

Equitable Services to Non-public Schools under the ESSA

Frequently Asked Questions



In an effort to assist local educational agencies (LEAs) with the provision and implementation of equitable services to non-public schools requirements under the Elementary and Secondary Education Act (ESEA), reauthorized as the Every Student Succeeds Act (the ESSA), [the Office of ESEA Programs](#) has prepared the following guidance based on frequently asked questions received from administrators throughout the state. For additional information, please visit the [Equitable Services to Non-public Schools webpage](#).

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I. Consultation

Question: Is the LEA required to consult with for-profit private schools?

Answer: For-profit non-public schools are not eligible to receive equitable services under the ESEA. The LEA is only required to consult with non-profit non-public schools regarding the provision of equitable services.

Question: What does the LEA need to submit to the non-public school ombudsman?

Answer: The results of the consultation must be submitted to the non-public schools ombudsman no later than May 30th each year. CDE has developed, with stakeholder input, a consultation form that may be used to meet the requirements under the ESSA regarding the results of consultation. The consultation form may be accessed on the [Equitable Services](#) webpage.

Question: What if the preliminary allocations are late? Is the LEA still required to submit the consultation form by May 30?

Answer: CDE recognizes that when allocations are released later than anticipated it may inhibit timely and meaningful consultation. In this situation, the LEA should continue with consultations, as planned, and provide updates to the non-public schools once preliminary allocations are received to finalize plans for the provision of equitable services in the upcoming school year.

Question: What should I do if the LEA has not reached out for consultation?

Answer: Consultation must include early discussions to prepare for the next school year so that there is a timely start of the Title program(s) at the beginning of each school year and should continue throughout its implementation and assessment of services. If the non-public school has not been invited to a consultation meeting or provided any information regarding the opportunity to participate in equitable services under the ESSA, the non-public school may initiate contact with the LEA or contact the Ombudsman for Equitable Services at the Colorado Department of Education.

II. Title I, Part A

Question: May an LEA reserve funds off the top of its Title I allocation before it allocates funds for equitable services?

Answer: No. An LEA must determine the amount of funds available for providing equitable services prior to any expenditures or transfers of funds. This includes all reservations previously taken “off the top” of an LEA’s Title I, Part A allocation, including reservations for administration, parental involvement, and district-wide initiatives.

Note: This is a change from how the funds were previously calculated to provide equitable services under the No Child Left Behind (NCLB) Act. LEAs will no longer use the school-level per-pupil amount (PPA) to determine the amount of funds to reserve to provide equitable services under Title I.

Question: Is the LEA required to obtain information from non-participating non-public schools to calculate the proportionate share?

Answer: If the LEA is able to obtain information from non-participating non-public schools, the LEA should also include this data when calculating the proportionate share under Title I, Part A. However, in Colorado, the Colorado Department of Education (the CDE) has no mechanism to require and/or enforce a requirement that LEAs obtain this data from non-participating non-public schools. If the LEA includes information from non-participating non-public schools it will result in an additional amount of funds that the LEA must set-aside to provide equitable services and carry-over. Non-participating non-public schools are not obligated to provide any information to CDE, and must only

submit an enrollment count, not inclusive of student level academic or income information, to the LEA upon request.

When monitoring, CDE would expect to see that the LEA has been collecting and verifying addresses and applicable income information for students from participating non-public schools, if appropriate for the method selected by the LEA to calculate the proportionate share; however, CDE is not requiring that LEAs obtain this information from non-participating non-public schools.

If the LEA has selected a method for determining the proportionate share that requires the exchange of data and, after timely and meaningful consultation has occurred, a non-public school elects not to participate in the LEA's federally funded programs and therefore does not share the data necessary to calculate the proportionate share under Title I, Part A, the non-participating non-public school has yielded any future right(s) to submit a complaint regarding this provision under the ESSA.

Question: Is the non-public school required to submit a list of student addresses and income information to the LEA during consultation?

Answer: The LEA must discuss and obtain the information necessary to calculate the amount of funds to set-aside under the Title program(s) if the non-public schools chooses to participate in during the timely and meaningful consultation. The information necessary to calculate the proportionate share under Title I, Part A includes student addresses, and may include income information depending upon the LEA's chosen method of determining the comparable number of low-income students attending the non-public school.

Question: Does the LEA need to have a data sharing agreement on file with the non-public school?

Answer: As the LEA engages in timely and meaningful consultation with the non-public school, it should be diligent in following local data privacy policies when gathering student level personally identifiable information (PII), which may include securing a data sharing agreement between the LEA and the non-public school. If the LEA chooses to collect comparable data from a survey as its method of determining the low-income students attending the non-public school, the U.S. Department of Education provides the following information in guidance:

- *In order to obtain the number of private school children from low-income families, 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.*** The only information necessary for an LEA to collect in such a survey of private school children is -
 - (1) geographic information verifying residence in a participating public school attendance area;
 - (2) grade level of each child; and
 - (3) income level of parents.

The LEA should not require that the private school officials give the names of low-income families.

Question: If an LEA does not collect the names of low-income families, how do LEA officials or auditors determine that the poverty numbers provided by the private school officials are accurate?

Answer: Private school officials should maintain the poverty data in their own records. If LEA officials or auditors wish to review the poverty data, they may review the data at the private schools.

Question: Are the students that generate the proportionate share the only students that may access the equitable services provided in the non-public school?

Answer: No. Student eligibility for Title I, Part A services for private school children is determined by (1) residence in a participating public school attendance area, and (2) educational need. Poverty is not a criterion.

Question: How are the criteria for at-risk students served by Title I, Part A funds determined?

Answer: In consultation with private school officials, an LEA must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I, Part A services, and, within the eligible group, which children will be served. To the extent appropriate, the LEA must select private school children who are failing, or most at risk of failing, to meet high student academic achievement standards

Question: How does the LEA calculate the proportionate share of Title I funds to be set-aside to provide equitable services to students in non-public schools?

Answer: CDE has developed a step-by-step guidance document to assist LEAs in calculating the proportionate share. [LEAs may access the guidance at http://www.cde.state.co.us/fedprograms/equitableservicescolorado](http://www.cde.state.co.us/fedprograms/equitableservicescolorado).

Question: Does the LEA set-aside additional Title I funds to provide parent and family engagement activities for private school families?

Answer: No. The parent and family engagement activities should be accounted for with funds already set-aside as the proportionate share of funds under Title I, Part A, not in addition to this amount. When budgeting within the Consolidated Application, the LEA will have three funding source options to reflect whether the funds are identified for the parent and family engagement activities, administration reservation, or the remaining amount of the proportionate share used to provide equitable services.

Question: Should the LEA include charter schools and alternative high schools in the proportionate share calculation?

Answer: The proportionate share in Title I, Part A is calculated based on the number of low-income students residing in a Title I, Part A school boundary and attending either a public or private school. The funds set-aside as the “proportionate share” should be used to provide equitable services under Title I, Part A to participating non-public schools. Charter schools and alternative high schools should be treated as district schools and are not impacted by the proportionate share calculation.

Question: If we are compensating another district for providing services to a student that resides in our boundary but attends private school in another district, do you include those students in the proportionate share?

Answer: Yes, the sending district should include students attending a private school outside the district boundary, but residing in the district boundary, in the proportionate share calculation when possible. Districts should develop an inter-district MOU to address how the two districts will work together to provide equitable services to students in private schools. CDE is currently developing guidance regarding the MOU process and format.

III. Title II, Part A

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

Answer: 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.

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.
- 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.
- Ensure that the LEA responsible for providing equitable services retains control of the funds used to provide such services.

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

Question: Does REAP/Flexing or transferring funds from Title II and/or Title IV impact the consultation requirements?

Answer: Yes. The LEA must consult with the non-public school officials about the decision to REAP/Flex or transfer Title II, Part A and/or Title IV, Part A funds *before* the funds are REAP/Flexed or transferred. If the non-public school chooses to participate in Title II, Part A and/or Title IV, Part A, the LEA must determine the amount necessary to set-aside to provide equitable services to the non-public school, and may then REAP/Flex or transfer the remaining amount of Title II, Part A and/or Title IV, Part A funds.

Question: Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?

Answer: No. LEAs must assess the needs of private school teachers in designing the professional development program for private school teachers. If the professional development needs of the private school teachers are different from those of public school teachers, the LEA, in consultation with private school representatives, should develop a separate program.

Question: 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?

Answer: 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.

IV. Title III, Part A

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

Answer: Some examples of the Title III 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 supplemental to what the private school would be required to provide in the absence of the Title III services. These materials and supplies must also 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 funds.

Question: As a private school that accepts Title funding, therefore government funds, are we then bound to federal laws from which private schools are normally exempt?

Answer: No, private schools whose students or teachers receive equitable services under the ESSA are not subject to the same federal laws as LEAs unless the private school otherwise receives federal funds from a program administered by the U.S. Department of Education. Provisions under federal law apply to educational agencies and

institutions that receive federal funds from programs administered by the U.S. Department of Education. A private school would be subject to federal laws only if it receives a payment of money from a program administered by the U.S. Department of Education. The private school is a recipient of equitable services under the ESSA, however, the private school is not a recipient of federal funds and will not receive payment of money from the LEA administering the Title programs under ESSA. The LEA must maintain control of the Title funds (including any equipment/materials purchased) that are set-aside to provide equitable services to non-public schools under the program(s) in which the private school participates and may not reimburse the private school for purchases or services. As such, the private school is not beholden to all of the same federal laws as the LEA; however, program requirements must be met as a participant of individual Title programs.

For example, if a private school chooses to participate in Title III, Part A, the LEA may use Title III, Part A funds to support the private school in the identification of students as English learners – which is prohibited in the public school system due to federal statute and case law. In the public school system, this activity must be funded with State and/or local funds. Because the private school is not beholden to those same laws, Title III, Part A funds may be used to support this effort. As a program requirement, though, the private school must go through the identification process with the LEA's support to continue participating in the Title III, Part A program to ensure that appropriate and eligible students are receiving services. This does not then require the private school to comply with all federal statute and case law, but does require identification for participation purposes.

V. Title IV, Part A

Question: How should LEAs determine the amount of funds to provide equitable services to non-public schools under Title IV?

Answer: In alignment with the provisions under Title VIII of the Every Student Succeeds Act, LEAs should calculate the amount to set-aside to serve participating non-public schools by determining the per pupil amount based on the LEA's and non-public school(s)' enrollment count. This process is similar to the Title II, Part A calculation, which is discussed in more detail in the guidance and webinars currently posted on the [Equitable Services webpage](#).

While many LEAs calculate equal expenditures strictly on the basis of the relative enrollments of public and private school students, on the assumption that these numbers also accurately reflect the relative needs of students and teachers in public and private schools, it is permissible for LEAs to use other factors relating to need and not base equal expenditures only on relative enrollments. For more information, [see the guidance released by the U.S. Department of Education in March 2009](#).

Question: Does REAP/Flexing or transferring funds from Title II and/or Title IV impact the consultation requirements?

Answer: Yes. The LEA must consult with the non-public school officials about the decision to REAP/Flex or transfer Title II, Part A and/or Title IV, Part A funds *before* the funds are REAP/Flexed or transferred. If the non-public school chooses to participate in Title II, Part A and/or Title IV, Part A, the LEA must determine the amount necessary to set-aside to provide equitable services to the non-public school, and may then REAP/Flex or transfer the remaining amount of Title II, Part A and/or Title IV, Part A funds.

VI. Fiscal Considerations and Requirements

Question: Can the LEA carry-over funds to provide equitable services?

Answer: The LEA must obligate the funds set-aside to provide equitable services during the fiscal year for which the funds are received. The LEA may complete a waiver request with CDE in the event that extenuating circumstances occur and the LEA needs to carry over funds; however, the funds must be carried over categorically. (i.e. Funds set-aside to provide equitable services that will be carried over to the next year must be used to provide equitable services



in the subsequent year.) CDE is currently developing the process to submit a waiver and will release related information in the Spring of 2018.

Question: Does the indirect cost rate apply to the entire Title I allocation?

Answer: Yes. The indirect cost rate is not impacted by the proportionate share.

Question: May private school officials order or purchase materials and supplies needed for the Title I program and be reimbursed by an LEA?

Answer: No. Private school officials have no authority to obligate or receive federal funds. The statute clearly states that the LEA must maintain control of all Title funds, materials, equipment, and property. No Title funds may be paid to a private school. Further, none of the programs in which a private school may participate in under Title VIII (Title I, Part C; Title II, Part A; Title III, Part A; Title IV, Part A; and, Title IV, Part B) may be comingled with non-federal funds.

Question: Does REAP/Flexing or transferring funds from Title II and/or Title IV impact the consultation requirements?

Answer: Yes. The LEA must consult with the non-public school officials about the decision to REAP/Flex or transfer Title II, Part A and/or Title IV, Part A funds *before* the funds are REAP/Flexed or transferred. If the non-public school chooses to participate in Title II, Part A and/or Title IV, Part A, the LEA must determine the amount necessary to set-aside to provide equitable services to the non-public school, and may then REAP/Flex or transfer the remaining amount of Title II, Part A and/or Title IV, Part A funds.

Question: As a private school that accepts Title funding, therefore government funds, are we then bound to federal laws from which private schools are normally exempt?

Answer: No, private schools whose students or teachers receive equitable services under the ESSA are not subject to the same federal laws as LEAs unless the private school otherwise receives federal funds from a program administered by the U.S. Department of Education. Provisions under federal law apply to educational agencies and institutions that receive federal funds from programs administered by the U.S. Department of Education. A private school would be subject to federal laws only if it receives a payment of money from a program administered by the U.S. Department of Education. The private school is a recipient of equitable services under the ESSA, however, the private school is not a recipient of federal funds and will not receive payment of money from the LEA administering the Title programs under ESSA. The LEA must maintain control of the Title funds (including any equipment/materials purchased) that are set-aside to provide equitable services to non-public schools under the program(s) in which the private school participates and may not reimburse the private school for purchases or services. As such, the private school is not beholden to all of the same federal laws as the LEA; however, program requirements must be met as a participant of individual Title programs.

For example, if a private school chooses to participate in Title III, Part A, the LEA may use Title III, Part A funds to support the private school in the identification of students as English learners – which is prohibited in the public school system due to federal statute and case law. In the public school system, this activity must be funded with State and/or local funds. Because the private school is not beholden to those same laws, Title III, Part A funds may be used to support this effort. As a program requirement, though, the private school must go through the identification process with the LEA's support to continue participating in the Title III, Part A program to ensure that appropriate and eligible students are receiving services. This does not then require the private school to comply with all federal statute and case law, but does require identification for participation purposes.

VII. Ombudsman



Question: Who should I contact for more information about the requirements regarding the provision of equitable services to students attending a non-public school?

Answer: For more information, please contact the non-public schools ombudsman, [DeLilah Collins](#) in the Office of ESEA Programs.

Where can I learn more?

- [Office of ESEA Programs: Equitable Services under ESEA](http://www.cde.state.co.us/fedprograms/equitableervicescolorado)
<http://www.cde.state.co.us/fedprograms/equitableervicescolorado>

