023).

***Q21: What are examples of practices that LEAs, in consultation with private school officials, may find helpful in increasing the survey response rate for Title I, Part A services?**

*A21: There are instances in which an LEA may need assistance from private school officials to obtain information necessary to provide Title I, Part A services to eligible students in private schools. Support from private school officials to increase the survey response rate to obtain poverty data comparable to those used for public school students serves as a form of such assistance. For example, an LEA might invite private school officials to provide a cover note to accompany the survey wherein the private school principal encourages participation. Another example is when an LEA agrees in consultation with private school officials for the private school to include the survey in the school's annual registration packet to families.

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 (Updated May 17, 2023).

Title I, Part C Migrant Equitable Services

Q1: How does an LEA determine the number of identified Title I, Part C Migrant PNP students attending a private school, located within district boundaries, to generate equitable services on the ESSA Consolidated Application Grant's PS3099 Private School Schedule?

A1: The identified Title I, Part C Migrant PNP student enrollment *ages 3-21* is used on the *ESSA Consolidated Application Grant's PS3099 Private School Schedule* to calculate district equitable services. Federal funds may not serve stand-alone PK, preschool, or Early Childhood programs without a Kindergarten grade level in the school.

PNP prekindergarten students may only be counted in student enrollment *if* the school serves at least the kindergarten grade level at the PNP school.

The citation for Migrant funding eligibility may be found in ESEA, Section 1303(a). The definition of migratory child may be found in ESEA, Section 1309(3).

Q2: Where might an LEA receive additional Title I, Part C program information and support?

A2: An LEA may contact the TEA's Federal Program Compliance Division at Migrant.Ed@tea.texas.gov for Title I, Part C Migrant program support and questions.

Title II, Part A Equitable Services

Q1: Who is eligible to receive equitable services under Title II, Part A?

A1: Generally, only private school teachers, principals, and other school leaders (who meet the definition provided in ESEA section 8101(44)) are eligible to receive equitable services under Title II, Part A. However, other educational personnel, including paraprofessionals, may also receive equitable services consistent with a specific allowable use of Title II, Part A funds. For example, under ESEA section 2103(b)(3)(I), Title II, Part A funds may be used for training for all school personnel in addressing issues related to school conditions for student learning such as safety, peer interactions, drug and alcohol abuse and chronic absenteeism.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q2: May an LEA use Title II, Part A funds for private nonprofit (PNP) teacher bonuses and/or staff incentives?

A2: 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)

Q3: What types of Title II, Part A activities may an LEA provide to private school participants?

A3: 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:

- 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)

Q4: May a private school use Title II, Part A equitable services for counselor training sessions that result in certification?

A4: 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 a 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.

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.

Q5: May Title II, Part A funds be used to pay stipends to private school staff who participate in professional development activities?

A5: Yes. Title II, Part A funds may be used to pay stipends for private school staff participating in LEA approved professional development activities, 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.

Q6: How is professional development defined?

A6: Under Title II, Part A, an LEA may “provide high-quality, personalized professional development that is evidence-based, to the extent that the State (in consultation with LEAs in the State) has determined that evidence is reasonably available, for teachers, instructional leadership teams, principals, or other school leaders, that is focused on improving teaching and student learning and achievement.” (ESEA section 2103(b)(3)(E)).

As a result, professional development services and programs must meet the definition of “professional development” in ESEA section 8101(42), which requires that the activity is both:

- (1) part of the strategies for providing educators with the knowledge and skills necessary to enable children to succeed in a well-rounded education; and
- (2) “sustained (not stand-alone, 1-day, or short-term workshops), intensive, collaborative, job-embedded, data driven, and classroom focused.”

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q7: What considerations must inform decisions regarding the professional development that private school educators receive under Title II, Part A funded equitable services?

A7: An LEA must consider the following:

- Does the professional development meet the definition of “professional development?” (ESEA section 8101(42)).
- Is the professional development evidence-based, where applicable? (ESEA section 8101(21)).
- Is the professional development reasonable and necessary in order to provide Title II, Part A equitable services? (See 2 C.F.R. § 200.403).

- Does the professional development supplement, and not supplant, professional development that would have otherwise been provided to private school teachers, principals, and other school leaders? (ESEA section 2301).

In addition, an LEA must meet all applicable requirements in ESEA section 8501, including the requirement that all services be “secular, neutral, and non-ideological.”

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q8: Do conferences meet the definition of “professional development” in ESEA section 8101(42)?

A8: Because many conferences are short-term or are stand-alone, they *may not* meet this definition as an allowable expenditure under ESEA section 2103(b)(3) without further integration into a comprehensive plan for professional development for a teacher or teachers. However, if a private school official can demonstrate, through consultation with an LEA, that attendance at a short-term conference is part of a sustained and comprehensive professional development plan for a teacher that meets these Title II, Part A requirements, including the statutory definition of professional development, then an LEA may use Title II, Part A funds for costs associated with a private school teacher’s participation in the conference.

Furthermore, depending on the content and substance of the conference, participation may be allowable under other specifically defined activities in Title II, Part A, which do not need to meet the ESEA section 8101(42) definition of professional development. For example, ESEA section 2103(b)(3)(H), (J), (K), and (L) allows training for selecting and implementing formative and classroom-based assessments, for identifying gifted and talented children, for supporting instructional services provided by effective school library programs, and for preventing and recognizing child sexual abuse.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q9: How can an LEA ensure Title II, Part A funds are only used for “secular, neutral, and non-ideological” conference sessions?

A9: A conference conducted by a religious organization often includes both secular and religious content. If an otherwise allowable professional conference is conducted by a religious organization, an LEA may pay only for a teacher’s participation in that portion of the conference program that is secular, neutral, and non-ideological. In determining the costs associated with a private school teacher’s participation in the conference, an LEA would need to:

- (1) determine the sessions of the conference that provide secular, neutral, and non-ideological professional development;
- (2) have the teacher document his/her participation in such program sessions in such a way that the LEA is able to determine the percentage of the teacher’s overall time spent attending those sessions; and
- (3) apply that percentage against the overall cost of attending the conference as a whole. For professional development activities, whether in-person or via a virtual/online format, an LEA might require that a private school teacher provide both titles and descriptions of the sessions the teacher expects to attend, as well as some form of verification that he/she participated in the sessions.

Example:

A conference runs from 8:00 a.m. to 5:00 p.m. (with an hour for lunch). If for the 8 hours of work time, the teacher spends 6 hours attending/participating in secular sessions that meet the Title II, Part A requirements above, an LEA could use Title II, Part A funds to pay 75 percent of the registration and travel costs, since the teacher has spent 75 percent of the full-day conference time attending/participating in secular activities.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q10: May Title II, Part A funds be used to pay for an online subscription to a professional development video database?

A10: Title II, Part A funds may be used to purchase a subscription to an online video database to provide professional development to private school educators so long as the content is secular, neutral, and non-ideological.

Title II, Part A funds may not pay for an online subscription to a professional development video database that contains content that is not fully secular, neutral, and non-ideological because, generally, there is no way to guarantee that the user is only accessing the secular content and, thus, that Title II, Part A funds are not spent on religious content. For the same reason, Title II, Part A funds may not be used to pay a prorated portion of an online subscription to reflect the amount of material that is secular, neutral, and non-ideological because there is no way to guarantee that the user is only accessing the non-religious content.

However, if an online subscription to a professional development video database has a separate subscription that only permits access to content that is secular, neutral, and non-ideological, that separate subscription would be an allowable use of Title II, Part A funds because it ensures that Federal funds are not spent on religious content.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q11: May an LEA use Title II, Part A funds to reimburse a private school for the costs of professional development?

A11: No. An LEA must administer and retain control over the Title II, Part A funds, and services must be provided by the LEA or through a contract between the LEA and a third-party provider. (ESEA section 8501(d)). Therefore, an LEA may not reimburse or provide Title II, Part A funds directly to private schools. An LEA may pay the provider directly or reimburse an individual private school teacher or other staff for professional development that the LEA has pre-approved after timely and meaningful consultation.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q12: If a private school requires and annually provides, as part of its teacher contract, 4 days of professional development, may the LEA provide, on these same days, professional development supported by Title II, Part A funds?

A12: It depends. Because the supplement not supplant requirement [34 C.F.R. § 299.8(a)] applies to all Title VIII equitable services, professional development equitable services provided to private school teachers must supplement the professional development those teachers would otherwise receive from their private school. In determining whether proposed professional development under Title II, Part A is supplemental, a starting point might be whether a private school provides some level of professional development pursuant to a teacher’s contract. If it does, Title II, Part A funds may not be used to meet the contractual requirements. Title II, Part A funds may supplement those requirements, however, even during required professional development days. For example, if a private school teacher’s contract requires the private school to provide eight hours of professional development that may be fulfilled by teachers working collaboratively with a master teacher or subject-matter coach, Title II, Part A funds could supplement the required professional development by funding a separate activity, such as contracting an outside expert to train teachers on effective collaboration.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Title III, Part A Equitable Services

Q1: Are English learners (ELs) who attend a private school eligible to participate in Title III, Part A programs and receive equitable services?

A1: Yes, as long as the English learners are identified in an appropriate manner and the private school has developed an agreement (written documentation and format of agreement used should be the local policy standard) with the LEA of geographic jurisdiction, English learners in a private school may participate in programs and receive services funded by Title III, Part A.

Private schools may not receive funds directly but must decide through the agreement to receive programs, services, and products from the LEA.

Q2: How much of an LEA’s Title III, Part A funds may be used to support programs, services, and products for English learners in private schools?

A2: The *Every Student Succeeds Act (ESSA)* specifies that assistance to English learners in private schools should be “comparable” to that of an English learner in public schools. The recommended method to determine comparability is to use the per-pupil allocation of Title III funds as the basis for the cost of Title III products and services in the private school. For example, assuming a per-pupil allocation of \$100, the private school would receive an equivalent amount of products and services for each English learner served. If 10 English learners were identified in the private school, then that private school would receive approximately \$1000 worth of products and services.

Q3: Who maintains control of Title III, Part A materials and equipment equitable services provided to PNPs?

A3: ESSA, Section 8501, states that the LEA, consortium, or entity maintains control of the federal funds used to provide services to private schools. It also maintains title to materials, equipment, and property purchased with those funds. LEAs, consortiums, independent charter schools, and entities may allow the

private schools to keep the items from year to year, in accordance with approved activities specified in the agreement, so long as appropriate records are maintained.

Q4: Must the Title III, Part A program design be the same for both public and private schools?

A4: No. If the needs of the private school are different from those of the public school, the LEA, in consultation with private school officials, must develop a separate program design that is appropriate for the PNP's needs. Consultation and coordination between LEA and private school officials are essential to ensure a high-quality program that meets the needs of the students being served and assists those students in attaining English proficiency and meeting the same challenging standards as all students are expected to meet.

Q5: Must private school English learners be assessed annually?

A5: Yes. The English proficiency of an EL enrolled in a private school must be assessed annually to determine continued student eligibility for Title III, Part A equitable services. LEAs should use the same instrument used for the initial assessment of English learners identified in the private school.

Q6: Does the Title III, Part A requirement on language qualifications of teachers also apply to teachers providing services to English learners enrolled in private schools?

A6: Yes. LEA instructional staff providing supplemental services to private school English learners must be fluent in English and any other language used for instruction, including having written and oral communications skills. [Section 3116(c)].

Q7: Does an LEA have to support Private Non-Profit (PNP) schools with Title III, Part A funding?

A7: Yes. An LEA has a responsibility to provide equitable Title III, Part A services to eligible private non-profit (PNP) schools' English learners and/or immigrant students, their teachers, and other educational personnel within the LEA's attendance boundary. Through consultation between the eligible PNP and the LEA, a variety of supplemental services may be agreed upon for the current academic year.

Q8: What is the age range for identified English learners and/or immigrant students enrolled in a PNP to calculate Title III funds on PS3099 – Private Nonprofit (PNP) School Equitable Services?

A8: Under ESSA, Sec. 8101(20), the terms "English learner" and "Immigrant student" have been defined with an **age range of 3 through 21** who are enrolled in school from prekindergarten through grade 12.

Note: Prekindergarten includes students enrolled in a 3- or 4-year-old school program.

Q9: What are some examples of the Title III, Part A services that an LEA may provide to private school ELs, their teachers, and other educational personnel?

A9: Some examples of the Title III, Part A services that an LEA may provide to private school ELs, their teachers, and other educational personnel include:

- Tutoring for ELs before, during, or after school hours;
- Professional development for private school teachers of ELs;

- Summer school programs to provide English language instruction for ELs; and
- Provision of supplemental instructional materials and supplies. These materials and supplies must be clearly labeled and identified as the LEA's property, and must be secular, neutral, and non-ideological. The LEA is required to maintain oversight of all materials and supplies purchased with Title III, Part A funds.

As with all services and materials provided with Title III, Part A funds, any materials, supplies, and services must be supplemental to what the private school would otherwise provide in the absence of the Title III, Part A services.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q10: What is the federal definition for an 'English Learner'?

A10: The federal definition for an "English Learner" can be found in Title VIII, Sec. 8101 (20) **English Learner**.—The term "English learner", when used with respect to an individual, means an individual—

- (A) who is aged 3 through 21;
- (B) who is enrolled or preparing to enroll in an elementary school or secondary school;
- (C)(i) who was not born in the United States or whose native language is a language other than English;
 - (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and
 - (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—
 - (i) the ability to meet the challenging State academic standards;
 - (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
 - (iii) the opportunity to participate fully in society.

(Division of English Learner Support Staff Response, August 29, 2022)

Q11: What is the definition of Title III, Part A Immigrant student?

A11: The term 'immigrant children and youth' means individuals who-

- (A) are aged 3 through 21;
- (B) were not born in any State; and
- (C) have not attended one or more schools in any one or more States for more than 3 full academic years.

Q12: May Title III, Part A funds from the private nonprofit school's equitable services share be used to identify English Learners?

A12: No. The LEA must use the same statewide standardized assessment, purchased with local/state funds,

to assess PNP students as for students enrolled in Texas public schools. Once a student has been assessed and has been identified as an emergent bilingual student, the LEA and PNP will need to determine if the PNP will continue to receive support for identified students and teachers at the PNP through Title III, Part A funds.

Local/State Funds must support the following activities:

- Identification Assessment
- Associated costs in administering the identification assessment

Title III, Part A Funds may support the following activities (allocation determined within the ESSA Consolidated Federal Grant Application, PS3099 Private School Schedule):

- Supplemental materials for Emergent Bilingual (EB) students enrolled in a PNP
- Professional development supports for teachers serving EB students enrolled in a PNP
- End-of-year assessment to determine continuation in program

These activities must be agreed upon through consultation. The PNP school may decline Title III, Part A equitable services.

(Division of English Learner Support Staff Response- revised 11/21/ 2022)

***Q13: Who is eligible to receive Title III, Part A equitable services?**

*A13: To be eligible for Title III, Part A equitable services for ELs, a private school student must be enrolled in a private elementary or secondary school in the geographic area served by an LEA that receives a Title III, Part A subgrant for ELs, and must meet the definition of an EL under ESEA section 8101(20).

To be eligible for Title III, Part A services for immigrant children and youth, a private school student must be enrolled in a nonprofit private or secondary school in the geographic area served by an LEA that receives a Title III, Part A subgrant for immigrant children and youth, and must meet the definition of an immigrant children and youth under ESEA section 3210(5).

Private school teachers and other educational personnel who instruct private school ELs may receive professional development under Title III, Part A. The extent to which private school teachers and other educational personnel would receive professional development under Title III, Part A would be determined during the consultation process.

Q14: Where might an LEA receive additional Title III, Part A program information and support?

A14: An LEA may contact the TEA's *Division of English Learner Support* at EnglishLearnerSupport@tea.texas.gov for Title III, Part A program support and questions.

Title IV, Part A Equitable Services

Q1: Must PNP schools participate in Title I, Part A equitable services to receive Title IV, Part A services?

A1: No. The LEA must have received Title I, Part A funds to generate Title IV, A funds.

Q2: Can Title IV, Part A funds be used to pay for a private nonprofit's (PNP's) advanced placement testing proctor's stipend or salary?

A2: No. Stipends and/or salary for a PNP's testing proctor does not meet any of the 3 purposes of Title IV, Part A for students: well-rounded education, safe and healthy students, or the effective use of technology.

Q3: Can Title IV, Part A funds be used to assist PNP students for dual credit tuition?

A3: Yes, it must meet requirements listed in ESSA, Section 4107(a)(3)(D) and the Title IV, Part A Use of Funds document. In addition, all Title IV, Part A funds used for PNP equitable services/materials/purchases must be neutral, secular, and non-ideological.

Q4: Can Title IV, Part A funds be used to pay for PNP student licenses for an online career inventory?

A4: Yes, it must meet requirements listed in ESEA, Section 4107(1)(3)(A) and the Title IV, Part A Use of Funds document. In addition, all Title IV, Part A funds used for PNP equitable services, materials, and/or purchases must be neutral, secular, and non-ideological.

Q5: May an LEA use Title IV, Part A funds for a PNP school's student group to attend a *Science, Technology, Engineering, and Mathematics (STEM)* competition?

A5: Yes, it must meet all requirements listed in the Title IV, Part A Use of Funds document.

An LEA may use Title IV, Part A funds for a PNP's programming and activities to improve instruction and student engagement in STEM subjects per ESEA Section 4107(a)(3)(C). STEM activities may include increasing access for groups of underrepresented students to high-quality courses and supporting participation in nonprofit competitions (e.g., robotics, science research, intervention and math competitions, computer programming).

All Title IV, Part A funds used for PNP equitable services/materials/purchases must be neutral, secular, and non-ideological.

Q6: May an LEA use Title IV, Part A funds for a private school's accelerated learning program for struggling students?

A6: Yes. Student academic achievement through accelerated learning programs is an allowable activity with Title IV, Part A funds.

Q7: Must a participating PNP school meet the 20% well-rounded education, 20% safe and healthy students, and effective use of technology portion requirements for Title IV, Part A equitable services?

A7: No. Participating PNP school equitable services amounts do not need to comply with required LEA content area spending requirements.

***Q8: How does an LEA that receives a subgrant of \$30,000 or greater address both the distribution requirements in Title IV, Part A and the equitable services requirement?**

*A8: Title IV, Part A requires that LEAs that receive \$30,000 or more in Title IV, Part A funds ‘use not less than 20 percent of funds received under this subpart’ for each content area (well-rounded education, safe and healthy students, and effective use of technology). The language – “*funds received under this subpart*”-means that these distribution requirements apply to an LEA’s total allocation, including any amount spent for equitable services to private school children and teachers. There is no requirement that the portion an LEA spends for equitable services separately meet these distribution requirements.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q9: What are some allowable activities for private school children and educators under Title IV, Part A?

A9: There are 3 categories of allowable activities under Title IV, Part A. Some examples of activities under each category are:

- (1) **Activities to Support Well-rounded Educational Opportunities** (ESEA section 4107), such as:
 - College and career guidance and counseling programs;
 - Programs and activities that use music and the arts as tools to support student success through the promotion of constructive student engagement, problem solving, and conflict resolution; and
 - Programming and activities to improve instruction and student engagement in science, technology, engineering, and mathematics, including computer science.
- (2) **Activities to Support Safe and Healthy Students** (ESEA section 4108), such as:
 - Drug and violence prevention activities and programs;
 - School-based mental health services;
 - High-quality training for school personnel, including specialized instructional support personnel, related to suicide prevention, effective and trauma-informed practices in classroom management, and crisis management and conflict resolution; and
 - Creating, maintaining, and enhancing high-quality school emergency operations plans.
- (3) **Activities to Support the Effective Use of Technology** (ESEA section 4109), such as:
 - Providing educators with the professional learning tools, devices, content, and resources to personalize learning to improve student academic achievement;
 - Building technological capacity, which may include procuring content and ensuring content quality and purchasing devices, equipment, and software applications in order to address readiness shortfalls; and
 - Developing or using effective or innovative strategies for the delivery of specialized or rigorous academic courses and curricula through the use of technology, including digital learning technologies and assistive technology.

As with all services and materials provided with Title IV, Part A funds, any materials, supplies, and services must be supplemental to what the private school would otherwise provide in the absence of the Title IV, Part A services. *Note that this is not an inclusive list of all allowable activities.* Please see

ESEA sections 4107-4109 for additional examples of activities that may be supported with Title IV, Part A funds.

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Title IV, Part B Equitable Services

Q1: What qualifies as Title IV, Part B Nita M. Lowey 21st Century Community Learning Center (21st CCLC)?

A1: The physical location at which the 21st CCLC program services occur.

- Title IV, Part B program services could be located at a school campus, community center, or privately-owned facility.
- Title IV, Part B grantees are limited to a maximum of 10 centers.

Q2: What is the eligibility requirement for Title IV, Part B 21st CCLC equitable services?

A2: The private school must be located within the attendance zone of a public school eligible for a Title I, Part A Schoolwide program.

Q3: What are subgrantee’s PNP requirements for the Title IV, Part B CCLC program?

A3: USDE’s key requirements subgrantees must ensure for participation:

- Title IV, Part B grant provides for equitable participation of private school students and teachers.
- Title IV, Part B equitable services must be supplemental.
- Consultation must be timely and meaningful.
- Expenditures must be equal on a per-pupil basis.
- LEA (or other eligible entity) remains in control of Title IV, Part B funds and title to all materials, equipment, and property purchased for equitable services.
- Title IV, Part B services must be secular, neutral, and non-ideological.
- Private school officials have the right to file a formal complaint with the TEA PNP Ombudsman.

Q4: What are eligibility requirements for private school students to participate in Title IV, Part B equitable services?

A4: The Title IV, Part B subgrantee must:

- Use needs assessment data to identify eligible private school students for services.
- Provide services to private school students *in same grades* as 21st CCLC grant-funded program.
- Must ensure all eligible private schools were consulted.
- Submit a Title IV, Part B Affirmation of Consultation form to TEA.

Q5: When should Title IV, Part B timely and meaningful consultation occur with the eligible private schools?

A5: Timely and meaningful consultation should occur prior to any subgrantee program decisions. Consultation should continue during the design, development, and implementation of the Title IV, Part B program.

Q6: How does a non-public school district determine public school attendance zones for its centers?

A6: All Title IV, Part B subgrantees, including charter schools, will use the public attendance zone in which the Texas Afterschool Centers on Education (ACE Center) is located.

Q7: If an eligible private school participates, may students residing outside of the Title I, Part A public attendance zone participate?

A7: No. Services must be provided to eligible private school students residing in the Title I, Part A Schoolwide attendance zones of the campuses and feeders served by the center.

Q8: Are home-school children and youth considered private school students and eligible for Title IV, Part B participation?

A8: No. Home-schooled students are not considered private school students unless the home school meets the federal definition of a private non-profit entity.

Q9: Are services required to be provided on the private school students' home campus?

A9: No. There is no requirement that private school students be served on the private school campus. During consultation, the subgrantee and private school would decide on the location of services.

If services are provided at the private school, the center must be run by the subgrantee with all program and statutory requirements met. If services are provided at the center, the subgrantee provides transportation.

Q10: How does a subgrantee calculate Title IV, Part B equitable services?

A10: On the Title IV, Part B CCLC Grant Application, the subgrantee completes the private school equitable services section to determine the amount of equitable services available.

Q11: What types of services may be provided to eligible private school children in a 21st CCLC program?

A11: Examples of allowable activities in 21st CCLC programs include:

- academic enrichment learning programs, mentoring programs, remedial education activities, and tutoring services that are aligned with challenging State academic standards;
- literacy education programs;
- programs that support a healthy and active lifestyle;
- drug and violence prevention programs;

- programs that build skills in science, technology, engineering, and mathematics (STEM), including computer science, and that foster innovation in learning by supporting nontraditional STEM education teaching methods; and
- programs that partner with in-demand fields of the local workforce or build career competencies and career readiness. (ESEA section 4205).

As with all services and materials provided with Title IV, Part B funds, any materials, supplies, and services must be supplemental to what the private school would otherwise provide in the absence of the Title IV, Part B services. *Note that this is not an inclusive list of all allowable activities.*

USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

***Q12: May a 21st CCLC subgrantee provide for the equitable participation of private school children and educators in programs and activities?**

*A12: Yes. All subgrantees receiving funds under the 21st CCLC program must, after timely and meaningful consultation with appropriate officials of private schools located in the area served by the subgrant, provide to private school children and educators educational services and other benefits that are equitable in comparison to such services and other benefits provided with program funds to public school children and educators. (Section 8501(a)(1), (3)(A)). The requirement to provide for the equitable participation of private school children and educators applies regardless of whether a subgrantee is an LEA, CBO, or other eligible entity.

Further guidance on meeting this requirement can be found here:

<https://oese.ed.gov/files/2022/03/Draft-Title-VIII-Equitable-Services-Guidance.pdf>.

USDE 21ST Century Community Learning Centers, Title IV, Part B Non-Regulatory Draft Guidance, (May 2023).

Q14: Where might an LEA receive additional Title IV, Part B program information and support?

A14: Interested parties may review the TEA's [Title IV, Part B 21st CCLC](#) webpage or for questions contact 21stcentury@TEA.Texas.gov.

Staff Providing PNP Equitable Services

Q1: May an LEA or a third-party contractor employ a private school teacher to provide Title I, Part A and/or ESSA programs covered by Title VIII equitable services to private school participants?

A1: Yes, provided certain conditions are met. An LEA may hire a certified private school teacher to provide services only if the teacher is independent of the private school in the provision of services. The certified private school teacher must be employed by the LEA or third-party contractor outside of the time he or she is employed by the private school. The private school teacher must be under the direct supervision of the LEA or third-party contractor with respect to all activities provided under a covered ESEA program. [(ESEA section 1117(d)(2) and ESEA section 8501(d)(2)].

USDE Title I, Part A Equitable Services Non-Regulatory Guidance and USDE Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q2: What does it mean for a contractor to be independent of a private school in the provision of equitable services?

A2: In general, whether a contractor is independent of a 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. For example, 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. As result, an LEA would be prohibited from entering into a contract with the administrative body for the provision of equitable services to its affiliated schools. In contrast, a membership organization with no authority over the operations of its member schools likely would be considered independent of such schools.

Q3: May an LEA use a third-party contractor to provide equitable services?

A3: Yes. Following consultation, an LEA may provide services directly or indirectly through contracts with individuals and public and private agencies, organizations, and institutions so long as those entities are independent of the private school in the provision of those services. (ESEA section 8501(d)(2)). If an LEA contracts with a third-party provider to provide services and benefits to eligible private school children and educators, the LEA remains responsible for ensuring that private school children and educators receive equitable services and that the requirements of the statute and regulations are met.

Q4: May Title I, Part A funds be used to pay stipends to private school instructional staff who participate in Title I, Part A and/or ESSA programs covered by Title VIII services and activities?

A4: Yes. Title I, Part A and/or ESSA programs covered by Title VIII 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.

Q5: If an LEA hires and supervises PNP staff to provide equitable services, would the PNP staff pay be considered extra-duty or contracted?

A5: It will depend upon the type of employment arrangement. The main difference between an employee and a contractor is that the employer has control over the activities of the employee, but the contractor does his or her work independently. The employee has a specified salary or wage and is bound by an employment contract. If the new employee is hired full- or part-time to provide PNP services, the salary or wage will be regular pay not extra-duty pay.

Q6: If an LEA hires public school staff to provide PNP equitable services, would the LEA staff be considered extra-duty or contracted?

A6: If the individual is already employed by the LEA and is providing services outside of normal working hours it is extra-duty pay. In that case, LEA must maintain time sheets and records of extra duties performed to support time and effort requirements.

***Q7: During inclement weather, an LEA closed all operations. One of the PNP schools served decided, without prior communication or authorization from the LEA, to provide online tutorials during the LEA's closure. The PNP school submitted a timesheet requesting payment for contracted services of the tutorials from their Title I, Part A equitable services share. Is the LEA obligated to provide reimbursement of the tutorial services to the PNP school?**

***A7:** No. Private school officials are not authorized to obligate or receive Title I, Part A funds for reimbursement.

Travel and Professional Development

Q1: Is registration and travel costs for LEA-approved professional development opportunities by participating PNPs allowed?

A1: Yes. Equitable services to private schools may include registration and travel costs for PNP staff participating in allowable professional development activities. LEAs must complete a pre-approved Participant Support Costs and maintain locally for documentation to auditors or monitors upon request. If there are questions regarding the Participant Support Costs form, contact the Grant Support Division at GrantSupport@TEA.Texas.gov.

Q2: What is the purpose of an LEA completing a Request for Approval of Participant Support Costs: Private School Equitable Services pre-approved TEA form?

A2: The purpose of the Participant Support Costs form is to provide required approval to all TEA grantees that expend any federal grant funds on the provision of equitable services to private nonprofit schools (PNPs), in accordance with the requirements of the *Every Student Succeeds Act* (ESSA). Equitable services to PNPs that are required, and therefore allowable, under federal program statute include registration and travel costs for PNP staff participating in allowable professional development activities. This form is applicable to all TEA subrecipients and to any federal grant administered by TEA in which equitable services to PNPs are required and therefore allowable.

Title 2 of the Code of Federal Regulations (2 CFR) 200.456 makes allowable the expenditure of federal grant funds on participant support costs. According to the definition provided in 2 CFR 200.1, "participant support costs" means the direct cost of providing training, including attendance of professional conferences, to grant program participants. Direct costs may include the cost of travel to the training and any registration fees.

Q3: May an LEA reimburse PNP staff for lodging, meals, and transportation costs to attend pre-approved professional development opportunities?

A3: Yes. However, the reimbursements out of grant funds *may not exceed* the maximum meals and lodging rates based on federal travel regulations that are issued by the Texas Comptroller of Public Accounts. The current [travel and mileage rates](#) published by the Texas Comptroller apply to all grants that TEA administers for individuals on travel status.

If local policy reimburses at a lesser amount, an LEA must comply with local policy. If local policy reimburses at a greater amount, an LEA must pay the difference from local or state funds and not from grant funds. A summary of current [Texas travel guidelines](#) is available on the TEA website.

Q4: May an LEA provide Title I, Part A services and activities, such as professional development, to staff employed by an LEA who provide PNP equitable services?

A4: Yes. An LEA may provide Title I services and activities, such as professional development, to LEA staff who provide instruction to eligible private school children. To the extent that an LEA is considering paying for such services and activities from the proportional share, it must consult with private school officials.

In addition, if only a portion of the cost of such services is paid from the proportional share, the costs must be in proportion to the amount of time the teacher provides services to private school students compared to other instruction the teacher may provide.

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: May Title II, Part A funds be used to pay for a private school teacher's attendance at a professional conference sponsored or conducted by a faith-based organization?

A5: Yes. To the extent that the conference is part of a sustained and comprehensive secular professional development plan for the teacher, then Title II, Part A funds may be expended to pay for the portion of the costs of the conference that, as determined by the LEA, represent the *secular* professional development in which the teacher participated. In this case, the LEA would pay or reimburse the teacher for attendance at the conference.

Please note that the conference, as professional development, must meet the definition of professional development in [section 8101\(42\)](#) of the ESEA, as amended by the ESSA.

Q6: May LEA or PNP staff use federal funds to attend out-of-state training opportunities?

A6: Federal grant funds may not be used for out-of-state training if the same type and quality of training

is available in state.

For more information, see the [TEA Budgeting Costs Guidance Handbook](#), *Other Operating Costs (6400)* section.

Q7: If eligible private school children need transportation from the private school to another site in order to be served by Title VIII program(s), who is responsible for providing transportation?

A7: If eligible private school children need to be transported from their private school to another site, the LEA, as the provider of equitable services, is responsible for providing that transportation. (See ESEA section 8501(a)(1)).

It is not the responsibility of the private school or the participants' parents to provide the necessary transportation. The cost of such transportation, which must be reasonable and necessary to provide services, is an administrative cost and is therefore among the administrative costs taken off the top of the LEA's total allocation. Thus, it is often beneficial for LEAs and private school officials to work together to facilitate the provision of services at the private school site in order to reduce administrative costs and time away from the children's general course of instruction at the private school.

Title VIII, Part F of the ESEA of 1965, as Amended by the ESSA: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel Non-Regulatory Guidance (March 30, 2022 – draft).

Q8: How is the definition of professional development applied to private nonpublic (PNP) schools?

A8: The definition of 'professional development' in [ESEA section 8101\(42\)](#) does not change as applied to PNP schools. The response applies with respect to any use of funds for either professional development or training for teachers in PNP schools. – USDE, 4/2022

Evaluations for Equitable Services

Q1: Is an evaluation of the Title I, Part A program required if private nonprofit (PNP) schools participate in Title I equitable services?

A1: Yes. An LEA must annually evaluate the Title I, Part A equitable services it provides to determine the progress being made in meeting participating students' academic needs. (ESEA section 1117(a)(1)(A), (b)(1)(D)). The [USDE Title I, Part A Equitable Services Non-Regulatory Guidance](#) document provides more details.

Q2: Is an evaluation of the Title IV program required if private nonprofit (PNP) schools participate in any Title IV, Part A equitable services?

A2: Yes. The evaluation of services and how the results will be used must be discussed during ongoing consultation meetings per the [ESEA, Participation by Private Schools and Teachers, Part F, Subpart 1, Section 8501\(c\)\(1\)\(D\)](#) and [ESEA, Title IV, Part A, Section 4106 \(e\)\(1\)\(E\)](#).

Virtual Meetings

Q1: May a district use Facebook or other social media and virtual options to conduct meetings for the required private school consultations?

A1: Yes. 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.

Q2: What are acceptable forms of documentation for sign-in sheets and/or consultation meetings?

A2: Given the increased use of virtual meeting environments, participant rosters that include the meeting title, meeting date, and PNP school official names and roles would be acceptable substitutes for the more traditional sign-in sheets. This eliminates the need of a PNP participant signature for any training sessions, professional development opportunities, and/or consultation meetings.