

Emergency Assistance To Non-Public Schools ARP EANS

*Under the
American Rescue Plan (ARP) Act of 2021*



NEBRASKA DEPARTMENT OF EDUCATION

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ARP EANS Program Overview

Background

On March 11, 2021, through the American Rescue Plan Act, Congress created the [American Rescue Plan \(ARP\) Emergency Assistance for Non-Public Schools \(EANS\) funding program](#)- referred to as ARP EANS. This program will provide \$18,618,767 in support to independent schools in Nebraska and includes the same allowable costs and many of the same requirements as its predecessor, CRRSA EANS. However, there are two key differences between the original CRRSA EANS and the ARP EANS programs:

1. A state educational agency (SEA) may only provide services or assistance under ARP EANS to non-public schools that enroll a significant percentage of students from low- income families and are most impacted by the novel Coronavirus Disease 2019 (COVID- 19) emergency. The ARP EANS state plan approved by the US Department of Education identifies a new metric that the Nebraska Department of Education must use to meet these eligibility requirements.
 - a. In addition to meeting the definition of a non-public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act to be eligible for the ARP EANS program, a non-public school must meet or exceed the State’s significant poverty percentage of 22% approved by the U.S. Secretary of Education and be most impacted by the COVID-19 emergency.

The NDE has discretion to identify the data source(s) it will accept when calculating the number of students enrolled in a non-public school, who are from low-income families, and the threshold for a family to have a low income in school year 2019-2020.

To ensure the definition of ‘low-income’ is the same for all non-public schools, the Nebraska Department of Education has selected 2019-2020 Non-public membership and the 2019-2020 number of students eligible for Free or Reduced Priced Meal data through the NDE Consolidated Data Collection (CDC) system as the most reliable school-audited and least burdensome data source for non-public schools and families.

For all non-public schools, data quality may have existed, and in order to avoid new or unnecessary data collections from non-public schools and families for eligibility purposes only of the ARP EANS program, the higher of a school’s Free or Reduced Price Meal data or proportionality data was utilized for a given school’s poverty percentage of students from low-income families.

Proportionality Data: the number of students enrolled in a non-public school are multiplied by the poverty percentage who are from low-income families of the public school district in which the non-public school resides and have the potential to serve the same communities as the public school district; assuming the public school district’s poverty percentage if higher in which the school resides.

- b. [Under the Federal Final Requirements](#), an eligible non-public school must also be most-impacted by the COVID-19 emergency based on at least one of the follow factors:
 - i. University of Nebraska Medical Center’s Social Vulnerability Index (Above 50th Percentile)
 - ii. The number of COVID-19 infections per capita in the county served by the non-public school with above State average cases

- iii. The number of COVID-19 deaths per capita in the county served by the non-public school with above State average cases
 - iv. Data on student eligibility for free or reduced-price lunch counts by grade span
 - v. Data on the economic impact of the COVID-19 emergency and mitigation costs/strategies per the Center for Disease Control and Prevention (CDC)
2. An SEA may not use ARP EANS funds to provide reimbursements to any non-public school for costs the school incurred to address the impact of COVID-19 emergency. The Nebraska Department of Education will provide support to non-public schools for allowable activities through procurement.

Eligibility

For purposes of the ARP EANS program, an eligible independent school is an elementary or secondary school that:

- Is non-profit,
- Serving K-12 students,
- Is accredited or approved to operate in accordance with Nebraska Administrative Rule 10 or 14, respectively,
- Accredited or approved to operate prior to March 13, 2020; the date a national emergency was declared,
- Students from Low Income Families 2019-2020 Data (22% or higher)- Poverty source that does not exceed 185 percent of the 2020 Federal poverty level:
 - Data on student eligibility for free or reduced-price lunch,
 - Data from the E-Rate program administered by the Federal Communications Commission,
 - Data from a different source, such as scholarship or financial assistance data; or
 - Data from the public school district in which the non-public resides and services the same community.
- Most-impacted by the COVID-19 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. Schools will be considered ineligible if they accepted PPP on or after December 27, 2020.

Important: The eligibility listing above is based off the eligibility criteria of being at or above the United States Department of Education established poverty rate of 22%. Schools that have previously accepted PPP, even if listed as eligible by the 22% criteria, **are not eligible for EANS funding if PPP was accepted on or after December 27, 2020.**

What to Expect

The Nebraska Department of Education will send out an email to all schools on or about March 22, 2022, when the application goes live. It will be a webform, although paper copies can be made available by request.

Schools can expect that the Nebraska ARP EANS team will be providing real-time technical assistance after the application is released. The team will also be working closely with each applicant during the review process to provide individualized technical support and guidance around procurement of services. Schools can expect that they will, receive an approval or denial of their applications within 30 calendar days of submission.

Program Timeline

Date	Year	Activity
March 22	2022	Program Webinar: 2022 Emergency Assistance to Nonpublic Schools, Part 1 Application Published
March 22 - April 12	2022	Application Deadline
April 20 – May 3	2022	Applications Approved
May 4	2022	Final Services and Assistance Published Program Webinar: 2022 Emergency Assistance to Nonpublic Schools, Part 2 Schools Begin Budgeting Distributions Approved Budgets - Begin Requesting/Obligating Services or Assistance
June 3	2022	Initial Budget Workbook Submission Deadline (to receive summer services)
August 15 - September 15	2022	Amended Budget Workbook Submission Deadline Due Date for Obligation of Service/Assistance
September 20	2023	GEER II Supplemental/Gap Services and Assistance Period Ends
September 30	2024	ARP EANS Services and Assistance Period Ends

Allowable Activities

ARP EANS has largely the same allowable uses in that a non-public school may receive services or assistance to address educational disruptions resulting from the COVID-19 Emergency Allowable types of services or assistance:

1. Supplies to sanitize, disinfect, and clean school facilities; but not cleaning services.
2. Personal protective equipment (PPE).
3. Improving ventilation systems including through windows or portable air purification systems to ensure healthy air.
4. Training and professional development for staff on sanitation, the use of PPE, and minimizing the spread of infectious diseases.
5. Physical barriers to facilitate social distancing.
6. Other materials, supplies, or equipment to implement public health protocol, including guidelines and recommendations from the CDC for reopening and operation of school facilities to effectively maintain health and safety.
7. Expanding capacity to administer coronavirus testing and effectively monitor to suppress the virus.

8. Educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning.
9. Redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss.
10. Leasing of sites or spaces to ensure safe social distancing.
11. Reasonable transportation costs.
12. Initiating and maintaining education and support services for remote learning, hybrid learning, or to address learning loss.

Please Note: Under ARP EANS, reimbursements are prohibited for any non-public school.

Reimbursement or Procurement?

For the ARP EANS program, support to non-schools is through procurement only, reimbursement is prohibited.

In partnership with [FACTS Education Solutions](#), a third party vendor, will provide: fiscal agent services and spenddown reports; technology and training to facilitate budgeting and requesting services; and provide/contract for the distribution of services and assistance. FACTS Education Solutions will directly contact non-public schools.

Frequently Asked Questions

When are ARP EANS applications due?

Applications for the Nebraska ARP EANS program will be accepted on a rolling basis beginning March 22, 2022, through April 11, 2022.

How is ARP EANS different from CRRSA EANS?

For the ARP EANS program, support to non-public schools is through procurement only. ARP EANS does not offer reimbursement for expenses. This program is for services and assistance to be directly provided or procured.

How do I hire staff with ARP EANS funds?

FACTS Education Solutions will contract to procure and provide. For example, FACTS would contract to procure staff for professional development and training to support student need related to COVID-19.

When does a non-public school need to have services and assistance budgeted by?

All non-public school will need to have ARP EANS distribution of service and assistance under an initial budget through FACTS budget workbooks by June 1, 2022.

When does a non-public school need to have services and assistance obligated by?

All non-public school will need to have ARP EANS distribution of service and assistance procured (directly provided) and services under contract through FACTS by

September 15, 2022.

When does a services and assistance of the ARP EANS program end?

The performance period of the program and all contracts will end by September 30, 2024.

Does a non-public school receive a grant award under the EANS program?

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 approved budget of services and assistance, to the extent resources are available.

Are eligible non-public schools under the ARP EANS program the same schools that were eligible for equitable services under CARES ESSER?

Not necessarily. In addition to the requirements for eligibility of a non-public school under CARES 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, under CRRSA EANS, an SEA must prioritize for services or assistance non-public schools that enroll students from low-income families and are most impacted by the COVID-19 emergency. Under ARP EANS, an SEA may only serve non-public schools that enroll a significant percentage of students from low-income families and are most impacted by the COVID-19 emergency.

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 ARP 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.

Is a non-public school that serves only preschool children eligible to receive services or assistance under the EANS program?

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. 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.

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.

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.

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.

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

The CRRSA and ARP Acts do 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 and ARP Acts similarly do 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.

What other factors must an SEA consider when determining the allowability of services or assistance for non-public schools?

To be allowable, an expenditure must be consistent with the cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), [2 C.F.R. Part 200](#), including the requirement that a cost be necessary and reasonable for performance of the Federal award. Under [2 C.F.R. § 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.”

Are services for sanitizing, disinfecting, and cleaning school facilities an allowable use of EANS funds?

No. Section 312(d)(4)(A) of the CRRSA Act 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.

May preschool children receive services or assistance under the EANS program?

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. 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.

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?

[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. At the same time, such negotiations must ensure that those schools that the SEA has prioritized, based on the number of children from low-income families and the impact from the COVID-19 emergency, are not precluded from participation. Note that reimbursements are not allowable under ARP EANS for any non-public school.

May EANS funds be used to pay the salaries of non-public schoolteachers or other staff?

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 schoolteacher 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 schoolteacher 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.

May an SEA contract with another entity to provide services or assistance to non-public schools?

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 or another public agency. ([Section 312\(d\)\(7\)\(B\) of the CRRSA Act](#)).

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\(d\)\(4\) of the CRRSA Act](#), 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. 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.

May EANS funds be used to pay for the installation of equipment or supplies purchased with EANS funds?

Yes. To the extent the purchase of supplies or equipment is allowable under the EANS program, EANS funds may be used to pay the costs of installation as long as the SEA can do so consistent with other applicable requirements. [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. Additionally, [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. Moreover, under [34 C.F.R. § 76.662](#), an SEA is prohibited from using EANS funds for construction.

May an SEA use EANS funds to pay for the installation of equipment or supplies purchased by a non-public school for purposes of improving its ventilation system?

Yes. EANS funds generally may only be used for the costs of installation of supplies or equipment that is otherwise allowable and not for installation of supplies or equipment that is not otherwise allowable. However, because [section 312\(d\)\(4\)\(C\) of the CRRSA Act](#) authorizes the use of funds for improving ventilation systems, an SEA may use EANS funds to install supplies or equipment that are otherwise unallowable as long as such supplies or equipment are needed to improve a non-public school's ventilation system. For example, purchasing new windows for a non-public school using EANS funds would be inconsistent with the public control of funds requirements in [section 312\(d\)\(7\) of the CRRSA Act](#) and [34 C.F.R. § 76.661](#). However, to the extent a non-public school uses its own funds to purchase new windows for the purpose of improving ventilation (e.g., replacing windows that do not open with ones that do), an SEA may use EANS funds for the installation of such windows.

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 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. To maintain control of EANS funds, an SEA must maintain records of the equipment and supplies it has provided to each non-public school.

How can an SEA maintain control of services or assistance for allowable activities that might affect the infrastructure of a non-public school?

[Section 312\(d\)\(4\)\(C\) of the CRRSA Act](#) authorizes a non-public school to request services or 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.

How may an SEA meet the requirement to retain title to property, equipment, and supplies purchased with EANS funds?

[Section 312\(d\)\(7\)\(A\) of the CRRSA Act](#) requires a public agency to control EANS funds for services or assistance provided to a non-public school, and retain title to materials, equipment, and property purchased with such funds. (For purposes of the EANS program, property, equipment, and supplies are defined at [2 C.F.R. § 200.1](#)). These requirements for public control of EANS funds and title to property, equipment, and supplies purchased with EANS funds apply whether an SEA is providing services or assistance directly, through a contract, or through reimbursement. With respect to property, equipment, and some tangible supplies—e.g., laptops—retaining title is clear; the public agency owns the property, equipment or supplies that it provides to non-public schools for their use during the period of performance of the EANS program. Retaining title is not as clear, however, with respect to consumable tangible supplies—e.g., personal protective equipment (PPE) or cleaning supplies—that are available for a short duration, after which they are consumed. In this case, retaining documentation that the public agency provided such consumable supplies to a given non-public school would be sufficient to meet the public control requirement. If such supplies are not consumed during the period of performance of the EANS program, a public agency must retrieve them for other allowable uses. With respect to a software license, for example, although such license does not have a physical presence, it has value and can be “owned” and controlled by a public agency.

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, 2024, for ARP EANS) 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). (See [2 C.F.R. § 200.313\(c\)](#)). 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.

Are eligible non-public schools under the CRRSA EANS program the same schools that are eligible for services or assistance under the ARP EANS program?

Not necessarily. [Section 2002\(a\) of the ARP Act](#) requires that an SEA only provide services or assistance to an eligible non-public school that enrolls a significant percentage of students from low-income families (whose family income does not exceed 185 percent of the 2020 Federal poverty level consistent with the final requirements) and is most impacted by the COVID-19 emergency. It is possible that some non-public schools that received services or assistance under the CRRSA EANS program will not meet the threshold for enrolling a significant percentage of students from low-income families or being most impacted by the COVID-19 emergency under the ARP EANS program.

What sources of data may an SEA use to obtain a count of students from low-income families enrolled in a non-public school?

To obtain a count of students from low-income families enrolled in a non-public school, an SEA may use one or more of the following sources of data, provided the poverty threshold is consistent across sources and does not exceed 185 percent of the 2020 Federal poverty level:

- (1) Data on student eligibility for free or reduced-price lunch,
- (2) Data from the E-Rate program administered by the Federal Communications Commission,
- (3) Data from a different source, such as scholarship or financial assistance data; or
- (4) Data from a survey developed by the SEA.

Further ARP EANS questions? Contact us at:

For program, eligibility, application, allowable services, and student data questions, please contact the Nebraska Department of Education:



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For budget workbook, requesting services and assistance, or spenddown report questions, please contact FACTS Education Solutions:



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