

Under the Title II, Part A program, local education agencies (LEAs) are required to provide educational services and other benefits for private school children, teachers and other educational personnel, equitable in comparison to services and other benefits for public school children, teachers and other educational personnel, pursuant to [section 8501\(a\)\(3\)\(A\)](#) of the [Elementary and Secondary Education Act \(ESEA\)](#), amended by the [Every Student Succeeds Act of 2015 \(ESSA\)](#). Private schools must hold non-profit status in order to be eligible to receive funds.

### Notification Requirements

- The [Elementary and Secondary Education Act \(ESEA\)](#), amended by the [Every Student Succeeds Act of 2015 \(ESSA\)](#), requires that public LEAs contact appropriate officials of all private schools within the geographic boundaries of the LEA annually to determine if they want their teachers to participate in the Title II, Part A: Supporting Effective Instruction grant program, regardless of whether or not those officials have recently indicated any interest in program participation. In order to allow participants the opportunity to take part in the annual needs assessment before allocations are made available in the next fiscal year, letters should be mailed in the current fiscal year. The LEA must include private schools that wish to participate in the Title II, Part A program in the assessment, planning, participation and assessment of professional learning activities.
- Title II, Part A coordinators may work in collaboration with other appropriate federal program coordinators in the LEA in sending invitations to private schools for a consultation meeting regarding their participation in the Title II, Part A program as well as other federal programs. Mail receipts should be kept and available for each program served.

### Consultation and Planning

- To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the proposed programs, pursuant to [section 8501\(c\)](#).
- It is important that attention be given to the timing of the consultation so that decisions affecting the opportunities for eligible private school teachers to participate in Title II, Part A program activities are made after discussions have taken place. In accordance with [section 8501\(c\)\(3\)](#), the consultation must occur before the LEA and private schools make any decisions that affect the opportunities for eligible private school children, teachers and other educational personnel to participate in Title II, Part A programs. The quality of the consultation process will likely have an effect on the quality of services to private schools.
- Pursuant to [section 8501\(c\)\(3\)](#), consultation should continue throughout the implementation and assessment of activities.

- To meet its general record keeping responsibility, the LEA should document that:
  - Representatives of private schools were informed of the availability of Title II, Part A: Supporting Effective Instruction funds and services;
  - The needs of private and public school teachers were identified as part of an LEA-wide needs assessment;
  - Private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and
  - The LEA approved a budget that permitted equitable participation for private schools.
  
- Pursuant to [section 8501\(c\)\(1\)](#), LEAs must consult with appropriate private school officials and have the goal of reaching agreement on how to provide equitable and effective programs for eligible private schools on issues such as the following:
  - How student needs will be identified
  - How student needs will inform professional learning needs of teachers, principals and other school leaders
  - What services will be offered
  - How, where and by whom the services will be provided
  - How the services will be assessed and how the results of the assessment will be used to improve those services, as LEAs are responsible for ensuring private schools measure effectiveness of funded activities
  - The size and scope of the equitable services to be provided to eligible teachers, the amount of funds available for those services and how that amount is determined
  - How and when the LEA will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of services through potential third-party providers
  - Whether the LEA will provide services directly or through a separate government agency, consortium or entity through a third-party contractor
  - Whether to provide equitable services to eligible private schools
    - By creating a pool or pools of funds with all of the funds allocated, in accordance with [section 8501\(a\)\(4\)\(C\)](#), based on all children from low-income families in a participating school attendance area who attend private schools; or
    - In the LEA's participating school attendance area who attend private schools with the proportion of funds allocated, in accordance with [section 8501\(a\)\(4\)\(C\)](#), based on the number of children from low-income families who attend private schools.
  
- LEAs are also encouraged to consult with private school officials and provide guidance and/or copies of applicable policies or written procedures, such as travel, stipends, college courses and source documentation required to determine allowability.

## Documentation of Consultation

- LEAs should obtain a written affirmation signed by officials of each participating private school that meaningful consultation required by ESSA has occurred. The written affirmation must provide the option for private school officials to indicate if they feel timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.
- If private school officials do not provide the written affirmation within a reasonable period of time, the LEA must document that consultation or attempts at consultation took place, pursuant to [section 8501\(c\)\(5\)](#).

## Determining Allocations

- The amount an LEA must reserve to provide equitable services for private school teachers and other educational personnel for Title II, Part A services is based on the LEA's total Title II, Part A allocation, less administrative costs. The LEA determines the amount of funds available for Title II, Part A equitable services by calculating, on a per-pupil basis, the amount available for all public and private school students enrolled in participating private elementary and secondary schools in areas served by the LEA (regardless of a student's residency), taking into consideration the number and needs of the students, their teachers and other educational personnel to be served.

Example of Formula to Determine Amount for Title II, Part A Equitable Services	
<b>A. Number of Students</b>	
A1. LEA Enrollment	900
A2. Participating Private Schools Enrollment	100
A3. Total Enrollment = A1 + A2	1,000
<b>B. Title II, Part A Allocation</b>	
B1. Total LEA Allocation	\$1,000,000
B2. Administrative Costs (for public and private school programs)	\$50,000
B3. LEA Allocation Minus Admin Costs = B1 - B2	\$950,000
<b>C. Per Pupil Rate</b>	
C1. B3 divided by A3	\$950
<b>D. Equitable Services</b>	
Amount LEA must reserve for equitable services for private school teachers and other educational personnel = A2 x C1	\$95,000

## Roll Forward

- ESSA requires that an LEA obligate the full amount of funding generated for equitable services to private school teachers, principals and other school leaders during the first fiscal year of availability. Pursuant to [section 1117\(a\)\(4\)\(B\)](#), funds allocated to an LEA for educational services and other benefits to eligible private school children must be obligated in the fiscal year for which the funds are received by the agency. Beginning with the 2017-18 school year, LEAs will not have carry forward

funds allocated for equitable services. The U.S. Department of Education published "Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA)" to discuss the fiscal changes under the equitable services requirements under ESSA. Specifically, Question N-7 states:

May an LEA carry over unobligated funds despite this new statutory requirement regarding obligation of funds?

In general, to ensure that equitable services are provided in a timely manner, an LEA must obligate the funds allocated for equitable services under all applicable programs in the year for which they are appropriated. (ESEA sections 1117(a)(4)(B) and 8501(a)(4)(B).)

There may be extenuating circumstances, however, in which an LEA is unable to obligate all funds within this timeframe in a responsible manner. Under these circumstances, the funds may remain available for the provision of equitable services under the respective program during the subsequent school year. In determining how such carryover funds will be used, the LEA must consult with appropriate private school officials. (ESEA sections 1117(b) and 8501(c)).

- In extenuating circumstances only, if the private school has not utilized the contracted services, and this is confirmed through consultation, then the remaining funds would be deobligated and carried over for equitable services. The use of the funds in the equitable services program would then be determined by consultation.

### **Allowable Activities for Participation of Private Schools**

- Educational services or other benefits, including materials and equipment, shall be secular, neutral and nonideological, in accordance with section 8501(a)(2).
- 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, as was done in the past under No Child Left Behind. 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 use of Title II, Part A funds under the authorizing statute, in accordance with 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, as allowed by 34 CFR section 76.658.
- Pursuant to section 2103 (b)(3)(D), 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 [section 8501\(d\)](#) regarding public control of funds and the supervision and control of employees or contractors.

- To the extent that a teacher's, principal's or other school leader's attendance at a conference sponsored or conducted by a faith-based organization is part of a sustained and comprehensive secular professional development plan, 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, principal or other school leader participated. By law, use of federal funds to support religion is prohibited, pursuant to [34 CFR section 76.532](#), [sections 8505](#) and [8501 \(a\)\(2\)](#).
  - Note: If the conference contains both secular and non-secular events, the attending teacher, principal or other school leader must provide the LEA with information clearly delineating secular and non-secular activities prior to attending the conference. The LEA will determine the percentage of the conference representing secular professional development in which the teacher participated. The LEA should consider all expenses related to attending the conference (e.g., airfare, hotel registration) to determine the amount to reimburse the teacher for attending the conference.

### **Control of Funds and Reimbursement**

- Pursuant to [section 8501\(d\)](#), the LEA must maintain control of the Title II, Part A funds at all times. Any materials, equipment or property purchased with these funds shall remain property of the LEA, where the materials, equipment or property must continue to be used for the purposes of Title II, Part A, as outlined in [section 2001](#).
- Only the LEA may obligate and expend federal funds on behalf of private school teachers, principals and other school leaders. This means the LEA must purchase materials or procure services on behalf of the private school; LEAs are not allowed to reimburse to private schools directly for professional learning costs. However, an LEA may use federal funds reimburse an individual private school teacher, principal or other school leader for professional development that the LEA has preapproved, and meets the reasonable and necessary cost principles of [2 CFR section 200](#).
- LEAs must not reimburse for unallowable activities.

### **Record Keeping**

- While an LEA may not overburden a private school in paperwork, as the LEA is fiscally responsible for the management of funds pursuant to [section 8501\(d\)](#), an LEA may require the private school to submit enough documentation to determine student and teacher needs, as well as documentation to determine that the activities and expenses are allowable, reasonable and necessary, in accordance with any and all federal and state requirements.
- LEAs that serve private schools expend funds on behalf of the private schools, thus all private school expenditures must also comply with the LEA procurement procedures. LEAs entering into contracts on behalf of private schools must adhere to LEA procedures and have the primary responsibility for maintaining documentation.

- As mentioned in the Consultation and Planning section of this document, in order to meet its general record-keeping responsibility, the LEA should document that:
  - Representatives of private schools were informed of the availability of Supporting Effective Instruction services;
  - The needs of private and public school teachers were identified as part of an LEA-wide needs assessment;
  - Private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and
  - The LEA approved a budget that permitted equitable participation for private schools.

## FAQs

**This section may be updated on a regular basis, as more private school equitable services questions arise.**

- *May an LEA reimburse a private school for materials it has purchased or services it has procured to implement a Title II, Part A/ESSA program?*
  - No. Only the LEA may obligate and expend federal funds on behalf of private school students and teachers. Therefore, the LEA must purchase materials or procure services on behalf of the private school students and teachers. However, an LEA may use federal funds to reimburse an individual private school teacher, principal or other school leader for professional development that the LEA has preapproved and that meets the reasonable and necessary cost principals of the Office of Management and Budget (OMB) [2 CFR section 200](#).
  
- *May an LEA use funds to provide stipends to private school teachers, principals, and other school leaders?*
  - Yes. As with any other costs, the use of funds for stipends must be allowable under the Title II, Part A use of funds for private schools, and they must be reasonable and necessary. For example, if a professional development program is conducted during after-school hours or during the summer, stipends may be needed to compensate teachers for participation outside their regular employment hours. In addition, stipends for private school teachers must be available on the same basis as public school teachers, and the stipends must be paid to private school teachers for their own use. However, the stipends must not be paid to the private school or be for the benefit of the private school.
  
- *Can private schools use Title II, Part A funds to pay for college courses?*
  - Yes, but there are a few restrictions. The content of the college course must be an allowable use of Title II, Part A funds under the authorizing statute, in accordance with [section 2103 \(b\)\(3\)](#), and the course content must 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, as allowed by [34 CFR section 76.658](#). For example, a college course titled "Development

and Assessment of Individuals with Severe Disabilities” would be allowable, but a college course titled “Financial Reporting and Managerial Control” as part of a Business Administration degree would not be allowable.

In addition, using Title II, Part A funds for college courses is at the discretion of the host LEA. If the LEA does not allow its own teachers, principals and other school leaders to use Title II, part A funds to pay for college courses, the LEA is not obligated to allow private schools to use Title II, part A funds for college courses. If the LEA does allow teachers, principals and other school leaders to attend college courses funded from Title II, Part A, then the LEA must allow private schools to do the same.

### **References:**

- [The Elementary and Secondary Education Act \(ESEA\), amended by the Every Student Succeeds Act of 2015 \(ESSA\)](#)
- [No Child Left Behind Act of 2001 \(NCLB\) – Every Student Succeeds Act of 2015 \(ESSA\) Equitable Services Comparison Chart](#)
- [ESSA Fiscal Changes & Equitable Services Guidance](#)
- [The Code of Federal Regulations \(CFR\)](#)