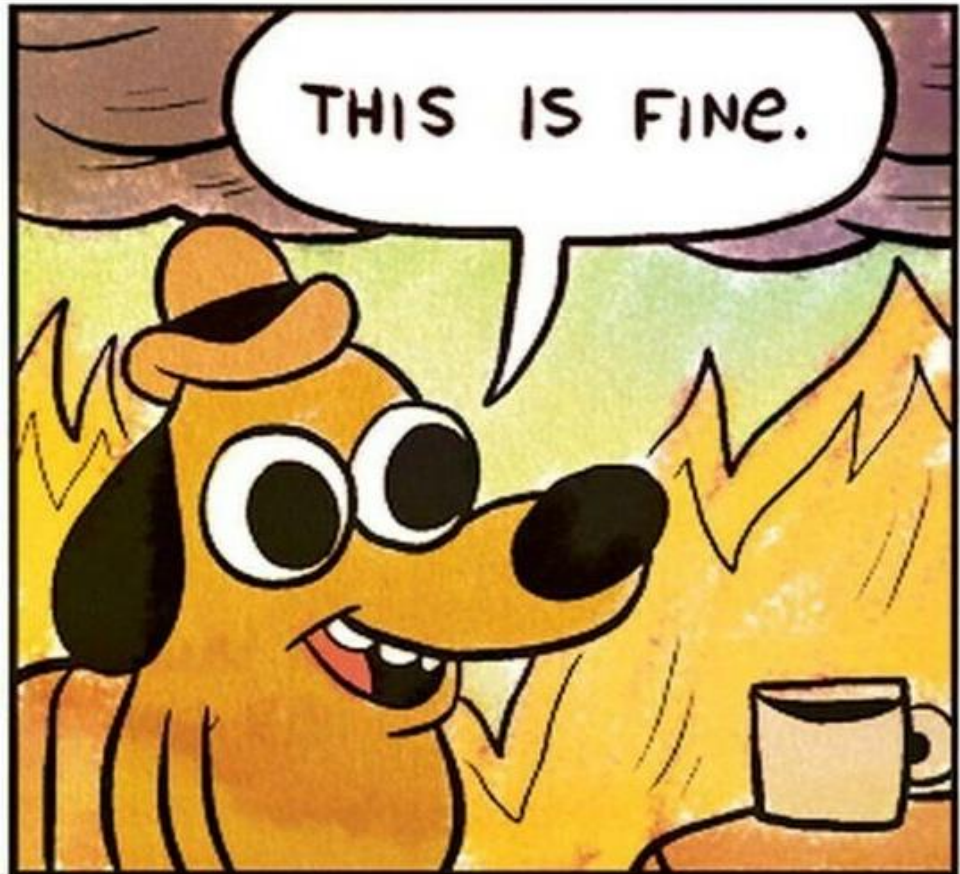


# **ESEA Hot Topics: Old and New Guidance for Managing Federal Programs**

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# What do “hot topics” mean to you?



# Agenda

- Audits and Investigations
- Equitable Services
- Supplement Not Supplant
- Recent Non-Regulatory Guidance
- Dear Colleague Letters
- What's Next?
- Admin Updates

# Audits and Investigations

# School Fiscal Services Director Embezzles \$16.7m

- Wrote checks with initials, then deposited in personal bank accounts
- Forged bank statements
- Federal law enforcement seized \$7.7 in personal property (57 luxury bags; 8 bottles of \$2k tequila; BMW; home; jewelry, shoes, etc.)
- Sentenced to 70 months prison; restitution of \$16.7 million



# Linn-Mar Community School District

## ESSER Audit

- Reviewed 20 expenditures; determined all were allowable
- District did not comply with competitive procurement process or documentation requirements for 6 of 15 non-personnel costs
  - \$27,841 for library mgmt. license; no price or rate quotations
    - District: Recurring expense; contract entered into 10 years ago
    - OIG: Need to maintain “history” of procurement
  - Remaining 5 expenditures (ed tech and materials, PD, and needs assessment), argued “single source” but no justification documentation to support
- Recommendation: Support the reasonableness of the 6 expenditures without competitive procurement (\$228k), and if not, “require appropriate corrective actions”
- Recommendation: Require training on federal procurement requirements

# Southeast Polk Community School District

## ESSER Audit

- Reviewed 20 expenditures; determined all were allowable (counselor salaries, cleaning supplies, textbooks and air conditioning equipment)
- District did not comply with competitive procurement process or documentation requirements for 1 of 15 non-personnel costs
  - \$62,000 for school bus air conditioners (purchase was part of a larger purchase of buses and related items, totaling \$834,000)
    - OIG: Because total cost exceeded \$250k, needed to conduct a formal bid process (even though only \$62k charged to federal funds)
    - District: received three vendor bids, approval from state. Selected the vendor, then used “specification sheet” to serve as contract
    - OIG: Asked for signed specification sheet; District could not locate
- Recommendation: Require training on federal procurement requirements; “without a contract stipulating the terms and conditions of the award, [District] might not be able to adequately monitor vendor performance or ensure it receives what it paid for in terms of cost, quality and timeliness”

# Des Moines Independent Community School District ESSER Audit

- Reviewed 20 expenditures; 17 allowable, 2 unallowable, 1 unsupported
- 2 unallowable costs, totaling \$164,580 for advertising and public relations costs solely to promote the LEA
  - OIG: While certain advertising and public relations costs are allowable, the purpose here was to generally promote the LEA; did not reference coronavirus pandemic, impact on students, absenteeism, etc.
- 1 unsupported cost, \$33,326 payment on a \$666,527 expenditure for HVAC upgrade
  - OIG: District was reimbursed the \$33,326 for this payment, but held it as a retainage fee and withheld it from the vendor; no proof of payment until the review (18 months later) – creates Cash Management issue.

# Des Moines Independent Community School District ESSER Audit (cont.)

- Recommendations:
- 1. Return the \$164,580 for unallowable advertising, **or reallocate the funds to other allowable costs**
- 2. Provide support of payment to the HVAC upgrades (\$33,326), return the funds, or reallocate to other allowable costs
- 3. Calculate the interest earned (actual or imputed) on any ESSER grant funds that were retained (withheld) and not immediately paid to vendors, and return interest exceeding \$500
- 4. Ensure that LEA officials responsible for making or reviewing and approving purchases have training on federal rules and regulations related to grants admin, allowability, documentation and cash management
- **Iowa/Des Moines Response:** Reallocated the unallowable costs spent on LEA advertising and public relations (\$164k) and HVAC portion (\$59k) to payroll costs for virtual instruction and cleaning supplies and materials
  - **OIG:** Should look at FY 21 and FY 22 to see if any unallowable costs for advertising charged, and correct accordingly

# Lower Kuskokwim School District ESSER Audit

- All 20 reviewed expenditures were allowable
  - Looked at indirect costs; ipad, educational software, construction costs; equipment, internet service, travel reimbursement, training and payroll
- OIG: Costs were connected to the coronavirus pandemic, authorized uses of ESSER funds, and reasonable and necessary and otherwise permissible under the UGG. In addition, the district complied with federal procurement requirements.
- Same result for Matanuska-Susitna Borough School District
- Same result for Anchorage School District

# Risk vs. Noncompliance

## RISK

- 2 CFR 200.206 (Risk assessment by federal agencies)
- 2 CFR 200.332 (Risk assessment by pass-throughs; subrecipient monitoring)
- 2 CFR 200.519 (Risk assessment by single auditors)
- 2 CFR 200.318(h) (Risk assessment of contractors)

## NONCOMPLIANCE

- 2 CFR 200.303; 200.329(a) (internal controls and self-assessment of compliance)
- 2 CFR 200.339 (Enforcement options for noncompliance)
- 2 CFR 200.521; 200.332 (Management decisions on single audit findings)
- 31 USC 3729-3733 (False Claims Act for fraud)

# High Risk Designation

- If federal agency, pass-through agency, or auditor identifies risk, awarding agency should impose specific conditions on the award to mitigate that risk, 2 CFR 200.208
  - Designate the grantee or subgrantee as “high risk”
- Is high risk designation required?
  - E.g., Detroit Public Schools
  - E.g., The School District of Philadelphia

# Mandatory Disclosures (200.113)

- Mandatory disclosures (200.113): Applicant, recipients, and subrecipients must promptly disclose whenever it has credible evidence of the commission a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations under Title 18 or Civil False Claims Act (31 U.S.C. 3729–3733)
  - Includes both criminal and civil false claims actions
  - Must be made in writing to the Federal agency, the agency's Office of Inspector General, and the pass-through entity (if applicable)
  - Also required to report matters to recipient integrity and performance (i.e. SAM and FAPIIS)
- Includes any activities or subawards in connection with the Federal award
- Failure to report can result in remedies for noncompliance (200.339)

# Credible Evidence Standard

- **Scenario 1:** Pass-through entity conducts subrecipient monitoring. Pass-through identifies that subrecipient has used grant funds to contract with a company owned by the director's spouse.
- **Scenario 2:** Employees have \$5k limit on purchase cards. While an employee is on vacation, supervisor reconciling purchase card expenses discovers employee had been paying a vendor that she owned.
- **Scenario 3:** Pass-through entity receives a complaint alleging mismanagement and possible fraud at the subrecipient level. Pass-through contacts subrecipient to respond.

# Mandatory Disclosure Requirements (cont.)

- Even with appropriately designed and implemented internal controls, misstatements and noncompliance often occur – and often go undetected and uncorrected.
- May be due to:
  - Human error;
  - Lack of training;
  - Bandwidth issues;
  - Inadequate change management during regulatory revisions; and
  - Bad actors who may defraud a program, organization, or people



# Involving Counsel ...

## Disclose -

- Protection from False Claims Liability
  - Original source defense; if defendant proactively discloses to government
- Transparency with Funder
  - Opportunity to tell your side of the story; demonstration of good faith and internal controls
- Other?

## Not to Disclose -

- Elevate Risk Status
  - Increased monitoring?
  - Affect eligibility for other awards?
  - High-risk status?
- Possible Liability
  - Referral to OIG and/or state auditor and/or single auditor
- Other?

# Equitable Services

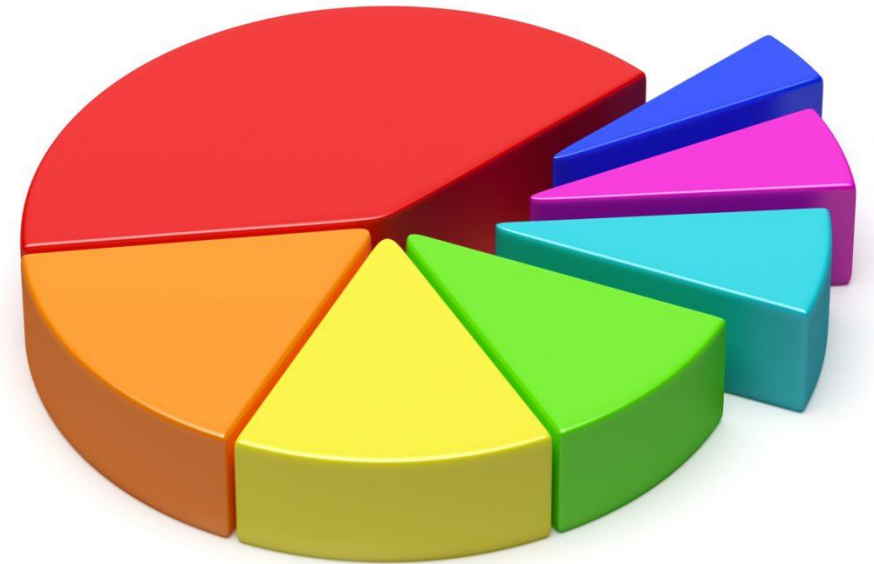
# EQUITABLE SERVICES – THE BASICS

## Two Equitable Services programs under ESE

- Title I-A → Section 1117
- Title VIII → Section 8501
  - Applies to...
    - Title I-C
    - Title II-A
    - Title III-A
    - Title IV-A
    - Title IV-B
    - Title IV-F (Project SERV)

# EQUITABLE SERVICES – THE BASICS

- LEAs must calculate the “proportional share” of funding for equitable services under each covered program
- \*\*\*Calculation for Title I different from the programs covered under Title VIII



# EQUITABLE SERVICES – THE BASICS

- If covered program has eligibility/participation restrictions (e.g. Title III-A for ELs), then also applies to equitable services
- All services and benefits provided must be “secular, neutral, nonideological”
- LEA must maintain control of funds!
  - Share of funds for private schools is used to provide services and benefits
    - Funds are never distributed to the private schools

# EQUITABLE SERVICES – THE BASICS



- Consultation, consultation, consultation!
- LEAs must consult with private schools in an ongoing, meaningful, and timely manner

# EQUITABLE SERVICES CONSULTATION

- LEA must initiate contact annually
  - May choose to send “intent to participate” form
- LEA may set reasonable timelines (e.g. for intent to participate)
- Must include early discussions to prepare for school year AND be ongoing throughout school year
- Maintain documentation!

\*Always goal of reaching agreement\*

# EQUITABLE SERVICES CONSULTATION TOPICS

- Children's needs and how they are identified
- What services
- How, where, by whom services to be provided
- Size and scope of program
- Data to ID students
- How and when LEA makes decisions
- Services to be provided directly or through third party (and If LEA disagrees on use of third-party contract - reasons in writing)
- School by school or pooling
- Time of day for provision of services
- Coordination with other programs

# EQUITABLE SERVICES CONSULTATION TOPICS

- Administrative costs of providing equitable services
- Indirect costs
- Services and activities for teachers of participating private school students
- Family engagement activities
- Any funds available for carryover
- Transferring funds from Title II, Part A or Title IV, Part A into Title I, Part A





# **TITLE I-A EQUITABLE SERVICES**

# TITLE I EQUITABLE SERVICES CALCULATION

## Proportionate Share Formula (ESSA Section 1117(a)(4)):

1. Determine the number of children from low-income families residing in each Title I participating attendance area who attend public and private schools
2. Figure out the proportion of those children in private schools
3. Apply the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate share

\*Include funds transferred into Title I\*

Must occur before any required reservations

# TITLE I EQUITABLE SERVICES CALCULATION

How does the LEA determine low-income students attending private schools?

1. The same measure of poverty used to count public school children (Free and Reduced-Price Lunch, etc.)
2. Comparable poverty data from a survey
3. Comparable poverty data from a different source
4. Proportionality
5. An equated measure

# TITLE I EQUITABLE SERVICES CALCULATION

Data source must be discussed during timely and meaningful consultation!!

“LEA cannot conclude that a survey is the best source of poverty data without at least consulting about other sources that may exist.” –Title I ES Guidance

BUT LEA has the final authority to decide which method it will use

# PROVISION OF SERVICES

LEA must establish “multiple, educationally related, objective criteria” to determine which students are eligible for Title I-A services within the overall eligible group

→ Services should be targeted to students with greatest need



# PROVISION OF SERVICES - POOLING

- Options for providing services:
  - School-by-school
  - Pooling within an LEA
    - LEA must establish criteria (in consultation) to determine students with greatest educational need to receive services
  - Pooling across LEAs
    - Same criteria as pooling within an LEA
- Must be discussed and agreed to in consultation!!

A close-up photograph of a person's hand holding a wooden pencil, writing on a lined notebook. The person is wearing a black and white striped shirt. The background is blurred, showing a desk and a window with natural light. A red banner is overlaid on the right side of the image, containing the text 'TITLE VIII EQUITABLE SERVICES'.

# **TITLE VIII EQUITABLE SERVICES**

# TITLE VIII EQUITABLE SERVICES CALCULATION

Different from Title I calculation!

- Based on where student *attends* private school, not where the student lives
- Eligible children = children and educators in nonprofit private elementary and secondary schools in the LEA's service area
  - If program has participation restrictions (e.g. Title III-A for ELs), then also applies to equitable services

# TITLE VIII EQUITABLE SERVICES CALCULATION

- Based on data from prior year
  - Use same year data for public and private numbers
- Use only the number of children or eligible children in private schools that *wish to participate*
- Not the total number of private school children in the LEA

# TITLE VIII EQUITABLE SERVICES CALCULATION

How are administrative costs calculated?

- LEA reserves admin costs (including indirect) from program's total allocation (off the top) before the LEA determines allocation for public and private school children and educators
  - Admin reservation covers costs of both public and private school components

Different from Title I ES!

- Proportional share calculated BEFORE any reservations

# TITLE VII EQUITABLE SERVICES

- What requirements/options are the same as under Title I??
- Consultation
  - Must be ongoing, timely, and meaningful
  - Must include all required topics
  - Maintain documentation
- Pooling options

# Supplement, not Supplant

[HTTPS://WWW2.ED.GOV/POLICY/ELSEC/LEG/ESSA/SNSFINAL  
GUIDANCE06192019.PDF](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf)

## Programs

	Title I,A	Migrant Education	Title II,A	Title III,A	Title IV,A	REAP/ SRSA	21 <sup>st</sup> CCLC	IDEA	ESSER
State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c)(2)							---
Non-Federal Funds			ESSA Sec. 2301		ESSA Sec. 4110				---
Federal, State and Local Funds				ESSA Sec. 3115(g)		ESSA Sec. 5232	ESSA Sec. 4204 Subs Non-federal funds (4202(b)(2)(G))	34 CFR 300.164 (a) (SEA); 300.202 (a) (LEA)	---

# ESSA Title I, A Sec. 1118

- To demonstrate compliance, a LEA must demonstrate that it has a methodology (e.g., *through written procedures*) and uses it to allocate **state and local funds to each Title I school** [and] ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds—i.e., the LEA’s methodology may not take into account a school’s Title I status
  - ED frames this as “Title I neutral”

Applies to LEAs and Educational Service Agencies (ESAs) if the ESA obtains Title I, A funding on behalf of LEAs for allocation.

# What is a compliant methodology?

- One that results in Title I schools receiving “all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds”
  - Can differentiate by grade span, size of school, student enrollment, etc.
  - Suggested models in guidance:
    - Weighted funding based on student characteristics (certain \$ amount per student based on estimated needs)
    - Staffing/ supplies (e.g. 1 principal, 1 teacher per 20 students, estimated amount for supplies technology)
    - Combination of methodologies

# Does this mean that State/local spending has to be equal in Title I/ non-Title I schools?

- No
  - However, requirement will most often result in higher spending for the Title I schools within that same district
  - ED may not mandate equalized spending
  - Schools and grade spans have different concentrations of students
  - Having higher spending in non-Title I schools is not necessarily an indicator of violation so long as methodology is appropriate

# What About District-level Activities?

- The LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status.
- For example, the LEA reserves the State and local funds for a social worker at the district level.
  - The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.
  - Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance Section VI.

# Are there any SNS exceptions?



- Excluded from SNS Methodology Test:
  - Single School LEAs;
  - LEAs with only Title I schools.
  - A grade span that contains only: a single school, non-Title I schools, or Title I schools.
- SNS Guidance Q&A 26

# Title I vs. non-Title I Programs

- For programs outside of Title I-A, can still use:
  - Specific cost test
  - Presumptions of supplanting



# Presumptions of Supplanting

## Presumptions of Supplanting

1. Used Federal funds to provide services that are required under other Federal, State or local laws.
2. Used non-federal funds in prior year.
3. Used federal funds to provide services for participating children and non-federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available.

\*NOT APPLICABLE to Title I

# Evidence of Compliance

The LEA must maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology

- An LEA must keep records to show compliance with program requirements and facilitate an effective audit. (34 C.F.R. 76.730-76.731)
- Examples: written methodology, calculations performed by the LEA to implement the methodology.

SNS Guidance Q&A 19.

# What happens if the LEA does not meet the SNS requirements?

- Audit Finding
- Update methodology
- Enforcement provisions under GEPA and the UGG (2 CFR Part 200)



# Non-Regulatory Guidance



# Title I, Part D Guidance

- Final Guidance: <https://www.ed.gov/media/document/tipd-non-regulatory-guidance>
  - Based on draft guidance published in August 2024
- Title I, Part D Serves “children and youth in local, Tribal, and State institutions for neglected or delinquent children and youth”
- Separated into State agency programs (Subpart 1), Local Agency programs (subpart 2), and Program Evaluation Requirements (Subpart 3)

# Title I, Part D Guidance: Key Points

- Defines types of eligible programs!
  - With citations to regulations on minimum stay
- Defines a “regular program of instruction”
- Offers instructions on child count and eligibility
- Lists allowable uses of funds
- Information sharing and FERPA
- Parent involvement requirement
- Transition services requirement

# Title I, Part D Guidance

- Allowable uses of Subpart 1:
  - Use of funds for advanced coursework, including dual enrollment or dual credit, trade school, and advanced CTE classes at vocational colleges
  - Training and mentoring
  - Pay-for-success
- Allowable uses of Subpart 2:
  - Reasonable administrative costs
  - Advanced coursework
  - Virtual learning
  - Dropout prevention

# School Improvement Guidance

- Final guidance published January 2025:  
<https://www.ed.gov/media/document/school-improvement-guidance>
- Few differences from original draft, except:
  - Notes that TSI schools don't have to have formal exit criteria, but argues that there needs to be a way to determine success of plans/interventions
  - Now says that 1003 funds are NOT subject to 15% limitation on carryover.



# School Improvement: Key Takeaways

- Charts that differentiate between Title I and non-Title I schools and obligations for school improvement!
- CSI/TSI requirements versus recommendations
  - Note that some things are only ED “recommendations” – language is chosen carefully (“must” versus “may” or “should”)
- Suggestions and resources for evidence-based interventions
- Outlines requirements for identifying and addressing resource inequities and requirements for state review.
  - These are going to be part of regular ESEA monitoring!

# Identifying and Addressing Resource Inequities

- Section 1111(d)(1)(B)(iv) and (2)(C)
- “Should consider all available data” including
  - Per-pupil expenditures
  - Teacher experience
  - Access to specialized instructional support personnel
  - Access to comprehensive and rigorous coursework
  - Access to preschool programs
  - Other educational resource information

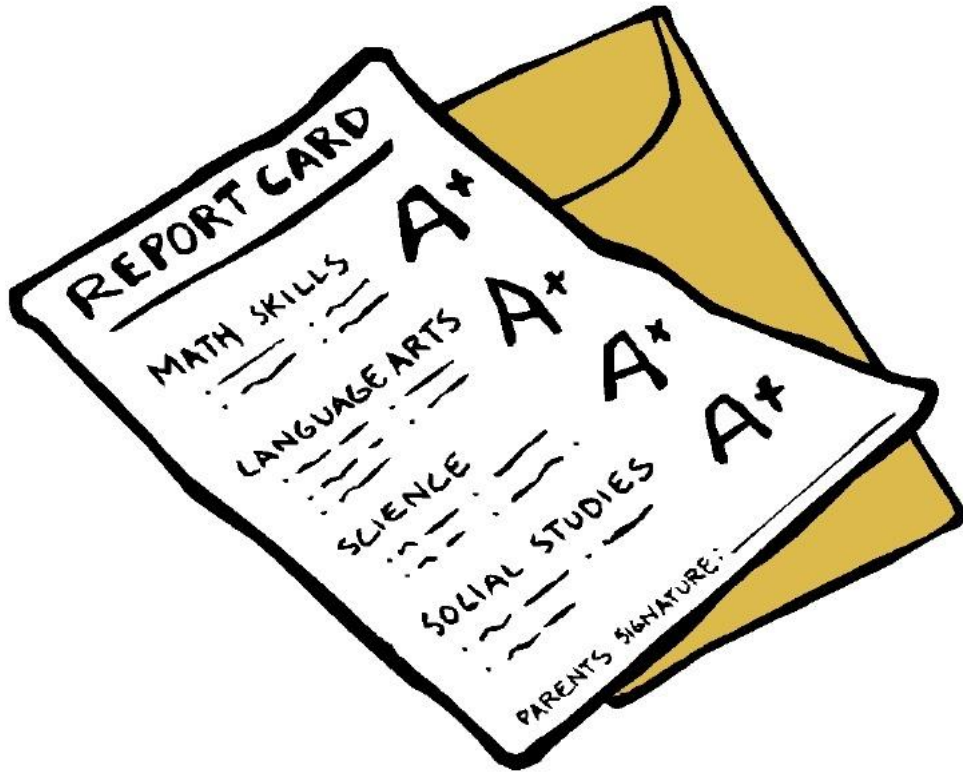
# Resource Allocation Reviews

- Section 1111(d)(3)(A)(ii): State must “periodically conduct a resource allocation review to support school improvement in each LEA in the State serving a significant number of schools identified for CSI, TSI, or ATSI”
- State can determine what “periodically” and “significant” mean
  - But ED makes recommendations (e.g. every 3 years, and 10% or more than 3 schools)
- May use to prioritize 1003 funds

# “More Rigorous Action”

- “ESEA section 1111(d)(3)(A)(i)(I) requires “more rigorous State-determined action” in a school identified for CSI that fails to meet the statewide exit criteria within the State-determined number of years”
  - Number of years must be less than 4, including a planning year
- Must be:
  - More rigorous than previously implemented
  - Described in a State plan
- Should be
  - Supported by evidence relevant to the school population to the extent practicable
  - In consideration of whether the design of original support played a part
- Can be
  - In addition to or instead of prior interventions

# Report Card Guidance



- January 2025 guidance:  
<https://www.ed.gov/media/document/report-card-guidance-2025>
  - Not final but open to comments?

# Report Card Guidance: Key Takeaways

- Accessibility is important!
  - “Parents and other stakeholders who are not from the major language groups serviced by an SEA and LEA must also have meaningful access. An SEA and LEA may provide this access in the same manner as it does for its major language groups, or, if that is not practicable, by translating the report card upon request, translating an effective summary of the report card, or providing effective oral interpretations of the report card”

# Report Card Guidance: Key Takeaways

- “Students with a parent who is a member of the armed forces on active duty” → “military-connected students” per 2024 NDAA
  - Military-connected is no longer limited to parents who are active duty
  - Reporting category must, at a minimum, capture students with a parent in “active service.” That includes “individuals on active duty, full-time or part-time National Guard duty, and full-time or part-time Reserve status” but not retirees or veterans.

# Report Card Guidance: Key Takeaways

- Must maintain at least 3 years of State and local report cards as publicly available
- Participation is students who have a “valid score” on a State assessment
  - “as determined by the State”
- Instructions on CRDC reporting, inclusion of English Learners

# Parent Engagement Guidance

- January 2025: <https://www.ed.gov/media/document/parent-and-family-engagement-guidance-2025>
  - Not “final” or “draft” but accepting comments
  - Table of parent notification requirements
  - Sample parent engagement policy
  - Sample school-parent compact
- “[P]arent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare).”

# Parent Engagement Guidance: Key Takeaways

- Translations are necessary!
  - “whenever practicable, written translations of printed information must be provided to parents with limited English proficiency in a language they understand. However, if written translations are not practicable, it is practicable to provide information to limited English proficient parents orally in a language that they understand. SEAs and LEAs have flexibility in determining what mix of oral and written translation services may be necessary and reasonable for communicating the required information to parents.”
- Parents of students in non-public schools have the right to participate in LEA-provided activities
  - Must be based on consultation
  - “light refreshments” may be served for parents and families at Title I parent engagement meetings “to facilitate attendance.”

# Parent Engagement Guidance: Key Takeaways

- New interpretation on set-aside allocation
  - Where an LEA chooses to withhold more than the one percent minimum of its allocation for parent engagement, the guidance says, the LEA does not have to allocate 90 percent of the full set-aside to schools. Instead, “the LEA may retain for district-wide parental involvement activities the full amount of any Title I, Part A funds reserved for that purpose in excess of the required one percent.”
- Statute (Sec. 1116(a)(3)): “(A)...Each local educational agency shall reserve at least 1 percent of its allocation under subpart 2 to assist schools to carry out the activities described in this section...(C) Not less than 90 percent of the funds reserved under subparagraph (A) shall be distributed to schools served under this part, with priority given to high-need schools”

# Title II Guidance

- January 2025: <https://www.ed.gov/media/document/title-ii-part-non-regulatory-guidance-january-2025>
- Not draft or final
- Should be used in concert with December documents, not as a replacement

# Title II Guidance: Key Takeaways

- Focus on “evidence-based” interventions
- Lists allowable uses of funds for State and local level
- Instructions for allocations and monitoring/reporting
  - Including “special “ LEAs like charter without geographic boundaries
    - Obligation extends whether or not SEA has ability to track children transferring
  - Reallocating “unclaimed” funds
- Explains presumptions of supplanting and rebuttal for non-Title I programs
- Equitable services requirements at both LEA and SEA level
  - SEA: if funds are researched for State-level activities

# Title II Guidance: Key Takeaways

- Professional development must be (ESEA Sec. 8101(42)):
  - Sustained (or part of a long-term professional development or school improvement plan)
  - Intensive
  - Collaborative
  - Job-embedded
  - Data-driven
  - Classroom-focused
- NOT a one-day “training”
  - Unless explicitly permitted in Sec. 2101(c)(4)(B) (e.g. training on how to recognize and prevent child abuse)

# Honorable Mentions

- Building And Sustaining Inclusive Educational Practices
- Using Title II, Part A Funds Strategically To Support Educator Recruitment, Retention, Professional Learning, And Improved Student Outcomes
  - External analysis showed 27% of ESSER funds used for staffing
  - Part A can help cover the pending funding gap while improving outcomes
- Using Functional Behavioral Assessments To Create Supportive Learning Environments
  - Encourages use of FBAs instead of exclusionary practices (suspension, etc)
  - Document discussed implicit bias and racial/gender make-up of those receiving exclusionary punishments as a reason for increasing FBA use

# Dear Colleague Letters



# Title VI ('25)

- **Question:** How do schools implement the requirements under the Supreme Court's ruling in *Students for Fair Admissions v. Harvard*?
  - This case involved affirmative action and the use of race in college admissions
  - The court held that, except for limited circumstances, race should not be a factor.
- **ED's Answer:** Use the Office of Civil Rights to enforce prohibitions against:
  - Policies or actions that favor one racial group
  - The use of indirect means (e.g., application essays) to effect that outcome
  - The use of contractors, aggregators, or other means of circumventing the restriction
- **Rationale:** Prohibited actions violate civil rights laws, as interpreted by SCOTUS
- [dear-colleague-letter-sffa-v-harvard-109506.pdf](#)

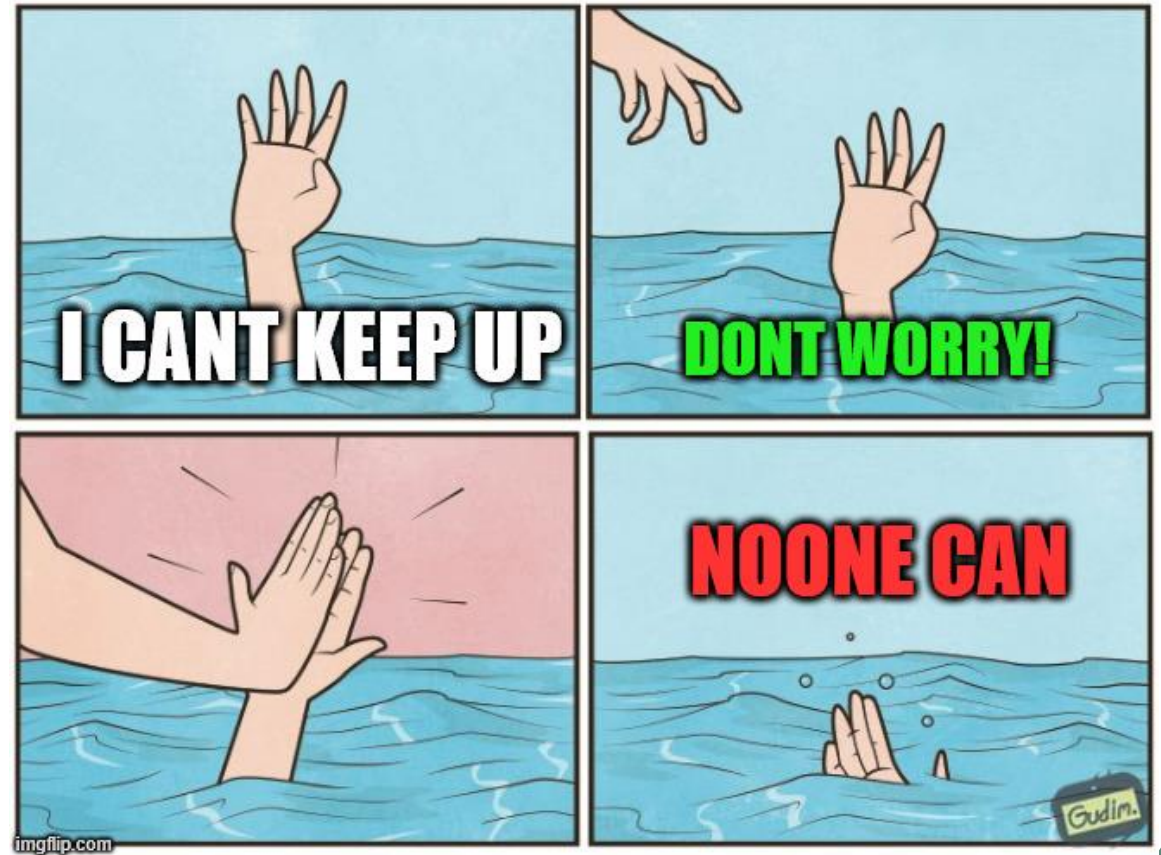
# Title IX ('25)

- Question: may schools issue gender identity policies that were permissible under 2024 Title IX regulations?
- ED's Answer: No. The 2020 regulations will be enforced by OCR moving forward.
- Rationale:
  - Those regulations were enjoined nationwide by a district court in Kentucky.
  - Prior state-specific challenges enjoining the rule had certiorari denied
- What's Next? SEAs, LEAs, and schools with gender-identity affirming policies may be investigated by OCR, as are several Northern Virginia LEAs.
- [Title IX Enforcement Directive DCL \(PDF\)](#); [ARLnow](#)

# FERPA & Summer EBT ('24)

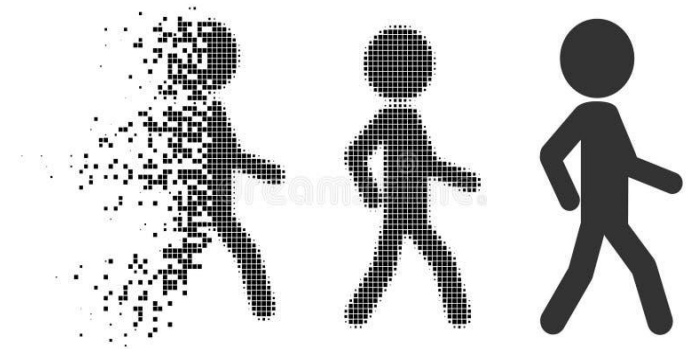
- **Question:** Whether to follow FERPA privacy requirements or Summer EBT automatic enrollment requirements.
  - FERPA requires permission prior to sharing student information
  - Summer EBT requires automatic enrollment
  - Both cannot be true
- **ED's Answer:** automatically enroll with disclosure permission
- **Rationales:**
  - Summer EBT is later in time, so it controls.
  - FERPA is occasionally out-of-sync with subsequent laws, and
  - ED and USDA consistently interpret subsequent laws as creating exceptions to FERPA.
- **OS-24-008410 - FERPA-USDA Summer EBT**

**What's next?**



# Are These Guidance Documents Going to Disappear?

- The documents we discussed today are likely to remain in effect.
  - Program-specific/ “in the weeds”
  - Avoid hot-button political topics or terminology
- What may go away?
  - Documents inconsistent with administrative policy/ executive orders
  - Documents the administration no longer plans to apply/ enforce
  - Anything with a title or substantial use of controversial topics like diversity or gender identity



# Regulatory Freeze

- Administration ordered 90-day freeze on publishing new regulations to allow for review
- Will likely extend to guidance documents and “dear colleague” letters
- Time needed to staff up means additional delays in response time



# New Admin Updates

# Press Releases

- Jan. 23: ED announces senior appointees
- Jan. 23: ED takes action to eliminate DEI
- Jan. 24: ED Dismisses OCR complaints related to book bans
- Jan. 28: OCR investigates Denver Public Schools all-gender facility
- Jan. 31: ED reinstates 2020 Title IX rules
- Jan. 31: ED withdraws two notices inviting applications for State entity CSP and CMO grant programs, and announces availability of \$33 million for CMOs in CSP competition
- Feb. 6: OCR investigates Title IX violations in athletics

# Press Releases

- Feb 10: ED reverses CTE reporting requirements
- Feb. 13: ED cancels additional \$350 million in contracts and grants to regional laboratories and equity assistance centers
- Feb. 15: ED issues Dear Colleague Letter directing schools to end racial preferences
- Feb. 17: ED cancels \$600 million in teacher training grants
- Feb. 19: ED cancels \$226 million in funding to the Comprehensive Centers Program
- Feb. 19: ED notifies States that remaining Covid-19 funding must be reviewed for allowability before processing draws
- Feb. 21: OCR investigates Maine Dept of Ed and district for TIX violations related to interscholastic athletics

# Questions?

- Impact of recent court orders and injunctions relative to ED's actions?
  - Funding freeze
  - DEI Executive Order
- Appeal options? GEPA, OCR, 200.342
- Will the Department of Education be dissolved? If so, what will it look like?
- What's next for funding for my program?
- Others?

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