

# **Frequently Asked Questions**

## **Emergency Assistance to Non-Public Schools (EANS) Program** as authorized by the **Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)**



**U.S. Department of Education  
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**Updated March 19, 2021**

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# **Frequently Asked Questions**

## **Emergency Assistance to Non-Public Schools (EANS) Program**

### **PURPOSE OF THIS DOCUMENT**

The purpose of this document is to answer Frequently Asked Questions related to the Emergency Assistance to Non-Public Schools (EANS) program under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020). Congress authorized the EANS program as part of the CRRSA Act's Governor's Emergency Education Relief Fund (GEER II Fund). The U.S. Department of Education (Department) awarded a portion of the GEER Fund under the CRRSA Act to Governors as a supplement to the Coronavirus Aid, Relief, and Economic Security (CARES) Act's GEER Fund (Pub. L. No. 116-260 (March 27, 2020)). We refer to the funds awarded as a supplement to the CARES Act GEER Fund awards as the GEER II Fund. GEER II supplemental funding will appear in the Department's grants management system (G5) without any additional paperwork required for States with approved CARES Act GEER Fund applications.

Under the EANS program, each Governor of the 50 States and the Commonwealth of Puerto Rico as well as the Mayor of the District of Columbia may apply to the Department for a formula grant for the purpose of providing emergency services or assistance to non-public schools in the wake of the Coronavirus Disease 2019 (COVID-19). Although a Governor applies for EANS funds, the statute requires that the State educational agency (SEA) administer the program; consequently, in accepting an EANS award from the Department, a Governor automatically designates the SEA to administer the EANS program. The SEA will be the payee or fiscal agent in G5 for purposes of accessing Federal funds. To ensure that this administrative structure results in effective implementation of the EANS program consistent with all statutory requirements, Governors must consult with their respective SEAs in providing the application assurances specified in section 312(d)(2)(B) of the CRRSA Act.

Because the CRRSA Act includes a separate EANS program for which eligible non-public schools may apply to an SEA to receive services or assistance, a local educational agency (LEA) is not required to provide equitable services to students and teachers in non-public schools under the CRRSA Elementary and Secondary School Emergency Relief Fund (ESSER II Fund) or the GEER II Fund. However, equitable services requirements continue to apply to the ESSER I and GEER I programs under the CARES Act.

The Department initially issued guidance on the EANS program on January 15, 2021. This document updates, and supersedes, that guidance. It does not address changes to the EANS program under the American Rescue Plan Act of 2021. The Department will issue additional guidance in the near future.

Other than statutory and regulatory requirements included in the document (such as those pursuant to the authorizing statute and other applicable laws and regulations), the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any right for or on any person.

The Department may provide additional or updated information, as necessary, on the Department's website at:

<https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/>

If you have questions that are not answered in this document, please email [GEERF@ed.gov](mailto:GEERF@ed.gov) and include “EANS” in the subject line.

## **A. Program Purpose and Awards to Governors**

### **A-1. What is the purpose of the EANS program?**

The purpose of the EANS program is to provide services or assistance to eligible non-public schools to address educational disruptions caused by COVID-19. By creating a separate reservation of funds for this purpose, Congress reiterated the need for non-public schools to participate in emergency education relief programs by establishing a separate program under GEER, rather than relying on the equitable services requirements that typically apply to elementary and secondary formula grant programs. Consequently, LEAs are not required to provide equitable services for funds received under the CRRSA Act, though equitable services requirements continue to apply to CARES Act programs.

The Department awards EANS funds by formula to each Governor who has an approved Certification and Agreement. By accepting an EANS award from the Department, a Governor designates the SEA to administer the program and access EANS funds from the Department's grants management system (G5). Governors and SEAs should consult expeditiously on the administration of EANS. To receive services or assistance, an eligible non-public school submits an application to the SEA at such time, in such manner, and accompanied by such information as the SEA may reasonably require to ensure expedited and timely provision of services or assistance.

### **A-2. How does the Department determine the amount of funding available for each State under the EANS program? (Updated March 19, 2021)**

Under the CRRSA Act, Congress provided \$2,750,000,000 for the EANS program. The Department allocates EANS funds to a Governor with an approved Certification and Agreement based on the State's relative share of children ages 5-17 who are from families at or below 185 percent of the poverty level and enrolled in non-public schools, as determined by the Department on the basis of non-public school enrollment data from the U.S. Census Bureau's American Community Survey Public Use Microdata Sample (PUMS), which can be accessed here: <https://www.census.gov/programs-surveys/acs/microdata.html>. The amount available to each State is available at:

<https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/>

For information on funding to the Outlying Areas, please visit the Department's [Education Stabilization Fund to the Outlying Areas](#) web site for more information.

### **A-3. How does a Governor apply for a State's share of EANS funds? (Updated March 19, 2021)**

To apply for a State's allocation for the EANS program, a Governor must submit a signed Certification and Agreement to the Department. It may be submitted immediately but no later than February 22, 2021. The Certification and Agreement includes specific programmatic, fiscal, and accountability assurances, as well as other assurances and certifications. The Certification and Agreement is available at

<https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/>

Note that because of the unique administrative structure of the EANS program, under which Governors apply for funding and SEAs are charged with administering the program, Governors must consult with their respective SEAs in providing the application assurances specified in section 312(d)(2)(B) of the CRRSA Act. The Department further encourages Governors and SEAs to continue to engage in regular consultation throughout the administration of the EANS program.

### **A-4. How long after submitting a Certification and Agreement should a Governor anticipate receiving funds? (Updated March 19, 2021)**

The Department intends to make awards within one business day of receiving an approvable Certification and Agreement. By law, the Department must award funds within 15 days of receiving a Governor's

approvable Certification and Agreement. A list of States, the award amount, the award date, and a link to each State's Certification and Agreement can be found here: <https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/eans-awards/>

## **B. Administration of the EANS Program/SEA Responsibilities**

### **B-1. Who is responsible for administering the EANS program?**

The SEA in a State in which the Governor receives an EANS award is responsible for administering the EANS program. However, the Governor remains the grantee and is responsible for oversight, including that the SEA implements the program consistent with all relevant requirements. The statute requires Governors to consult with SEAs in carrying out this responsibility.

### **B-2. What are an SEA's responsibilities for administering the EANS program?**

An SEA's responsibilities to administer the EANS program include the following:

- Distributing information about the EANS program promptly to non-public schools in the State.
- Creating an application with which any eligible non-public school in the State may apply for services or assistance.
  - Establishing poverty criteria (from among generally available sources of poverty data) for a non-public school to identify the number and percentage of children from low-income families in its application. (See C-11).
  - Establishing information a non-public school must provide in its application to enable the SEA to prioritize schools most impacted by COVID-19. (See C-15)
- Ensuring that eligible non-public schools provide the information required by section 312(d)(3)(B) related to enrollment of students from low-income families and a description of the emergency services requested from the SEA.
- Making an application easily available to non-public schools in the State as soon as possible but no later than 30 days after receipt of the EANS funds.
- Approving/denying each non-public school application promptly but no later than 30 days after the SEA receives the application from a non-public school.
- Prioritizing the provision of services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19.
- Determining what services or assistance the SEA will provide directly or through LEAs, other public entities, or contractors to each non-public school, as informed by an approved application and consultation, as appropriate, with the non-public school or its representatives.
- Ensuring the control of funds for the services or assistance provided to a non-public school, and title to materials, equipment, and property purchased with EANS funds, are in a public agency and a public agency administers the funds, services, assistance, materials, equipment, and property.
- Ensuring that all services or assistance provided, including any materials, equipment, and any other items used to provide such services or assistance, are limited to secular, neutral, and non-ideological purposes.
- Obligating all EANS funds in an expedited and timely manner, to the extent practicable; however, obligating all EANS funds not later than six months after receiving the funds.
- Administering the EANS program in accordance with all applicable requirements.

### **B-3. How might an SEA provide information to non-public schools in a timely manner?**

An SEA must distribute information about the EANS program promptly to non-public schools in the State, which would include information on topics such as how to access the application, data requirements, steps for completing the application, and relevant deadlines. In addition, the SEA should

seek to distribute information widely, and in various formats (e.g., social media, email, SEA website, and regular mail). The SEA should emphasize that services are available to all eligible non-public schools, including those that may not have participated in any Federal education program in the past, but that it will first target services to non-public schools serving low-income students and most impacted by COVID-19. (See C-14). To assist with the dissemination of information, the SEA may engage with non-public school leaders in the State, such as State-level non-public school associations or State-level working groups. An SEA might also consult with its State ombudsman designated under the Elementary and Secondary Education Act of 1965 (ESEA), who has relationships with such organizations and non-public school officials in the State. State ombudsmen should also support the SEA's dissemination of information to non-public schools in a timely manner.

**B-4. Must an SEA consult with representatives of non-public schools in the State regarding implementation of the EANS program?**

An SEA would benefit greatly from engaging in timely and meaningful consultation to assist it in establishing the parameters of the program, and it would be difficult to administer the program successfully without doing so. For example, representatives of non-public schools could provide relevant information on sources of poverty data available for non-public school children and criteria to determine those schools most impacted by COVID-19 and services that may best serve their students and teachers. However, there is no statutory requirement that an SEA consult with representatives of non-public schools regarding implementation of the EANS program.

**B-5. Does an SEA automatically have access to its State's EANS funds once the Department makes an award to the Governor?**

Yes. By accepting an EANS award from the Department, a Governor automatically designates the SEA to administer the EANS program. The SEA will be the payee or fiscal agent in G5 for purposes of accessing Federal funds on the date of award. The Governor must provide the SEA's financial institution and bank information in the Certification and Agreement. The SEA, as the agency designated to administer the EANS program, is considered to have "received" EANS funds when the Department makes an award to the Governor. The Governor and the SEA are encouraged to consult each other throughout the process of providing emergency assistance to non-public-school students and teachers.

**B-6. May an SEA reserve EANS funds to administer the program?**

Yes. An SEA may reserve not more than the greater of \$200,000 or one-half of one percent of the State's EANS allocation for reasonable costs necessary to administer the EANS program. An allocation table for the EANS program, including the maximum administrative reservation for each State, can be found here: <https://oese.ed.gov/offices/education-stabilization-fund/emergency-assistance-non-public-schools/>

**B-7. May an SEA consolidate its administrative funds under the EANS program? (Updated March 19, 2021)**

Yes. Under sections 8201(a) and 8203(a) of the ESEA, the Secretary has designated EANS, ESSER I, and ESSER II, as well as GEER I and GEER II if administered by the SEA, as programs under which administrative funds may be consolidated. Accordingly, an SEA that consolidates ESEA administrative funds may consolidate administrative funds under the ESSER I and II Fund, the GEER I and II Fund, and the EANS program. In addition, an SEA may consolidate administrative funds under two or more of the ESSER I and II Fund, the EANS program, and the GEER I and II Fund without also consolidating other ESEA program administrative funds, so long as the SEA can demonstrate that the majority of its resources are derived from non-Federal sources.

Specifically, an SEA may consolidate the one-half of one percent of its ESSER I and ESSER II funds able to be reserved for State administration, the amount of EANS funds available for State administration, and, if the SEA is administering a portion of the GEER I or GEER II funds on behalf of the Governor, a reasonable and necessary amount of those funds. If the SEA consolidates administrative funds under these programs, it is not required to keep separate records for how it uses those administrative funds.

Consolidated administrative funds may be used to administer the programs included in the consolidation as well as for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation. Note that an SEA may not use its SEA Reserve under ESSER for administrative costs.

**B-8. Are indirect costs subject to the administrative cap? (NEW March 19, 2021)**

Whether an indirect cost is an administrative cost subject to an SEA's cap on administrative costs depends on the nature of the direct costs to which the indirect cost applies. If, for example, an SEA incurs indirect costs that are associated with administration of the EANS program, those indirect costs would be subsumed within the SEA's administrative cost cap. On the other hand, if an SEA incurs indirect costs associated with providing actual services or assistance to non-public schools, the indirect costs would not be administrative costs and would not be charged against the SEA's administrative cap.

**B-9. If an SEA contracts to deliver services or assistance under the EANS program, may the contract include costs of the contractor associated with providing such services or assistance? (NEW March 19, 2021)**

Yes. A contract to provide services or assistance to a non-public school may include reasonable and necessary costs associated with providing services or assistance to a non-public school. These costs would not be included in an SEA's reservation of funds to administer the EANS program. If, however, an SEA contracts with another public agency such as an LEA or educational service agency (ESA) to administer the EANS program in its place, administrative costs incurred by the agency would be included in the administrative cap authorized for the SEA. Costs for providing services or assistance, however, such as costs associated with reimbursing a non-public school for allowable activities, would not be administrative costs.

**B-10. Is there a deadline by which an SEA must obligate EANS funds for services or assistance for non-public schools? (Updated March 19, 2021)**

Under section 312(d)(2)(B)(iii), the Governor of each State must provide assurance to the Department that the SEA will provide services or assistance to eligible non-public schools. Related to this requirement, under section 312(d)(2)(B)(v), the Governor of each State also must provide assurance that the SEA will obligate funds for services or assistance requested by eligible non-public schools within six months of receiving its funds. If an SEA is in compliance with this and the other requirements in 312(d)(2), section 312(d)(6) requires the SEA to return any unobligated funds remaining six months after receipt to the Governor for authorized uses under the GEER II Fund.

If, however, an SEA has approved applications from non-public schools but has not obligated the funds to provide services or assistance within the six-month timeline—for example, because of its procurement requirements—it has not timely obligated funds. In this instance, the SEA should continue with its process and provide the services or assistance as described in the approved applications before determining the amount of unobligated funds that would return to the Governor. An SEA that finds itself in this situation should contact the Department within six months of receiving its EANS award to discuss its progress in implementing the program. The SEA should expect to explain the delay, how the SEA is addressing the delay, and when the SEA will be able to obligate the funds.

**B-11. What does it mean for an SEA to “obligate” EANS funds?**

The regulations at 34 C.F.R. § 76.707 govern when an obligation of Federal funds by an SEA occurs. Specifically, for services or assistance provided through a contract, the obligation is made on the date that the SEA makes a binding written commitment to obtain the services, work, or products. For rental or lease of real or personal property, the obligation is made when the property is used.

**B-12. Does anything in the CRRSA Act impact deadlines for awarding and obligating ESSER I and GEER I funds under the CARES Act?**

No. The timelines for awarding and obligating the ESSER I and GEER I funds under the CARES Act remain the same. A State has one year from the date it received ESSER I and GEER I funds to award those funds (typically April/May 2021), and has until September 30, 2022, to obligate them.

**C. Non-Public School Eligibility, Application, and Identification for Services or Assistance**

**C-1. Which non-public schools are eligible to apply for services or assistance under the EANS program?**

For purposes of the EANS program, an eligible non-public school is an elementary or secondary school that—

- Is non-profit;<sup>1</sup>
- Is accredited, licensed, or otherwise operates in accordance with State law;
- Was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency; and
- Did not, and will not, apply for and receive a loan under the Small Business Administration’s Paycheck Protection Program (PPP) (15 U.S.C. 636(a)(37)) that is made on or after December 27, 2020. This limitation applies for as long as the non-public school is a participant in the EANS program under the CRRSA Act. (See C-17 for information regarding non-public schools that apply for but do not receive a PPP loan).

**C-2. Does a non-public school receive a grant award under the EANS program? (NEW March 19, 2021)**

No. A non-public school does not receive a grant award under the EANS program, nor does it receive an allocation of EANS funds. Rather, a non-public school receives services or assistance provided by the SEA as requested in the school’s application, to the extent resources are available and subject to prioritizing schools based on their enrollment of low-income students and the severity of the impact of COVID-19 on the school. (See C-14, C-15, C-16, and D-12).

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<sup>1</sup> A for-profit non-public school is not eligible to receive equitable services for its students and teachers under the EANS program. Section 316(6) of the CRRSA Act defines a “non-public school” as a non-public elementary or secondary school. Section 316(8) of the CRRSA Act incorporates the definitions in ESEA section 8101 for any terms not defined in the CRRSA Act. ESEA section 8101(19) and (45) defines “elementary school” and “secondary school,” respectively, and specifies that they must be non-profit.

**C-3. Are eligible non-public schools under the EANS program the same schools that were eligible for equitable services under ESSER? (NEW March 19, 2021)**

Not necessarily. In addition to the requirements for eligibility of a non-public school under ESSER, section 312(d)(9) of the CRRSA Act precludes from eligibility a non-public school that applies for and receives a loan under the Small Business Administration's Paycheck Protection Program (PPP) (15 U.S.C. 636(a)(37)) that is made on or after December 27, 2020. In addition, an SEA must prioritize for services or assistance non-public schools that enroll low-income students and are most impacted by COVID-19. (See C-1 and C-14).

**C-4. Are faith-based non-public schools eligible to participate in the EANS program?**

Yes. Faith-based non-public schools are eligible to participate in the EANS program to the same extent as other eligible non-public schools. All services or assistance provided under the program must be secular, neutral, and non-ideological.

**C-5. Is a non-public school that serves only preschool children eligible to receive services or assistance under the EANS program? (NEW March 19, 2021)**

Not generally. Under the EANS program, in pertinent part, an eligible "non-public school" is a non-public *elementary* school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency. (Section 316(6) of the CRRSA Act). Under section 8101(19) of the ESEA, incorporated by section 316(8) of the CRRSA Act, an elementary school is a school that provides elementary education, as determined under State law. Therefore, only non-public schools that provide elementary (or secondary) education are eligible for services or assistance under the EANS program. Preschool children who are enrolled in a non-public elementary school that receives EANS services or assistance may be served. (See D-4). However, unless State law considers preschool education to be part of elementary education, a stand-alone non-public preschool is not eligible for services or assistance under the EANS program.

**C-6. May an SEA permit an organization that has governing authority over a group of non-public schools to submit an application on behalf of its member schools?**

Yes. An SEA may permit an organization that has governing authority over a group of non-public schools to submit an application on behalf of its member schools. If such an organization applies on behalf of its member schools, it must clearly indicate for which schools it applies and provide supporting data and other information requested in the application for any and all schools for which it applies.

**C-7. When must an SEA make the application for services or assistance under the EANS program available to non-public schools?**

An SEA should make the application for services or assistance available to non-public schools as soon as possible but must make it available no later than 30 days after receiving the funds. (See B-2 and B-5).

**C-8. What information must an SEA require an eligible non-public school to provide in its application for services or assistance under the EANS program?**

An SEA may require an eligible non-public school to provide information in an application for services or assistance under the EANS program as the SEA deems reasonable to ensure expedited and timely provision of services or assistance. At a minimum, the SEA must request the following information from an eligible non-public school:

- The number and percentage of students from low-income families enrolled in the non-public school in SY 2019-2020. (See C-11).

- Information regarding the impact of COVID-19 on its school so that the SEA may appropriately prioritize the provision of services and assistance. (See C-15).
- A description of the emergency services or assistance that the non-public school requests be provided by the SEA.
- Whether the non-public school received a loan guaranteed by the Small Business Association's Paycheck Protection Program (PPP) before December 27, 2020, and the amount of any such loan received.
- An assurance that the non-public school did not, and will not, apply for and receive a PPP loan on or after December 27, 2020. (See C-17 and C-18). The Department does not require an SEA to include any additional information on this assurance.

**C-9. What is the difference between an "application" and "consultation"?** *(NEW March 19, 2021)*

An SEA's application serves a similar purpose as consultation under Federal education programs that require equitable services for non-public school students and teachers. That is, it serves as a non-public school's intent to participate, provides required information such as poverty data and other information an SEA may reasonably require, and identifies COVID-19-related needs of the school. (An SEA may use the Department's [sample application template](#) in developing the application non-public schools will complete.)

**C-10. Is a non-public school that received a PPP loan prior to December 27, 2020 eligible to receive services or assistance under the EANS program?**

Yes. A non-public school that received a PPP loan prior to December 27, 2020, may receive services or assistance under the EANS program.

**C-11. What data may an SEA request a non-public school to provide in its application regarding the number and percentage of students from low-income families enrolled in the non-public school in the 2019–2020 school year?** *(Updated March 19, 2021)*

The CRRSA Act does not prescribe what poverty data an SEA must request from a non-public school in its application. The statute also does not prescribe the poverty threshold an SEA must use. Accordingly, an SEA has flexibility. Considering the short timeframe, the Department encourages an SEA to allow for the use of existing, generally available poverty data to enable reasonable estimates of a school's low-income status rather than requiring a new data collection. An SEA may permit data from multiple sources, within the State and even within a non-public school, provided the poverty threshold is the same across schools. Although an SEA may develop a survey to collect poverty data, the Department discourages surveys because of the length of time they take. Whatever the data source, an SEA must ensure that it does not require a non-public school to provide personally identifiable information about individual students or their families.

To the extent a non-public school has these data available, the following data sources are recommended:

- available free or reduced-priced lunch data,
- scholarship or financial assistance data that identify students whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines,
- E-Rate data, or
- other relevant data, such as data that the non-public school has provided to the State for purposes of State or local programs that identify students whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines.

If complete actual data from a particular source are unavailable, data may be extrapolated based on a representative sample.

For non-public schools where such data are not available, the following are potential sources of estimates of the number of students from low-income families:

- data imputing the number of students from low-income families based on the American Community Survey (ACS) or the Small Area Income and Poverty Estimates (SAIPE) program by the U.S. Census Bureau, or
- proportionality data: the number of students enrolled in a non-public school who reside in a Title I school attendance area multiplied by the percentage of public school students in that same attendance area who are from low-income families. If the non-public school has students who reside in more than one Title I school attendance area, multiple calculations would be necessary.

**C-12. Is there a deadline by which an SEA must require a non-public school to submit its applications?**

Although there is no statutory deadline, the Department strongly encourages an SEA to establish and effectively communicate a reasonable deadline for a non-public school to submit its application. For example, an SEA might require applications to be submitted within 30 days of the SEA making the application available in order for the SEA to ensure expedited and timely provision of services or assistance to non-public schools to address educational disruptions. An SEA could extend the deadline, if necessary, as many private schools do not have experience with applications like these and may need more time and assistance to complete them. In addition, establishing a deadline will facilitate the SEA's responsibility to obligate EANS funds within six months of receiving those funds. (See B-10).

**C-13. Is there a deadline by which an SEA must approve or deny an application for services or assistance from a non-public school?**

Yes. An SEA should approve or deny an application from a non-public school as soon as possible and must approve or deny no later than 30 days after its receipt. (See G-4 for more information on deadlines).

**C-14. Must an SEA establish criteria to prioritize non-public schools in approving applications for services or assistance under the EANS program? (NEW March 19, 2021)**

Yes. Under section 312(d)(3)(C) of the CRRSA Act, an SEA must prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19. An SEA must consider both factors. In other words, the SEA must have criteria that differentiate among non-public schools based on their enrollment of low-income students and the severity of the impact of COVID-19 on the school. (See C-11 and C-15). The SEA might weight the factors or weight non-public schools based on their strength of meeting the SEA's criteria. An SEA may choose to serve only non-public schools that meet its criteria; or, depending on the EANS funds available and the number of applications it receives, an SEA may also provide services or assistance to non-public schools that the SEA has not prioritized, provided the priority schools receive preference in the amount of services or assistance provided. (See C-15). However an SEA proceeds, it should make its criteria clear to non-public schools so they know the basis on which their application will be evaluated and apply those criteria consistently.

**C-15. What factors might an SEA consider in prioritizing non-public schools to receive services or assistance under the EANS program? (Updated March 19, 2021)**

An SEA generally has flexibility with regard to how it prioritizes non-public schools to receive services or assistance under the EANS program; however, the statute requires an SEA to target low-income schools and schools most impacted by COVID-19. With respect to poverty, an SEA might target those non-public schools that enroll significant numbers or percentages of low-income students (e.g., whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines) or meet a minimum threshold of low-income students. The SEA might also consider poverty bands, prioritizing schools in the

highest bands first. Factors that an SEA might consider in determining non-public schools that are most impacted by COVID-19 include but are not limited to: (1) rate of community infection; (2) number of COVID-19-related deaths per capita; (3) loss of tuition revenue due to decrease in enrollment; (4) lack of capacity to provide remote learning due to insufficient technological support, and (5) data documenting the extent of learning loss or the social, emotional, or mental health impact attributable to the disruption of instruction caused by COVID-19.

An SEA has flexibility to consider other factors in prioritizing non-public schools. For example, an SEA might consider the extent to which a non-public school serves low-income children with unmet needs and did not receive equitable services under a CARES Act program. An SEA might also take information regarding receipt or forgiveness of a PPP loan prior to December 27, 2020, into account in prioritizing services or assistance for non-public schools.

**C-16. How does an SEA determine what services or assistance to provide to individual non-public schools? (Updated March 19, 2021)**

An SEA should make every effort, consistent with available funding and school prioritization requirements, to provide the full range of services or assistance requested by each non-public school in its application. However, until an SEA knows how many non-public schools apply for services or assistance under the EANS program, it may not be possible for the SEA to precisely determine the type or quantity of services or assistance to provide to an individual non-public school. As a result, the SEA may need to confer with eligible non-public schools with approved applications to determine what services or assistance the SEA will provide based on the services or assistance requested in each non-public school's application and the amount of EANS funds available for providing services or assistance to the school. An SEA should communicate, as soon as possible, the services or assistance available to each non-public school, so that the school can weigh whether to pursue a PPP loan instead.

The CRRSA Act does not prescribe how an SEA distributes services or assistance among schools; accordingly, an SEA has flexibility. To determine the amount of EANS funds available to provide services or assistance to individual non-public schools, an SEA might divide the total funds available by the total enrollment in non-public schools with an approved application to obtain a per-pupil amount. The SEA would then multiply that per-pupil amount by the enrollment in an individual non-public school to determine the amount of services or assistance the SEA can provide to that school. If an SEA intends to serve both priority and non-priority non-public schools, however, this methodology would not sufficiently target priority schools because non-priority schools would be treated equivalently in the distribution of services or assistance. Alternatively, an SEA might calculate the funds available for services or assistance in individual non-public schools giving greater weight to poverty and measures that quantify the impact of COVID-19. Such a methodology could be used to target priority non-public schools before non-priority schools. These examples are illustrative and other approaches are allowable. Whatever method an SEA chooses, it should be objective, transparent, and applied consistently among non-public schools in the State.

**C-17. If a non-public school's application for services or assistance under the EANS program is denied, may the non-public school apply for a loan under the Paycheck Protection Program (PPP)?**

The PPP is administered by the Small Business Administration and is governed by its requirements and timelines. However, there is nothing in the CRRSA Act that would preclude a non-public school whose application for services or assistance under the EANS program is denied from then applying for a PPP loan on or after December 27, 2020.

**C-18. If a non-public school applies for a PPP loan and is denied a loan, may it apply for services or assistance under the EANS program?**

Yes. A non-public school that applies for a PPP loan on or after December 27, 2020, but does not receive funds under the PPP, may apply for services or assistance under the EANS program, as long as the non-public school meets the requirements and deadlines of the SEA.

**C-19. If an SEA denies an application from a non-public school, is there an appeal or complaint process?**

The CRRSA Act does not require an SEA to have a process by which a non-public school may appeal a denial of its application for services or assistance under the EANS program. However, an SEA may choose to establish such a process or may be required under State law or procedures to provide appropriate due process. The CRRSA Act similarly does not require an SEA to establish a process to receive complaints from non-public schools regarding EANS. An SEA, however, may wish to use its regular complaint process to resolve complaints under EANS.

**D. Services or Assistance for Non-Public Schools**

**D-1. What types of services or assistance may a non-public school receive?**

A non-public school may apply to receive services and assistance from the SEA or its contractors to address educational disruptions resulting from COVID-19 for:

- Supplies to sanitize, disinfect, and clean school facilities (See D-3)
- Personal protective equipment (PPE)
- Improving ventilation systems, including windows or portable air purification systems
- Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases
- Physical barriers to facilitate social distancing
- Other materials, supplies, or equipment recommended by the CDC for reopening and operation of school facilities to effectively maintain health and safety
- Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus
- Educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning, or to address learning loss
- Leasing sites or spaces to ensure safe social distancing
- Reasonable transportation costs
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss
- Reimbursement for the expenses of any services or assistance described above that a non-public school incurred on or after March 13, 2020, except for services or assistance described in D-8.

(See section 312(d)(4)).

**D-2. What other factors must an SEA consider when determining the allowability of services or assistance for non-public schools? (NEW March 19, 2021)**

To be allowable, an expenditure must be consistent with the cost principles in the Uniform Guidance, 2 CFR part 200, including the requirement that a cost be necessary and reasonable for performance of the Federal award. Under 2 CFR 200.404 “[a] cost is reasonable if, in its nature and amount, it does not

exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”

**D-3. Are services for sanitizing, disinfecting, and cleaning school facilities an allowable use of EANS funds? (NEW March 19, 2021)**

No. Section 312(d)(4)(A) specifically authorizes a non-public school to request “supplies to sanitize, disinfect, and clean school facilities.” This authority does not extend to contracting with a vendor to perform the cleaning. If a non-public school has contracted for cleaning and seeks reimbursement, an SEA may reimburse it for the cost of supplies but not for the full cleaning contract.

**D-4. May preschool children receive services or assistance under the EANS program? (NEW March 19, 2021)**

If preschool children are enrolled in an eligible non-public elementary school that receives services or assistance under the EANS program, preschool children and their teachers may receive allowable services. (See C-1 and C-3 through C-5 for which non-public schools are eligible). However, unless State law considers preschool education to be part of elementary education, preschool children enrolled in a stand-alone non-public preschool may not receive services or assistance under the EANS program.

**D-5. Must an SEA provide the ability for non-public schools to request any of the allowable services or assistance, or may the SEA choose which services or assistance it will offer to non-public schools? (NEW March 19, 2021)**

Section 312(d)(4) of the CRRSA Act permits a non-public school receiving services or assistance under the EANS program to use those services or assistance to address educational disruptions resulting from the COVID-19 emergency for any of the activities listed in paragraphs (A) through (M) of that section. An SEA may not restrict a non-public school’s ability to request any authorized services or assistance. The SEA may, however, need to negotiate the services or assistance it will provide based on the State’s procurement requirements, the amount of EANS funds available for providing such services or assistance to the school, or other reasons. (See C-16). At the same time, such negotiations must ensure that those schools that the SEA has prioritized, based on the number of low-income children and the impact from COVID-19, are not precluded from participation. (See C-14 and C-15).

**D-6. May EANS funds be used to pay the salaries of non-public school teachers or other staff? (NEW March 19, 2021)**

EANS funds may not be used to provide funds to non-public schools to cover payroll. Under section 312(d)(7) of the CRRSA Act, a public agency must control funds for services or assistance provided to non-public school students and teachers under the EANS program. However, an SEA may contract with a teacher at a non-public school directly to provide secular, neutral, and non-ideological services outside of the teacher’s contractual obligation with the non-public school. The non-public school teacher must be employed by the SEA or another public entity for EANS purposes outside of the time he or she is employed by the non-public school, and the non-public school teacher must be under the direct supervision of the SEA or other public entity with respect to all EANS activities. Also, an SEA may contract with a vendor to provide staff, such as nurses or teachers, who will provide services in non-public schools. The contract must be under the control and supervision of the SEA or another public entity.

**D-7. May a non-public school request reimbursement for COVID-19-related expenses?**

Yes. A non-public school may request reimbursement in its application for expenses it has incurred or will incur for most allowable services or assistance, including those obtained through a contract with a

vendor. (See D-1). An SEA may reimburse a non-public school only for expenses for allowable services or assistance it incurred on or after March 13, 2020, to prevent, prepare for, and respond to COVID-19 that have not already been reimbursed with Federal funds, including PPP. Reimbursement under the EANS program does not make a non-public school a recipient of Federal financial assistance. (See D-12). With respect to a request in a non-public school's application for reimbursement of future services or assistance, the SEA should have a process in place to review the requested services or assistance to ensure that they are necessary, reasonable, and allowable under the CRRSA Act, and approve reimbursement to the non-public school. Procedures for processing reimbursements, including the timing and frequency, are at the SEA's discretion but should be clearly communicated to non-public school applicants.

To maintain control over the EANS funds, the SEA must ensure that the non-public school's expenditures are allowable expenses, that the non-public school has sufficient documentation supporting such expenditures, such as paid invoices, that the school actually received the services or assistance related to those expenditures, and that the SEA or another public agency gains title to materials, equipment, and property for which it provides reimbursement. For example, if a non-public school purchased laptops for students and teachers to facilitate online learning, the SEA may use EANS funds to purchase those laptops from the non-public school, thereby also obtaining title for the laptops from the non-public school. Provided these conditions are met, the SEA may continue to allow the laptops to be used by non-public school students and teachers.

**D-8. Are there otherwise allowable expenses for services or assistance for which an SEA may not reimburse a non-public school? (Updated March 19, 2021)**

Yes. Although an SEA may provide the services or assistance listed below directly to a non-public school or through a contract with an individual, association, agency, or organization under the EANS program (see D-1), the SEA may not reimburse a non-public school for:

- Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
- Any expenses reimbursed through a loan guaranteed under the PPP (15 U.S.C. 636(a)) prior to December 27, 2020.
- Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss. (Section 312(d)(4)(M)).

**D-9. May an SEA subgrant EANS funds to an LEA, ESA, or other entity to provide services or assistance to a non-public school?**

No. Under 34 C.F.R. § 76.50(c), an SEA may not subgrant funds under a formula-grant program unless there is express authority to do so. There is no express authority to subgrant in the CRRSA Act.

**D-10. May an SEA contract with another entity to provide services or assistance to non-public schools? (Updated March 19, 2021)**

Yes. An SEA may provide services or assistance (including reimbursements) directly to non-public schools or it may contract with an individual, association, agency (e.g., an LEA or ESA), or organization to provide such services or assistance. Under this authority, an SEA may contract to administer the entirety of the EANS program, consistent with the SEA's procurement procedures. However, the individual, association, agency, or organization must be independent of the non-public schools receiving

the services or assistance. Any contract must be under the control and supervision of the SEA. (Section 312(d)(7)(B)).

**D-11. If a non-public school is receiving equitable services under a CARES Act program, do the services or assistance provided under the EANS program need to be different?**

No. The services provided to a non-public school under the EANS program may be the same as, or similar to, the equitable services the non-public school is receiving or has received under a CARES Act program. However, the services or assistance must be in addition to what was provided under a CARES Act program. Under the EANS program, services or assistance to non-public schools include those authorized services in section 312(d)(4) (see D-1), nearly all of which are also authorized equitable services under the CARES Act programs.

**D-12. Does receiving services or assistance under the EANS program make a non-public school a “recipient of Federal financial assistance”?**

No. Under the EANS program, a Governor is the recipient of Federal financial assistance and is responsible for ensuring that the SEA administers the EANS program in accordance with applicable laws, including civil rights laws. Section 312(d)(7)(A) of the CRRSA Act requires a public agency (e.g., the SEA) to control and administer EANS funds and keep title to materials, equipment, and property purchased with the funds. A non-public school whose students and teachers receive services or assistance under the EANS program, even if such services or assistance are delivered through reimbursement, is not a “recipient of Federal financial assistance.” As a result, certain Federal requirements that apply to a recipient of Federal financial assistance are not directly applicable to a non-public school whose students or teachers receive services or assistance under the program, unless the school receives Federal financial assistance for other purposes. Accordingly, non-public schools do not need a data universal numbering system (DUNS) number or to be registered in the System for Award Management (SAM) for purposes of the EANS program.

**E. Public Control of Funds**

**E-1. Must a public agency maintain control of EANS funds used to provide services or assistance to a non-public school? (Updated March 19, 2021)**

Yes. Control of funds for services or assistance provided to a non-public school under the EANS program and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. In addition, services for a non-public school must be provided by a public agency directly or through contract with another public or private entity. (See D-7 and D-10). To maintain control of EANS funds, an SEA must maintain records of the equipment and supplies it has provided to each non-public school. (See D-7).

Reimbursements by an SEA to a non-public school for allowable expenses are allowable under section 312(d)(4)(M) of the CRRSA Act. To maintain control over the EANS funds it uses to reimburse a non-public school, an SEA must ensure that the non-public school’s expenditures are allowable expenses, that the non-public school has sufficient documentation supporting such expenditures, such as paid invoices, that the school actually received the services or assistance related to those expenditures, and that the SEA or another public agency gains title to materials, equipment, and property for which it provides reimbursement. (See D-7).

**E-2. How can an SEA maintain control of services or assistance for allowable activities that might affect the infrastructure of a non-public school? (NEW March 19, 2021)**

Section 312(d)(4)(C) of the CRRSA Act authorizes a non-public school to request services and assistance under the EANS program for “improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school.” That authority, however, is tempered by several other provisions. Section 312(d)(7) of the CRRSA Act, for example, requires an SEA or another public agency to keep title to materials, equipment and property purchased with EANS funds and the public agency must administer such materials, equipment, and property. Moreover, 34 C.F.R. § 76.661 requires that equipment and supplies purchased with EANS funds must be able to be removed from a non-public school without remodeling the non-public school facility. Clearly, a portable air purification system could meet these requirements because an SEA could keep title and it could be removed when no longer needed without remodeling the non-public school facility. A ventilation system that is installed and becomes a capital improvement in a non-public school, however, would not meet these requirements. Similarly, new windows would not be permissible, but repairing old windows to facilitate air flow could be allowable. In sum, whether this particular authorized activity is allowable depends on the attendant circumstances.

**F. Fiscal Requirements**

**F-1. For how long are the services or assistance provided to a non-public school available?**

Equipment and supplies purchased with EANS funds for students and teachers in a non-public school may be used for the authorized purposes of the EANS program during the period of performance (i.e., through September 30, 2023) or until the equipment and supplies are no longer needed for the purposes of the EANS program (see 34 C.F.R. § 76.661(b); 2 C.F.R. §§ 200.313(a)(1), (c)(1) and 200.314(a)).

In general, once equipment and supplies are no longer needed for purposes of the EANS program, an SEA must remove them from the private school. 34 C.F.R. § 76.661(d)(1). After equipment and supplies are no longer needed for the purposes of the EANS program, the SEA may continue to use the equipment and supplies in the non-public school to the extent they are needed for other allowable purposes under another federal education program, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). In that case, the SEA must retain title to, and maintain administrative control over, the equipment and supplies or transfer title and control to another public agency such as an LEA providing equitable services under another federal education program.

**F-2. Must a State maintain effort to receive EANS funds? (Updated March 19, 2021)**

Yes. Under section 317 of the CRRSA Act, a State receiving funds under GEER II, ESSER II, or the EANS program must provide an assurance that the State will maintain support for elementary and secondary education and higher education in fiscal year 2022 at least at the proportional levels of the State’s support for elementary and secondary education and higher education relative to the State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.

The Secretary may waive the maintenance of effort (MOE) requirement for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to COVID-19. Please see the Department’s FAQs on MOE for more information.

## **G. Reporting Requirements and Timeline**

### **G-1. Are there specific reporting requirements for the EANS program?**

Yes. Each State must comply with all reporting requirements, including those in Section 15011 of the CARES Act that are satisfied through the Federal Funding Accountability and Transparency Act (FFATA) reporting. The Secretary may require additional reporting in the future. (See also 2 CFR 200.327-200.329).

### **G-2. Do SEAs that make subawards to other entities have to report them under FFATA for the EANS program? (NEW March 19, 2021)**

Yes. Any action obligating \$30,000 or more (effective November 12, 2020) in EANS funds that falls under the definition of a subaward must be reported in accordance with FFATA in FSRS. A subaward under the EANS program is an award made by an SEA to a subrecipient for the subrecipient to carry out part of the EANS program. A subaward may be provided through any form of legal agreement, including an agreement that the SEA considers a contract. Because most of the services or assistance provided to non-public schools under the EANS program will likely be through contracts, it is necessary to examine the nature of the agreement to determine whether the SEA has made a subaward and thus must report it in FSRS. In determining whether an agreement between an SEA and another non-Federal entity casts the non-Federal entity as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement for FFATA reporting purposes. Guidance on making subrecipient versus contractor determinations is set out in 2 CFR 200.331.

An agreement does not need to meet each of the characteristics called out in 2 CFR 200.331 for the non-Federal entity to be a subrecipient or a contractor. For example, it is likely that, given the very nature of the EANS program and the type of authorized activities, a contractor would rarely, if ever, provide services or assistance that are ancillary to the operation of the EANS program. Rather, the contractor would provide services or assistance that are the essence of the program—e.g., supplies to sanitize, disinfect, and clean school facilities; personal protective equipment; portable air purification systems; physical barriers to facilitate social distancing; educational technology, including hardware, software, connectivity, assistive technology, and adaptive equipment. Moreover, the SEA, rather than the contractor, would determine the nature of the services or assistance to be provided to specific non-public schools. Under these circumstances, the agreement would likely not be a subaward and thus would not need to be reported in FSRS. On the other hand, an SEA might enter into an agreement with a non-Federal entity to carry out a summer school program to address learning loss in a non-public school. If under the agreement the non-Federal entity determines, for example, who is eligible to receive services, has its performance measured in relation to whether objectives of the EANS program are met, and has responsibility for programmatic decision-making, the agreement would likely be a subaward and must be reported in accordance with FFATA in [FSRS](#). If an SEA contracts with an entity to only provide goods or services that enable the SEA to carry out activities to administer the program, the expenditures would not be considered a subaward and would not need to be reported in [FSRS](#). For example, an SEA might contract to receive support with the review of applications.

If you need further assistance, please contact your State mailbox at [State].[oease@ed.gov](mailto:oease@ed.gov).

### **G-3. Will the Department monitor an SEA's implementation of the EANS program? (NEW March 19, 2021)**

The Department will conduct ongoing monitoring of all EANS programs. Grantees should also be prepared for reviews from other entities such as the Office of Inspector General and State auditors.

**G-4. What are the significant deadlines associated with the EANS program?**

Please see the table below.

**SEA EANS Timeline**

<b>Action</b>	<b>Deadline</b>
Make Applications Available to Non-Public Schools	Promptly and no later than 30 days after the SEA receives the EANS funds
Submission of Non-Public School Applications	To be established by the SEA (e.g., the Department encourages 30 days)
Approve or Deny Applications	Promptly and no later than 30 days after receiving the application from a non-public school
Obligate EANS Funds	Within 6 months of the SEA receiving EANS funds (See B-10)
FFATA Reporting	Monthly
Annual Reporting	TBD
Maintenance of Effort Reporting	Spring 2023
Period of Availability of Funds	Through September 30, 2023