

U.S. Department of Education  
Office of Elementary and Secondary Education  
400 Maryland Ave. SW  
Washington, DC 20024

Re: ESEA Title VIII Equitable Services  
Submitted via email to: [EquitableServices@ed.gov](mailto:EquitableServices@ed.gov)

April 27, 2022

To whom it may concern:

Thank you for the opportunity to submit comments regarding your draft guidance on requirements for Equitable Services covered under Title VIII of the Elementary and Secondary Education Act (ESEA). Comprehensive documents like this can be an important resource for districts as they navigate the complex array of federal program requirements. As the National Association of ESEA State Program Administrators (“The Association”), we believe we are uniquely positioned to offer suggestions on how the guidance could provide additional clarity and better serve our shared purpose.

A number of aspects of the document are particularly helpful. This includes the additional information – and examples – added for Title II, Part A, and incorporating existing information on Title IV into non-regulatory guidance. We appreciate the effort to delineate by program so that districts can clearly see how the requirement applies to each. However, we have noted that some of the language between sections is phrased differently, implying that there might be nuances in interpretation between the various programs. Using consistent wording and guidance would help strengthen the case for being consistent across programs and limit confusion for schools, districts, and States alike.

The Association also has a number of specific areas for further clarification, or where we would suggest modifications.

First, item B-1 says that when calculating the proportionate share for student in private schools “it is permissible for an LEA to use other factors relating to educational need and not base equal expenditures only on relative enrollments.” However, the U.S. Department of Education (ED) does not provide examples of the kind of “other factors” it might consider allowable. Districts will only take advantage of this flexibility to include “other factors” if they are confident that those factors will be accepted by the State and ED. In order to facilitate this flexibility, please provide examples of the kinds of factors that ED believes reflect educational need and are acceptable for the purposes of calculating the proportionate share.

Item B-2 says that districts should used poverty data from the same year for both public and private schools. However, in both 2021 and 2022, ED released guidance allowing districts to use data from multiple school years to calculate allocations to public schools and permitted districts to use data from

different years to capture the proportionate share for students in private schools. To reduce confusion, we recommend acknowledging that previous guidance and stating that it was time-limited.

ED states in item C-14 that transportation is considered an administrative expenditure. We ask ED to expand upon this item to confirm that transportation for both public and private schools should not be considered when calculating the proportionate share. We further ask ED to clarify that transportation costs are not considered part of the limited administrative set-aside to which some grant programs are subject.

In item C-19, the guidance states that a district is not required to hold private school travel to the same standards as are required for SEA and LEA staff (“the LEA **may** require private school educators who receive equitable services with Federal funds to follow the same travel and per diem policies that apply to the LEA’s employees... the request may not be denied simply based on the location of the activity”[emphasis added]). Our member States are concerned that allowing private schools staff to travel based on different standards may trigger compliance issues at both the State and local level, and that it would conflict with 2 CFR 200.403(c) (requiring that federal program costs “be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity”). The Association would like further support in clarifying the intent of this paragraph with State and federal auditors.

Finally, we disagree with the characterization of registration fees and travel allowances as “participant support costs” under item C-19. For some programs like Title II, professional development opportunities like travel and conferences make up a significant portion of the benefits afforded to teachers of students in private schools under the equitable services program. Requiring prior written approval from ED on each of these items would be extremely burdensome for both ED and for LEAs, and would likely result in underutilization of those funds. We suggest removing this portion of the guidance and simply allowing States and LEAs to oversee travel costs and ensure that they are part of an appropriate continuing professional development plan.

The National Association of ESEA State Program Administrators sincerely appreciates the opportunity to share our thoughts on these points. Should you have any questions regarding our comments, please contact Erin Hanley at [erin.hanley@eseanetwork.org](mailto:erin.hanley@eseanetwork.org).