



Office of Non-Public Education
Frequently Asked Questions – General Issues Related to Nonpublic Schools
August 2019

Purpose of Non-Regulatory Guidance

The U.S. Department of Education’s (Department) Office of Non-Public Education (ONPE) updated this non-regulatory guidance to provide the nonpublic school community as well as state and local educational agencies (SEAs and LEAs) with information about some federal education benefits and services available to private school students, teachers and, in some programs, families. This non-regulatory guidance addresses a number of frequently asked questions about programs that include equitable services provisions authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and Part B of the Individuals with Disabilities Education Act (IDEA). However, this document is not inclusive of all issues concerning private school participation in federal education programs, and where appropriate, contains links to additional program related guidance for convenience.

This non-regulatory guidance represents the Department’s current thinking on these topics. It does not create or confer any rights for or on any person, nor does it impose any requirements beyond those set forth under applicable laws and regulations.

Should you wish to comment on this non-regulatory guidance, please send your comments to ONPE@ed.gov or the address below.

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1. Does the Department have jurisdiction over private elementary and secondary schools and home schools?

The Department does not have jurisdiction over private elementary and secondary schools unless they are direct recipients of federal financial assistance from the Department; nor does the Department have jurisdiction over home schools. The regulation of private and home schools is primarily the responsibility of state and local governments. The Department of Education Organization Act expressly prohibits the Department from exercising “any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system...except to the extent authorized by law.” (20 U.S.C. § 3403(b)). Additional information about state laws and policies impacting private and home schools is located on ONPE’s interactive [map of State Regulations of Private and Home Schools](#)¹. Also, see questions 12 and 13 below for information about the applicability of certain federal requirements to private schools that receive federal financial assistance.

2. Does the Department offer scholarships or other forms of financial assistance to pay tuition for students to attend private elementary or secondary schools?

In general, the federal government does not provide scholarships or other forms of financial assistance that directly pay the tuition for a student to attend a private elementary or secondary school. However, the Department administers one program, the District of Columbia Opportunity Scholarship Program (OSP), funded through a grant authorized under the [Student Opportunity and Achievement Results Act](#)², which provides low-income parents residing in the District of Columbia with expanded options for the education of their children. The Department awards a competitive grant to a private entity to administer the OSP and provide scholarships to families for private school tuition, fees, and transportation expenses for students who meet certain eligibility criteria. Students who are residents of the District of Columbia and who come from households whose income does not exceed 185 percent of the poverty line are eligible to apply for scholarships from the grantee under this program. To learn more about the OSP, visit the Department’s [OSP webpage](#)³.

Additionally, in 2019 Secretary of Education Betsy DeVos introduced Education Freedom Scholarships (EFS)⁴, a policy proposal that will empower students to pursue the education that’s right for them. The proposal would establish a

¹ <https://innovation.ed.gov/resources/state-nonpublic-education-regulation-map/>

² <https://innovation.ed.gov/what-we-do/parental-options/district-of-columbia-opportunity-scholarship-program/funding-and-legislation/>

³ <https://innovation.ed.gov/what-we-do/parental-options/district-of-columbia-opportunity-scholarship-program/>

⁴ EFS is a legislative proposal and is not an option currently available to states. If enacted, it will be a state administered program and will not be administered by the Department of Education.

federal income tax credit for voluntary contributions to non-profit organizations that give scholarships to students. The Scholarships will not take a single dollar from public school teachers or public school students. States can choose to participate, or they can elect not to offer more options to their students. Once states embrace the opportunity, they can design their own Education Freedom Scholarship program to meet their students' needs. You may read more about this proposal on the Department's [EFS webpage](#).⁵ Where can I learn more about scholarships to support my child's education?

Regardless of where you live, the best place to start looking for information about scholarships or other financial aid for your child to attend a private school is usually at the private school that your child attends or is considering attending. Ask school officials if they offer financial assistance and if they know of any other sources of financial aid for which your child might be eligible. For example, a private school affiliated with a religious denomination or order might have support available through a diocese, parish, or associated source.

Contact your state (often the state department of education or department of treasury) regarding any state scholarship, tax credit, or other financial assistance programs that may be available. You may also want to search the Internet for organizations that provide information about financing private education.

3. Does the Department provide funds for building, starting, or operating private elementary and secondary schools?

In general, the Department does not have programs that provide funds for building, starting, or operating private elementary and secondary schools.

However, in some cases, Congress has authorized financial assistance in areas where a major disaster or emergency was declared under sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5190). For example, under the Immediate Aid to Restart School Operations ([Restart](#)⁶), which is a program designed to support the provision of immediate services or assistance to LEAs and nonpublic schools related to the consequences of Hurricanes Harvey, Irma and/or Maria or the California wildfires in 2017, funds could be used to assist public and nonpublic school administrators and personnel in restarting school operations, re-opening schools, and re-enrolling students. Construction and major renovation, however, are prohibited under the Restart program.

Although the Department generally does not provide funds for building, starting, or operating private elementary and secondary schools, it does have programs that provide equitable services for eligible private school students, teachers and, in some

⁵ <https://sites.ed.gov/freedom/>

⁶ <https://www2.ed.gov/programs/restart/index.html>

programs, families. See questions 5, 6, 7, 9, and 10 below for more information on such programs.

4. Are services and benefits available to private elementary and secondary school students, their teachers, and their families under programs administered by the Department? If so, who is responsible for implementing such services and benefits?

Yes. Under certain ESEA programs (see question 6) and IDEA (see question 9), an LEA or other applicable entity must provide services and benefits to students enrolled in private nonprofit schools and, in some cases, their teachers and families that are equitable compared to services and benefits provided in public schools. Under the ESEA, LEAs or other applicable entities must engage in timely and meaningful consultation with appropriate private school officials and, under IDEA, with private school representatives and representatives of parents of parentally-placed children with disabilities. Under both ESEA programs and IDEA, control of funds remains with the LEA or other applicable entity, and all services or other benefits must be secular, neutral, and non-ideological. See question 10 for how to access these programs.

5. Which programs require the provision of equitable services to private elementary and secondary school students and, as applicable, their teachers and families under the ESEA?

Under the ESEA, there are a number of programs that provide for the equitable participation of private school students and, in some cases, their teachers and families. The programs that require equitable participation are:

Title I - Improving the Academic Achievement of the Disadvantaged

- *Improving Basic Programs Operated by LEAs* [Part A]
- *Education of Migratory Children* [Part C]

Title II - Preparing, Training, and Recruiting High-quality Teachers, Principals, or Other School Leaders

- *Supporting Effective Instruction* [Part A]
- *American History and Civics Education* [Part B, Subpart 3] (This program does not require the provision of equitable services but does allow for the participation of private school teachers and students.)

Title III - Language Instruction for English Learners and Immigrant Students

- *English Language Acquisition, Language Enhancement, & Academic Achievement* [Part A]

Title IV – 21st Century Schools

- *Student Support and Academic Enrichment Grants* [Part A]
- *21st Century Community Learning Centers* [Part B]
- *Project School Emergency Response to Violence (Project SERV)* [Part F, Subpart 3]
- *Jacob K. Javits Gifted and Talented Students Education Program* [Part F, Subpart 4, Section 4644] (This program’s own provisions require the U.S. Secretary of Education to ensure, where appropriate, equitable services for private school students and teachers.)

Note: Except for Title I, Part A, and as otherwise noted above, the programs listed are governed by the Title VIII Uniform Provisions for Equitable Serves (Part F).

6. How are services provided to private elementary and secondary school students and, as applicable, their teachers and families under ESEA programs?

An LEA or other entity receiving funds under an applicable ESEA program is required to reserve a proportional share of funds for equitable services that address the needs of private school students and as applicable, teachers and families, and must engage in timely and meaningful consultation with private school officials regarding the development, design, and implementation of such services. The LEA or other entity and private school officials must both have the goal of reaching agreement regarding how to provide equitable and effective services that meet the identified needs of students and, as applicable, their teachers and families. Services may be provided by the LEA directly or through contracts with third-party providers. For requirements and allowable uses of funds, refer to the specific statutory provisions for the program and the Federal Cost Principles found in [2 C.F.R Part 200, Subpart E⁷](#).

For additional information about ESEA benefits and services for private school students, teachers, or families, contact the LEA in which the private school is located, or contact the ESEA state ombudsman. (See also question 8.) Additional information is also available on the [Department's ESSA webpage⁸](#) and [ONPE's ESSA webpage⁹](#), respectively.

7. What is the ESEA ombudsman?

ESEA sections 1117(a)(3)(B) and 8501(a)(3)(B) require SEAs to designate an ombudsman to monitor and enforce ESEA equitable services requirements. An ombudsman serves as an SEA’s primary point of contact for addressing questions and concerns from private school officials and LEAs regarding the provision of

⁷ <https://gov.ecfr.io/cgi-bin/text-idx?SID=5a2b4bb8a9d6253e852be5e58fef8b2e&mc=true&node=pt2.1.200&rgn=div5>

⁸ <https://www2.ed.gov/policy/elsec/leg/essa/index.html>

⁹ <https://innovation.ed.gov/what-we-do/non-public-education/essa/>

ESEA equitable services. In addition, the ESEA requires the ombudsman to monitor and enforce the equitable services requirements and, thus, the ombudsman should have a significant role in the state's monitoring process. Furthermore, it is important that the ombudsman become familiar with information that the Department provides concerning equitable services. Additionally, private school representatives have the right to file a formal complaint with an SEA if they believe an LEA, or other responsible entity, has failed to implement the ESEA equitable services provisions as required by law. Additional information regarding ombudsmen is located on the Department's [Ombudsman Corner webpage](#)¹⁰.

8. How are services provided to private elementary and secondary school students with disabilities under IDEA?

IDEA requires that LEAs ensure the equitable participation of children with disabilities enrolled by their parents in private nonprofit elementary and secondary schools. To meet this obligation, the LEA where the private school is located is required to engage in timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities on a variety of topics during the design and development of special education and related services for these students. This includes discussions about how the LEA will conduct a thorough and complete child find process for parentally placed private school children to determine the number of parentally placed children with disabilities attending private schools located in the LEA. Child find is the process by which the LEA seeks out, identifies, and evaluates children with suspected disabilities. If a parent of a parentally-placed student believes the LEA has not met their obligations to conduct a thorough and complete child find process for their child, they have the right to file a due process complaint regarding the child find requirements. Such complaints must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA.

Although parentally-placed students with disabilities do not have an individual entitlement to services they would receive if enrolled in a public school, LEAs are required to expend a proportionate amount of IDEA federal funds to provide services to the group of parentally-placed children with disabilities. With this in mind, it is possible that some eligible parentally-placed students with disabilities will not receive any services while others will receive them. For those who do receive services, the amount of services may also be different from what they would receive if enrolled in a public school. It is important to note that nothing in IDEA requires a private school to administer any portion of the law. Additionally, private school representatives have the right to file a formal complaint with an SEA if they believe an LEA, or other responsible entity, has failed to implement the IDEA equitable services provisions as required by law.

¹⁰ <https://innovation.ed.gov/what-we-do/non-public-education/essa/ombudsman-corner/>

Some students with disabilities may be placed in a private school by a public agency as a means of providing special education and related services to the student, rather than by a parent. Publicly-placed students with disabilities retain all rights of a student with a disability who is served by a public agency under IDEA, including the right to receive special education and related services, in conformance with an individualized education program (IEP), at no cost to the parents. Additional information on IDEA is located on the [IDEA webpage¹¹](#), and specific information related to services to parentally-placed private school children with disabilities is located on [ONPE's IDEA webpage¹²](#) and the [IDEA topic page¹³](#).

9. How do I access Department programs that serve students and, as applicable, their teachers and families in private elementary and secondary schools?

Under the ESEA and IDEA, the LEA or other entity that is responsible for providing equitable services is required to contact private school officials to begin the consultation process on key issues that are relevant to the equitable participation of private school students and, as applicable, their teachers and families in federal education programs. Additionally, under IDEA, the LEA must also include representatives of parents of parentally-placed children with disabilities in the consultation process. If the LEA or other entity fails to contact private school officials regarding equitable participation, a private school official may wish to contact the LEA or other entity and speak to the individual(s) responsible for administering the federal education program in which they wish to participate. Additionally, private school officials may wish to contact the ESEA [state ombudsman for ESEA matters¹⁴](#) or other appropriate [federal programs administrator¹⁵](#) at the SEA for additional assistance.

10. Are there any Department grants that a private elementary and secondary school may apply for directly?

Yes. There are some Department grants for which private schools and faith-based and community organizations may apply. These grant programs are generally narrow in focus and address specific needs and concerns. To the extent that a private school meets the eligibility requirements for a program, the school may apply directly for these grants. The eligibility requirements are generally set forth in the federal notice inviting applications, statute, or regulations. If a private school receives such a grant from the Department, it then becomes a recipient of federal financial assistance and is subject to the laws and regulations that apply to recipients, including federal civil rights laws enforced by the Department's Office

¹¹ <https://sites.ed.gov/idea/>

¹² <https://innovation.ed.gov/what-we-do/non-public-education/individuals-with-disabilities-education-improvement-act-idea/>

¹³ <https://sites.ed.gov/idea/topic-areas/>

¹⁴ <https://innovation.ed.gov/what-we-do/non-public-education/essa/ombudsman-directory/>

¹⁵ <https://www2.ed.gov/about/contacts/state/index.html>

for Civil Rights. These include laws prohibiting discrimination on the bases of race, color, national origin, sex, disability, and age. The school would also generally become subject to the Department’s jurisdiction for purposes of enforcing those laws. Additional information about becoming a recipient of federal financial assistance is provided in question 12.

To learn more about available grants, visit the Department’s [grants page¹⁶](#), or search based on eligibility at the [Grants.gov website¹⁷](#). For information about the eligibility of faith-based organizations to participate in Department programs, please refer to the Education Department General Administrative Regulations ([34 CFR 75.52¹⁸](#) and [76.52¹⁹](#)).

11. Are private elementary and secondary schools whose students and, as applicable, their teachers and families, receive equitable services under the ESEA or IDEA considered to be “recipients of federal financial assistance”?

No. The Department does not consider private schools whose students or teachers receive equitable services under the ESEA or IDEA to be recipients of federal financial assistance. Typically, LEAs or other entities operate these programs for the benefit of students in private schools, not for the benefit of the private schools themselves. As a result, certain requirements that apply to recipients do not apply to private schools by virtue of their students or teachers receiving equitable services under the ESEA or IDEA. If a private school is not a recipient, but the private school’s students or teachers receive services under a federal education program administered by an LEA or SEA (including equitable services under the ESEA or IDEA), the LEA or SEA involved remains responsible for ensuring that there is no discrimination with respect to administering the federal education program.

However, if a private school otherwise receives federal financial assistance, including a grant or subgrant of federal funds to administer a federal education program, the school would then be considered a recipient.

A private school that is a recipient of federal financial assistance is subject to the federal civil rights laws enforced by the Department’s Office for Civil Rights prohibiting discrimination based on race, color, national origin, sex, disability, and age and is subject to the Department’s jurisdiction for purposes of enforcing those laws. It is also possible that some federal laws administered by other federal agencies may apply to private schools. Questions about recipient status for such programs should be directed to the appropriate federal agency.

¹⁶ <https://www2.ed.gov/fund/grants-apply.html>

¹⁷ <https://www.grants.gov/web/grants/search-grants.html>

¹⁸ https://gov.ecfr.io/cgi-bin/text-idx?SID=dfa52eb8a9fb758df872cc00cb4854fb&mc=true&tpl=/ecfrbrowse/Title34/34cfr75_main_02.tpl

¹⁹ https://gov.ecfr.io/cgi-bin/text-idx?SID=c9e122024a908ac30ed1ecc28d0f3ea8&mc=true&tpl=/ecfrbrowse/Title34/34cfr76_main_02.tpl

12. Are private secondary schools subject to the military recruiter requirements?

In general, the military recruiter requirements dictate that LEAs receiving assistance under the ESEA give military recruiters the same access to secondary school students as they provide to postsecondary institutions or to prospective employers. LEAs are also required to provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information.

Private secondary schools are not subject to the military recruiter requirements unless they receive funds under the ESEA. Further, private schools that do not themselves receive any ESEA funds, but whose students or teachers receive services under the equitable services provisions in the ESEA, are not considered recipients of federal funds, and, thus, they are not subject to the military recruiter requirements. Private schools that do receive funds under the ESEA (highly unlikely) but maintain a religious objection to service in the armed forces that is verifiable through the corporate or other organizational documents of that school are not required to comply with this requirement. More information about the military recruiter requirements is available on the Department's [Protecting Student Privacy webpage²⁰](#).

13. May children who are schooled at home receive services from federal education programs under the ESEA or IDEA?

In general, the extent to which homeschool children may participate in ESEA and IDEA programs depends on how a state recognizes a homeschool. If a state recognizes a homeschool as a private school under state law, the homeschool students would be eligible to receive benefits and services under the equitable services provisions. For additional information about IDEA equitable services for homeschool children with disabilities, see Section K of the Department's guidance: [Questions and Answers on Serving Children with Disabilities Enrolled by Their Parents in Private Schools²¹](#).

14. Must an organization or individual seeking to start a private elementary or secondary school contact the Department?

No. The Department does not regulate or control this aspect of private schools. In other words, you do not need the permission or approval of the Department to start a private school. Most of the laws and regulations for starting private schools are from state and local governments. Because states differ in how they regulate schools, you should inquire at your state department of education regarding laws, regulations, and policies that will affect opening and operating a private school. Information about state departments of education is located on the

²⁰ <https://studentprivacy.ed.gov/resources/dear-colleague-letter-regarding-military-recruiter-provisions-esea>

²¹ https://sites.ed.gov/idea/files/Private_School_Q_A_April_2011_1.pdf

Department's [website](#)²². Additional information about state laws and policies impacting private and home schools is located on ONPE's interactive [map of State Regulations of Private and Home Schools](#)²³. The interactive map provides a brief description of legal requirements that apply to K–12 private schools and home schools in each state and some U.S. territories. The website and map serve as a reference for public and nonpublic school officials, state policy-makers, researchers, and other stakeholders.

15. Does the Department have a list of private elementary and secondary schools?

While the Department does not have a complete list of all private elementary and secondary schools in the United States, the [National Center for Education Statistics \(NCES\)](#)²⁴, part of the Department's [Institute of Education Sciences](#)²⁵, maintains the [Private School Search](#)²⁶ tool, which is an online database that allows searches for private schools according to many criteria, including the type of school, location, and affiliations. Information posted on the Private School Search site is obtained from only those private schools that respond to the Private School Universe Survey (PSS) conducted by NCES (about 75 percent of all private K-12 schools).

16. Does the Department accredit private elementary or secondary schools? Does it recognize accrediting bodies for such accreditation?

The Department does not have the authority to accredit private or public elementary and secondary schools. Further, the Department does not have authority to recognize accrediting bodies that accredit private or public elementary and secondary schools. The Department does, however, recognize accrediting bodies for the accreditation of institutions of higher (postsecondary) education. If an accrediting body that is recognized by the Department for higher education also accredits elementary and secondary schools, the Department's recognition applies only to the body's accreditation of postsecondary institutions.

In general, the Department has no jurisdiction over private elementary and secondary schools or homeschools. The regulation of private elementary and secondary schools is primarily the responsibility of state and local governments. Private elementary and secondary schools that operate legally within a state (which may include state approval, state licensing, state registration and/or accreditation) are generally considered to be bona fide, recognized schools in the United States education system. For additional information, contact the appropriate [state department of education](#)²⁷ about private and home schools in the state.

²² <http://www.ed.gov/about/contacts/state/index.html>

²³ <https://innovation.ed.gov/resources/state-nonpublic-education-regulation-map/>

²⁴ <https://nces.ed.gov/>

²⁵ <https://ies.ed.gov/>

²⁶ <http://nces.ed.gov/surveys/pss/privateschoolsearch>

²⁷ <https://www2.ed.gov/about/contacts/state/index.html>

17. Where should someone direct a complaint about a private school?

In general, individuals may wish to first seek to address their concerns with the appropriate teacher and, as necessary, private school principal or head of school. If the complaint is not resolved satisfactorily, individuals may raise their concerns with other school officials as appropriate, such as a superintendent of a group of private schools or a religious leader who oversees a faith-based school or a group of faith-based schools. In addition, individuals may contact their [state department of education](#)²⁸ to seek assistance regarding any state requirements or regulations that may be relevant to their concerns.

²⁸ <https://www2.ed.gov/about/contacts/state/index.html>