

New Mexico Public Education Department

Title II, Part A Guidance for ESEA Equitable Services to Private Schools

This document is provided as a resource for New Mexico Public Education Department administering the Title II, Part A Supporting Effective Instruction State Grant. It is intended to provide coordinators with uniform practices to govern professional activities and implementation of this Federal program. This guidance is not intended to replace the legislation, regulations, and U.S. Department of Education (ED) Non-Regulatory Guidance.

Therefore, it is highly recommended that coordinators consult the appropriate resources available online for complete guidance and regulations. In addition, all LEAs and coordinators responsible for implementing this Federal program must abide by current laws, regulations, and administrative procedures, ED guidance, and the Education Department General Administrative Regulations (EDGAR). This document is considered a working draft and is reviewed and updated as policies and procedures change and, at a minimum, is reviewed yearly.

NMPED Title II, Part A

Guidance for Equitable Services - Private Schools

Technical Assistance Document

As per the regulations outlined by Title II, Part A (TIIA) program, local education agencies (LEAs), also known as school districts, are to provide educational services and additional benefits for private school children, teachers, and other educational personnel. These provisions must be equitable when compared to the services and benefits provided to their counterparts in public schools, as mandated by section [8501\(a\)\(3\)\(A\)](#) of the [Elementary and Secondary Education Act \(ESEA\)](#), amended by the [Every Student Succeeds Act of 2015 \(ESSA\)](#). It is essential to note that private schools must maintain non-profit status to qualify for the receipt of these funds.

NOTIFICATION REQUIREMENTS

Annually, LEAs are required to contact appropriate officials of all private schools within the district's geographic boundaries to determine if they want their teachers to participate in the TIIA: Supporting Effective Instruction grant program. Letters should be disseminated in the current school year for schools to have the opportunity to take part in the annual needs assessment before allocations are made available in the next school year. The school district must include private schools that wish to participate in the TIIA program in the assessment, planning, and participation of professional learning activities.

TIIA Liaisons may collaborate with other federal Title program liaisons by sending invitations to private schools for a consultation meeting regarding their participation in the TIIA program as well as other federal programs. LEAs should keep a record of invitations, and mail receipts for each program served. Copies of electronic receipts (emails) should be kept and available for each program served.

CONSULTATION AND PLANNING

To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the proposed programs, pursuant to [section 8501\(c\)](#)

Attention must be given to the timing of the consultation so that decisions affecting opportunities for eligible private school teachers to participate in TIIA program activities are made after discussions have taken place. Under [section 8501\(c\)\(3\)](#), the consultation must occur before the LEA and private schools make any decisions that affect the opportunities for eligible private school children, teachers, and other educational personnel to participate in the TIIA program. The quality of the consultation process will likely affect the quality of services to private schools.

Per [section 8501\(c\)\(3\)](#), consultation should continue throughout the implementation and assessment of TIIA activities.

The school district should document the following to meet general record-keeping responsibilities:

- o Informing private school representatives of the availability of TIIA: Supporting Effective Instruction equitable service funds and district services.
- o Identification of the private and public-school teachers' needs as part of a communitywide needs assessment.

DETERMINING ALLOCATIONS

The amount a school district must reserve to provide equitable services for private school teachers and other educational personnel for TIIA services uses the school district's total TIIA allocation, less administrative costs. The school district determines the funds available for TIIA equitable services through a formula. The formula calculates, on a per-pupil basis, the amount available for all public and private students enrolled in participating private schools in areas served by the district, regardless of a student's residency. The needs of public school and private school students, teachers, and educational personnel are taken into consideration.

Example of Formula to Determine Amount for TIIA Equitable Services	
A. Number of Students	
A1. LEA Enrollment	1,000
A2. Participating Private schools Enrollment	150
A3. <i>Total Enrollment (# = A1 + A2)</i>	1,150
B. TIIA Base Preliminary Allocation	
B1. Total LEA Allocation	\$500,000
B2. Administrative Costs (for public and private school programs)	\$25,000
B3. <i>LEA Base Preliminary Allocation (# = B1 – B2)</i>	\$475,000
C. Per Pupil Rate	
C1. <i>Individual per pupil for TIIA (# = B3 ÷ A3)</i>	\$413.04
D. Equitable Services	
Amount the school district must reserve for equitable services for private school teachers and other educational personnel ($\$ = A2 \times C1$)	\$61,956

CARRYOVER AND SERVICES ROLLING FOWARD

In general, to ensure that equitable services are provided in a timely manner, an LEA must obligate the funds allocated for equitable services under all applicable programs in the year for which they are appropriated. (ESEA [Section 1117\(a\)\(4\)\(B\)](#), and [8501\(a\)\(4\)\(B\)](#).) There may be extenuating circumstances, however, in which an LEA is unable to obligate all funds within this timeframe in a responsible manner. Under these circumstances, the funds may remain available for the provision of equitable services under the respective program during the subsequent school year. In determining how such carryover funds will be used, the LEA must consult with appropriate private school officials. ([ESEA sections 1117\(b\)](#) and [8501\(c\)](#).)

New Requirement: Notice of Allocation

An SEA must provide notice in a timely manner to appropriate private school officials in the State of the allocation of funds for educational services and other benefits under each ESEA program that an LEA has determined are available for eligible private school children, teachers and other educational personnel, and families. (ESEA sections 1117(a)(4)(C) and 8501(a)(4)(C).) [Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under Every Student Succeeds Act \(ESSA\)](#)

ALLOWABLE ACTIVITIES FOR PARTICIPATION OF PRIVATE SCHOOLS

Educational services, professional development, or other benefits, including materials and supplies, shall be secular, neutral, and nonideological, per [Section 8501\(a\)\(2\)](#).

LEAs may continue to use TIIA funds to provide professional development activities for teachers, principals, and other school leaders to address the specific needs of their students, as was done in the past under No Child Left Behind. Additionally, there may be other permissible uses of TIIA funds for the benefit of private school participants. To qualify for the use of TIIA funds under the authorizing statute, as outlined in section 2103(b)(3), the expenditure must adhere to certain criteria:

- It must align with the allowable uses specified in the statute.
- It should cater to the specific needs of students enrolled in a private school rather than benefiting the school itself. TIIA funds cannot be directed towards addressing the general needs of the private school or its student policy. However, there are instances where a program or activity designed to address specific needs of the private school's students, rather than its overall needs, may also incidentally benefit the school. This incidental benefit is permissible under [34 CFR section 76.658](#).
- Pursuant to [Section 2103 \(b\)\(3\)\(D\)](#), it is not allowable to use TIIA equitable services funds for class-size reduction in a private school. Non-public school personnel contracts are inconsistent with the requirements listed under [Section 8501\(d\)](#) regarding public control of funds and the supervision and control of employees or contractors.
- To the extent that a teacher's, principal's, or other school leader's attendance at a conference sponsored or conducted by a faith-based organization is part of a sustained and comprehensive secular professional development plan, TIIA funds may be expended to pay for the portion of the costs of the conference that, as determined by the LEA, represent the secular professional development in which the teacher, principal or other school leader participated. By law, using federal funds to support religion is prohibited under [34 CFR section 76.532](#), [sections 8505](#) and [8501\(a\)\(2\)](#).
- Note: If the conference contains both secular and non-secular events, the attending teacher, principal, or school leader must provide the LEA with information delineating secular and non-secular activities before attending the conference. The LEA will determine the percentage of the conference representing secular professional development in which the teacher participated. The LEA should consider all expenses related to attending the conference (e.g., airfare, hotel registration) to determine the amount to reimburse the teacher for attending the conference.

Line Item	Eligible Activities and Expenditures	Non-Eligible Activities and Expenditures
Salaries	Salaries for certified teachers hired by the school district to offer services to the private school (hiring must be based on the needs of the private school)	Private school teacher's salary Substitute teacher's salary
Benefits	Not Allowable	Funds are not allowable for non- public personnel's benefits
Stipends	Stipends if reasonable and necessary to the grant Stipends may be used for professional development offered after school or during the summer to compensate teachers	Stipends must not be paid to the private school or be for the benefit of the private school
Substitutes	Not Allowable	Funds are not allowable for substitute teachers
Supplies/Materials	The school district ensures services, materials, and equipment are secular, neutral, and non-ideological Supplies or materials are to be used strictly for professional development such as books or instructional resources See CONTROL OF FUNDS AND REIMBURSEMENT	Supplies to be used in the classroom by students Materials must be supplemental and must not supplant what the private school would otherwise provide in the absence of federal funds The school district must collect and retain when the private school no longer needs the items, and use for the purposes of TII, A or Title IV
Equipment	The school district may place equipment in a private school for the period needed for the program and only for that program See CONTROL OF FUNDS AND REIMBURSEMENT	Equipment must be returned to the school district when no longer needed, and use for the purposes of TII, A or Title IV

Line Item	Eligible Activities and Expenditures	Non-Eligible Activities and Expenditures
<p>Workshops, classes, conferences, registrations, contracted services for professional learning</p>	<p>Funds may be used as part of an approved professional learning plan (can include in-person, hybrid, or online learning models)</p> <p>School district professional development activities may be open to private school staff</p> <p>Clock hours when teachers attend a training, even if this results in an additional fee</p> <p>Tuition for courses in a state-approved teacher or state-approved principal preparation program</p> <p>School district professional development activities may be open to private school staff</p> <p>Fees for endorsement testing</p>	<p>Funds for faith-based trainings are not allowed; see the row below for details</p>
<p>Faith-based trainings</p>	<p>TIIA funds may be expended to pay for the portion of the costs of a conference that, as determined by the school district, represents the secular professional development in which the teacher participates</p>	<p>A percentage of faith-based offerings may be determined and subtracted from the costs of the conference</p> <p>Registrations must be pre-approved by the school district to determine the faith-based percentage</p>

Line Item	Eligible Activities and Expenditures	Non-Eligible Activities and Expenditures
Travel	<p>The school district may reimburse a private school teacher or school administrator for pre-approved professional development expenditures (mileage, meals, and hotel costs)</p> <p>Conference registration is paid through the school district’s regular process</p>	<p>Federal funds may never be paid directly to a private school</p> <p>Only the school district may obligate and expend federal funds on behalf of private school students and teachers</p> <p>Federal funds may never be used for food or refreshments (including working lunches)</p>

CONTROL OF FUNDS AND REIMBURSEMENT

Pursuant to [section 8501\(d\)](#), the LEA must maintain control of the TIIA funds at all times. Any materials, supplies, or property purchased with these funds shall remain property of the LEA, where the materials, supplies, or property must be used for TIIA, as outlined in [section 2001](#).

Only the LEA may obligate and expend federal funds on behalf of private school teachers, principals, and other school leaders; this means the LEA must purchase materials or procure services on behalf of the non-public school. Public LEAs are not allowed to reimburse private schools directly for any costs. However, a LEA may use federal funds to reimburse an individual non-public schoolteacher, principal, or other school leaders for professional development the LEA has preapproved and that meets the reasonable and necessary cost principles of [2 CFR section 200](#).

Public LEAs must not reimburse for unallowable activities.

RECORD KEEPING

While a LEA may not overburden a private school in paperwork, as the LEA is fiscally responsible for the management of funds pursuant to [section 8501\(d\)](#), an LEA may require the private school to submit enough documentation to determine student and teacher needs, as well as documentation to determine that the activities and expenses are allowable, reasonable, and necessary, following all federal and state requirements.

LEAs that serve private schools expend funds on behalf of the private schools. Thus, all private school expenditures must also comply with the school district procurement procedures. LEAs entering contracts on behalf of private schools must adhere to the district's procedures and have the primary responsibility for maintaining documentation.

As mentioned in the Consultation and Planning section of this document, to meet its general record-keeping responsibility, the LEA should document that:

- Representatives of private schools were informed of the availability of TIIA: Supporting Effective Instruction services.
- The needs of private and public-school teachers were identified as part of a needs assessment.
- Private school officials were consulted and provided an opportunity for input into the planning of the TIIA program activities.
- The school district approved a budget that permitted equitable participation for private schools.

References

The [Elementary and Secondary Education Act \(ESEA\)](#), amended by the [Every Student Succeeds Act of 2015 \(ESSA\)](#)

[No Child Left Behind Act of 2001 \(NCLB\) Every Student Succeeds Act of 2015 \(ESSA\) Equitable Services Comparison Chart](#)

[ESSA Fiscal Changes & Equitable Services Guidance](#)

The [Code of Federal Regulations \(CFR\)](#)