



Federal Program Compliance Division

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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 red font.

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

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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:

- [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](#)
- [Great Schools - Texas Private Schools](#)
- [Council for American Private Education \(CAPE\)](#)
- [National Center for Education Statistics \(NCES\)](#)
- [National Council for Private School Accreditation \(NCPSA\)](#)
- [Cognia Accredited 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.

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?**

***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.

- a. **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 1117I(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—
 - verification of residence in a participating Title I public school attendance area;
 - grade level and age of each child; and
 - income level of parents. If, based on consultation with private school officials, an LEA chooses to extrapolate the survey results to the private school's entire enrollment, the LEA will also need the private school's enrollment. For example, in a private school with an enrollment of 400, if an LEA receives survey data for 300 children that indicate that 150 children are from low-income families (50 percent), to extrapolate the results the LEA would multiply 400 by 0.5 to determine that there are 200 children in the school from low-income families.
2. **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.
3. **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.
4. **An equated measure.** An LEA may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, an LEA uses FRPL data, but those data are not available for private school students. However, if Temporary Assistance for Needy Families (TANF) data are available, the LEA could determine an equated measure of poor children in private schools based on FRPL data by correlating the two sets of data as follows:

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

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

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

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

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

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.

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 I, Part C	Identified Migrant Children	Ages 3-21
Title II, Part A	Total Student Enrollment	Ages 5-17
Title III, Part A-ELA	Identified English Learner	Ages 3-21
Title III, Part A-IMM	Identified Immigrant Children	Ages 3-21
Title IV, Part A	Total Student Enrollment	Ages 5-17

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* section 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
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.	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.
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>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>
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.	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.

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.

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 section 1117(a)(3)(A) and (b)(3) and 8501(a)(3)(A), (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).

Technology

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

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

Eligible Uses of Grants Funds Section

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

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

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

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

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

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

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

A1: Before an LEA may transfer funds from a program subject to equitable services requirements, including 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 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 the 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 a Title IV, Part A subgrant. After the subgrant is received, the LEA can make decisions regarding transferring funds or enacting the *Alternative Fund Use Authority* (AFUA) under the Title IV, Part A program.

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

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

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 Services to Eligible Private School Children, Teachers, and Families, Updated Non-Regulatory Guidance (October 2019).

***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 nonideological, 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).

***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 uses 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.

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 an 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.**

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

A9: 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. -USDE Response, 12/2020.

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 nonideological.

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 nonideological.

Q5: May an LEA use Title IV, Part A funds for a PNP'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 nonideological.

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.

Title IV, Part B Equitable Services

Q1: What qualifies as a Title IV, Part B 21st Century Community Learning Center (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: Where might an LEA receive additional Title IV, Part B program information and support?

A11: Interested parties may review the TEA's [Title IV, Part B 21st CCLC](https://tea.texas.gov/21stcentury) 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 services to private school participants?

A1: Yes, provided certain conditions are met. An LEA may hire a certified private school teacher to provide Title I, Part A services only if the teacher is independent of the private school in the provision of Title I services. The certified private school teacher must be employed by the LEA for Title I purposes outside of the time he or she is employed by the private school, and the private school teacher must be under the direct supervision of the LEA with respect to all Title I activities. (ESEA section 1117(d)(2)). -[USDE Title I, Part A Equitable Services Non-Regulatory Guidance](#)

Q2: May Title I, Part A funds be used to pay stipends to private school instructional staff who participate in Title I, Part A services and activities?

A2: Yes. Title I, Part A 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.

Q3: If an LEA hires and supervises *PNP staff* to provide equitable services, would the PNP staff pay be considered extra-duty or contracted?

A3: 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.

Q4: If an LEA hires *public school staff* to provide PNP equitable services, would the LEA staff be considered extra-duty or contracted?

- A4: 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.

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

***Q8: May Title II, Part A funds be used to pay for an online subscription to a professional development video database?**

***A8:** 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 nonideological.

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 pro rata 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.

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).

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

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 in the years since Spring 2020, 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.