

# Emergency Assistance To Non-Public Schools

## EANS

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*Under the*

*Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act*



## NEBRASKA DEPARTMENT OF EDUCATION

### FREQUENTLY ASKED QUESTIONS

#### OVERVIEW AND PURPOSE

##### **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. As a result, LEAs are not required to provide equitable services for funds received under the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, though equitable services requirements continue to apply to CARES Act programs. The U.S. Department of Education (USDE) will award EANS funds by formula to each governor who has an approved Certification and Agreement. By accepting an EANS award from the USDE, a governor designates the SEA to administer the program and access EANS funds from G5. Governors and SEAs should consult expeditiously on the administration of EANS. To receive services or assistance, an eligible non-public school must submit 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.

##### **What is the EANS grant program? (Section 312(d) of the CRRSA Act)?**

Out of the 5 percent allocated from the Education Stabilization Fund to the GEER Fund, \$2.75 billion must be reserved for emergency relief grants to non-public schools. The Act provides that each governor will apply for the funds, but the program itself will be administered by the SEA.

Within 30 days of the enactment of the Act, the U.S. Secretary of Education was required to issue notice inviting states (through their governors) to apply for these relief grant funds and is required to approve or deny an application no later than 15 days after receipt of such application. The Secretary released this invitation on Jan. 8, 2021. Within the state application, each state must provide assurances relating to its implementation of the program, including, but not limited to, that the SEA will ensure that services or assistance provided to a non-public school is a non-public school (as defined), submits an application for the services or assistance (as required), and requests allowable services or assistance.

##### **How are allocations under the EANS grants reservation determined?**

The Act provides that each state's allotment will be an amount proportional to the total number of children aged 5-17 at or below 185 percent of the poverty line who are enrolled in non-public schools, as compared to the total number of such children in all states. Nebraska's allocation for the EANS program is \$17,272,129. The Nebraska Department of Education (NDE) will determine an eligible and approved nonpublic school's allocation based on the number of students enrolled in the non-public school for the 2019-2020 school year. Further, as required by the EANS program, OSDE will target the provision of services or assistance to non-public schools based on the number and percentage of low-income students and those schools who are determined to be most impacted by the COVID-19 pandemic.

## ADMINISTRATION OF THE EANS PROGRAM

### 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.

### 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
  - Establishing information, a non-public school must provide in its application to enable the SEA to prioritize schools most impacted by COVID-19
- 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 nonideological purposes
  
- Obligating all EANS funds in an expedited and timely manner, to the extent practicable; however, obligating all EANS funds no later than six months after receiving the funds
  
- Administering the EANS program in accordance with all applicable requirements

## **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. 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 (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.

## **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.

## **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/%20emergency-assistance-non-public-schools/>

## **May an SEA consolidate its administrative funds under the EANS program?**

Yes. Sections 8201(a)(2) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015, permits an SEA to consolidate administrative funds under certain ESEA programs (assuming the SEA derives the majority of its administrative funds from non-Federal sources). The Secretary may designate additional programs from which administrative funds may be consolidated. In addition to ESEA programs, the Secretary has previously designated McKinney-Vento and ESSER as programs from which an SEA may consolidate administrative funds. Under that authority, the U.S. Department of Education has also designated the EANS program as a program under which an SEA may consolidate administrative funds. If an SEA consolidates administrative funds, it is not required to keep separate records for how it uses those administrative funds.

## **Is there a deadline by which an SEA must obligate EANS funds for services or assistance for non-public schools?**

Yes. An SEA must obligate EANS funds to provide services or assistance to non-public schools in an expedited and timely manner, to the extent practicable. However, an SEA must obligate EANS funds not later than six months after receiving those 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 or work. For rental of real or personal property, the obligation is made when the property is used.

## **Are non-public schools able to receive funds under EANS?**

No. The Act specifically prohibits a state from provisioning funds directly to an eligible non-public school under the EANS grants. Rather, the Act requires that control of funds for services, and title to any materials, equipment, property purchased shall be (and remain at all times) with the public agency. Further, provision of services or assistance must be provided by employees of a public agency, or through a contract by such public agency with an individual, association, agency or organization. In sum, OSDE is authorized to directly provide services or assistance to non-public schools, to do so through contractors of OSDE or through reimbursement to the non-public school for its provision of allowable and approved services or assistance.

## **Must a public agency maintain control of EANS funds used to provide services or assistance to a non-public school?**

Yes. Control of funds for services and 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. Reimbursements by SEAs to non-public schools for allowable expenses meet the public control requirements. 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.

## **Are there additional conditions or restrictions on participation in the EANS grants?**

Yes. In addition to the limitation that control of funds and services remain with a public agency (see above), the Act also requires the following for participation in the EANS program:

1. All services or assistance shall be secular, neutral and non-ideological (Section 312(d)(8));
2. A non-public school must submit an assurance to the SEA that, on or after enactment of the Act, it did not, and will not, apply for and receive a Paycheck Protection Program loan (Section 312(d)(9)); and
3. Funds under the Emergency Assistance to Non-Public Schools relief reservations shall not be used for direct or indirect financial assistance to scholarship granting organizations, or to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs or tuition-assistance programs. Provided, however, a State may use funds under Section 312(a)(1) [GEER Fund] to provide this assistance if it is to students who receive(d) assistance with those funds under the CARES Act-GEER Fund for the 2020-21 school year and only for the same assistance that was provided under that authorization.

## **ELIGIBILITY, APPLICATION AND SERVICES OR ASSISTANCE**

### **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
- Is accredited, licensed, or otherwise operates in accordance with State law;
- Was in existence prior to March 13, 2020, the date the President declared the national emergency due to COVID-19; 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 Dec. 27, 2020.

### **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.

### **Will a non-public school have to submit an application for services and assistance?**

Yes. Notwithstanding the above, an eligible non-public school must apply to the SEA for an award of a relief grant. The non-public application will include information as the SEA may reasonably require to ensure expedited and timely provision of services, and must include the following information:

1. Number and percentage of students from low-income families enrolled in non-public schools in the 2019-20 school year
2. Information regarding the impact of COVID-19 on its school so that the SEA may appropriately prioritize the provision of services and assistance
3. Description of the authorized services the non-public school requests to be provided
4. Whether the non-public school received a loan guaranteed by the Small Business Association's Paycheck Protection Program (PPP) before Dec. 27, 2020 and, if so, the amount
5. An assurance that the non-public school did not, and will not, apply for and receive a PPP loan on or after Dec. 27, 2020. The Department does not require any additional information on this assurance.

In awarding emergency relief grants to eligible non-public schools, the SEA is required to prioritize services to non-public schools that enroll low-income students and are most impacted by the qualifying emergency.

## **When must an SEA make the application for services and 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. OSDE will make the application available to non-public schools on or before Feb. 26, 2021.

## **When will the application be due to the NDE?**

Although there is no statutory deadline, the NDE seeks to quickly begin provision of services or assistance such that it anticipates requiring applications to be submitted by March 1, 2021. In addition, establishing a deadline will facilitate the NDE's commitment to obligate EANS funds within six months of receiving those funds.

Once the final allocations are posted, the non-public school will need to submit its budget and requested services or assistance to the designated fiscal agent.

## **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.

## **What factors might the NDE consider in prioritizing non-public schools to receive services or assistance under the EANS program?**

The NDE is required by law to prioritize EANS services or assistance to non-public schools that enroll low-income students and are most impacted by COVID-19 and has flexibility with regard to how it considers these criteria. According to the USDE, the NDE might, for example, target non-public schools that enroll significant numbers of low-income students or meet a minimum threshold of low-income students. Factors that an SEA might consider in determining non-public schools most impacted by COVID-19 include but are not limited to: (1) loss of tuition revenue, (2) decrease in enrollment, (3) lack of capacity to provide remote learning due to insufficient technological support and (4) data documenting the extent of learning loss attributable to the disruption of instruction caused by COVID-19.

An SEA has the 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 Dec. 27, 2020, into account in prioritizing services or assistance for non-public schools.

Depending on the EANS funds available the NDE may also provide services or assistance to non-public schools that it has not prioritized.

## **What services or assistance are authorized to be provided to an eligible non-public school?**

The Act authorizes the following types of services or assistance to an eligible non-public school:

1. Supplies to sanitize, disinfect and clean school facilities
2. Personal Protective Equipment (PPE)
3. Improving ventilation systems
4. Training/PD on sanitation, use of PPE
5. Physical barriers that facilitate social distancing
6. Other materials, supplies and equipment to implement health protocols
7. Expanding capacity to administer COVID-19 testing or conduct contact tracing
8. Educational technology *(including hardware, software, and connectivity) for students who are served by the school that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment. This does not include screen/case protectors, carrying cases, etc.*
9. Redeveloping instructional plans for remote learning or to address learning loss
10. Leasing of sites or spaces to ensure safe social distancing
11. Reasonable transportation costs
12. Initiating or maintaining education and support services for remote learning or to address learning loss
13. 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 below

## **Are there expenses for services or assistance that may not be reimbursed (Future allowable direct services or assistance, but not reimbursable services)**

Yes. Although allowable services or assistance to be provided directly or through a contractor of the NDE, the following may not be reimbursed for:

Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed

- 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
- Developing 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

With the exception of expenses reimbursed through a Personal Paycheck Protection (PPP) loan, while an SEA may not reimburse a nonpublic school for the above expenses, an SEA may provide these services or assistance directly to a nonpublic school or through a contract with an individual, association, agency, or organization.

**NOTE:** 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. ([p. 10 of USDE FAQ](#))

### **How does an SEA determine what services or assistance to provide to individual non-public schools?**

SEAs should make every effort, consistent with available funding and school prioritization requirements, to provide the full range of services and 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.

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. Alternatively, an SEA might calculate the funds available for services or assistance in individual non-public schools giving greater weight to student characteristics such as poverty or a measure that quantifies the impact of COVID-19. 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.

### **May a non-public school receive 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. 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. Reimbursements under the EANS program do not make non-public schools 11 recipients of Federal financial assistance. 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.

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, 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.

### **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 additive 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), nearly all of which are also authorized equitable services under the CARES Act programs.

### **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.

### **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 Dec. 27, 2020.

### **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 on or after Dec. 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.

## FISCAL REQUIREMENTS

### **How long are the services and 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 Sept. 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 or 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 or 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.

### **Must a State maintain effort to receive EANS funds?**

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 U.S. Department of Education may waive the maintenance of effort requirement for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.

### **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, which are satisfied through the Federal Funding Accountability and Transparency Act (FFATA) reporting. The USDE may require additional reporting in the future. (See also 2 CFR 200.327-200.329).

## What significant deadlines are associated with the EANS program?

March 1	Preliminary Allocation of Services and Assistance Posted
March 1	EANS Application Available to Non-Public Schools
March 1-30	Schools Complete and Submit Application
April 1-30	Final Allocation of Services and Assistance Posted
May 1	Schools Qualify Budgets and Begin Requesting Services or Assistance
June 28	Obligation Date – Services or Assistance Purchased or Under Contract

Deadlines may be extended upon request and at the discretion of the NDE

Additional information relating to the EANS program may be found [here](#).

## Questions?

For program or operational questions, please contact Jim Kent, Nebraska Nonpublic School Ombudsman, at [Jim.Kent@nebraska.gov](mailto:Jim.Kent@nebraska.gov)

**NOTICE: All the information above is based upon the Nebraska State Department of Education’s review of laws, regulations and guidance available to date. This information is subject to change as additional guidance and information is released.**

