California Department of Education

October 2022

# Transferability Guidance for Local Educational Agencies (LEAs) Under the Elementary and Secondary Education Act of 1965

The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), Section 5103, authorizes an LEA to transfer funds from Title II, Part A and Title IV, Part. Because each of these programs provides for the participation of students, teachers, or other educational personnel from nonprofit private schools, under ESEA Section 5103(e)(2) the LEA must conduct consultations with appropriate private school officials in accordance with ESEA Section 8501.

The consultation required must occur prior to the LEA making any decision that affects the opportunities of eligible private school students, teachers, and other educational personnel to participate in programs under the ESEA Section 8501, and must continue throughout the implementation and assessment of the equitable services programs.

In accordance with ESEA Section 5103(e)(1), funds transferred from Titles II, Part A and IV, Part A are subject to each of the rules and requirements applicable to the programs to which the transferred funds are transferred, which may include transferring to Title I, Parts A, C, and D, Title III, Part A, and Title V, Part B as well as to Titles II, Part A or IV, Part A.

This guidance outlines the federal requirements and limitations on transferability and how the calculation of equitable services may be impacted or informed by the transfer of funds.

## I. Transferability

In accordance with the ESEA Section 5103 as described in the U.S. Department of Education’s Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under ESEA, as amended by the ESSA (dated November 21, 2016):

Under the ESSA, LEAs may transfer funds they receive by formula under certain programs to other programs to better address State and local needs. The ESEA amended the transferability authority by changing the programs from and to which an LEA may transfer funds and removing limits on the amount of funds that may be transferred. The below guidance addresses those changes.

### Transfers by LEAs

T-1. Updates to programs from which an LEA may transfer funds (ESEA Section 5103[b][2]):

Title II, Part A – Supporting effective instruction state grants

* Title IV, Part A – Student support and academic enrichment grants

An LEA may not transfer funds it receives under any other ESEA program.

T-2 Updates to programs to which an LEA may transfer funds (ESEA Section 5103[b]):

* Title I, Part A – Improving basic programs operated by LEAs
* Title I, Part C – Education of migratory children
* Title I, Part D − Prevention and intervention programs for children and youth who are neglected, delinquent, or at-risk
* Title II, Part A − Supporting effective instruction state grants
* Title III, Part A – State grants for English language acquisition and language enhancement
* Title IV, Part A − Student support and academic enrichment grants
* Title V, Part B – Rural education

The LEA must consult with appropriate private school officials prior to transferring Title II, Part A and Title IV, Part A federal funds

As noted above, under ESEA Section 5103(e)(2) an LEA must consult with appropriate private school officials in accordance with ESEA Section 8501. Such consultation must occur prior to the LEA making any decision that affects the opportunities of eligible private school students, teachers, and other educational personnel to participate in programs under the ESEA, including a decision to transfer eligible Federal funds from one program to another. Specifically, with respect to transferring funds, the LEA must consult about —

1. Whether to transfer funds and, if so, from which program(s) and into which program(s)
2. The amount of funds to transfer
3. How a transfer of funds might affect eligibility—e.g., eligibility for equitable services under Title II, Part A is different from eligibility for equitable services under Title I, Part A
4. What equitable services to provide commensurate with the proportionate share of funds available to private school students, teachers, or other educational personnel after the transfer has occurred

Each LEA that transfers funds shall modify its local plan or application to which those funds relate to account for such transfer. The LEA shall submit a copy of such modified plan or application to the State no later than 30 days after the date of the transfer. Not later than 30 days before the effective date of such transfer, the LEA must notify the State of such transfer (ESEA Section 5103[d]).

### **Frequently Asked Questions in the U.S. Department of Education’s Non-Regulatory Guidance**: Fiscal Changes and Equitable Services Requirements under ESEA, as amended by the ESSA (dated November 21, 2016)

1. Is there a limit on the amount of funds an LEA may transfer?

No. An LEA may transfer all or a portion of funds it receives under each of the programs listed under T-1 above.

1. What are the responsibilities of a state educational agency (SEA) or LEA for the provision of equitable services to private school children and teachers with respect to funds being transferred?

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 SEA or 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 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.

1. May an SEA or LEA transfer only those funds that are to be used for equitable services to private school students or teachers?

No. An SEA or LEA may not transfer funds to a particular program solely to provide equitable services for private school students or teachers. Rather, an SEA or 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 (See ESEA Section 5103[e]).

## II. Calculating Proportionate Share After Transfer

Next steps after transfer of federal funds and in accordance with the U.S. Department of Education’s Ombudsman Update (Published Quarterly by the Office of Non-Public Education) dated January 30, 2018:

LEAs must calculate equitable service shares based on the total amount of funds available under a program after a transfer. Just as an LEA may not transfer funds to a particular program solely to provide equitable services, it may not retain funds solely for this purpose. Thus, for example, if an LEA chooses to transfer 100 percent of its Title II, Part A or Title IV, Part A funds to Title I, Part A, it may not provide equitable services under Title II, Part A or Title IV, Part A. Under this scenario, an LEA would determine the proportionate share available for equitable services under Title I, Part A based on the LEA’s total Title I, Part A allocation, including the amounts transferred into Title I, Part A.

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. The final decision regarding the transfer of funds, however, remains with the LEA.

Although an LEA is not required to obtain agreement from private school officials prior to a transfer of funds, the goal of consultation is agreement. Thus, LEAs are encouraged to carefully consider the views of private school officials prior to making decisions regarding transfers. By engaging in timely and meaningful consultation and developing positive relationships with private school officials, an LEA can facilitate creation of a cooperative environment and minimize problems and complaints.

If private school officials believe that timely and meaningful consultation has not occurred, they should first discuss this matter with the LEA official responsible for coordinating the consultation between the two entities. Private school officials may also contact the LEA superintendent or program director of the federally funded program to ask for assistance. If the response at the local level is not satisfactory, the private school official may contact the SEA Equitable Services Ombudsman) responsible for ensuring that ESEA programs are implemented at the local level. Often, these steps will resolve the matter. In the event the problem is not resolved, private school officials have the right to file a formal written complaint with the SEA.

For information on determining equitable services allocations when there is no transfer of funds between programs, please see the CDE Equitable Services Ombudsman webpage located at <https://www.cde.ca.gov/sp/sw/t1/ombudsmaneqservices.asp>.

### **Examples of equitable services proportional share under Title I, Part A after transferring Title II, Part A funds into Title I, Part A**

Sample LEA

Title I, Part A LEA Allocation = $150,000 (5% proportional share rate)

Title II, Part A LEA Allocation = $40,000 (10% proportional share rate)

**Example 1: No Transfers**

Title I, Part A equitable services proportional share $150,000 x 5% = $7,500

Title II, Part A equitable services proportional share $40,000 x 10% = $4,000

**Example 2: LEA transfers $30,000 from Title II, Part A to Title I, Part A**

Title I, Part A equitable services proportional share $150,000 + $30,000 = $180,000

$180,000 x 5% = $9,000

Title II, Part A equitable services proportional share $40,000 – $30,000 = $10,000

$10,000 x 10% = $1,000