



What to Consider when Considering Government Funding?

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Frequently Asked Questions (“FAQs”)

Many California private schools are considering whether to accept government funds to assist with their operations or help make capital improvements. These funds may come in the form of meal programs, safety and security grants, technology discounts, or even disaster relief after wildfires or earthquakes.

Government funding can provide significant benefits, but it also brings legal responsibilities. Administrators should understand what rules will apply before agreeing to take financial assistance. The following FAQs highlight issues school leaders need to know when considering accepting government funds.

FAQ #1 – Which Federal Laws Apply if a California Private School Accepts Federal Financial Assistance (“FFA”)?

Federal aid (called Federal Financial Assistance or “FFA”) can include cash payments, grants, equipment, food services, or even federal staff support. Common programs used by California private schools include:

- USDA Child Nutrition Programs, including National School Lunch Program;
- Head Start Program Funding;
- Emergency Relief Funds (Covid-19);
- Federal Emergency Management Agency (“FEMA”) disaster assistance;
- IDEA (Individuals with Disabilities Education Act) Direct Subgrants, and others.

What this means in practice: if your school accepts FFA, you are promising to follow ongoing nondiscrimination and civil rights requirements. These laws protect students, staff, and families by ensuring they cannot be treated differently based on certain protected traits. Recipients must always review grant terms to determine the applicable federal laws on a case-by-case basis. Applicable requirements can include:

- **Title VI of the Civil Rights Act of 1964**, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving FFA.

- **Title VIII of the Civil Rights Act of 1968¹**, relating to nondiscrimination in the sale, rental, financing, or advertising of housing on the basis of race, color, national origin, religion, disability, familial status, and sex.
- **Title IX of the Education Amendments of 1972²**, which prohibits discrimination on the basis of sex/gender in any educational program or activity receiving FFA.
- **Section 504 of the Rehabilitation Act of 1973**, which prohibits discrimination on the basis of disability in programs and activities receiving FFA.
- **Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age in any program or activity receiving FFA.³
- **Family Educational Rights & Privacy Act (FERPA)**, which governs access to and disclosure of student education records. FERPA requires and applies to the receipt of FFA (including services or property provided in lieu of funds) under programs administered by the U.S. Department of Education.

FAQ #2 – Are There New Homeland Security Rules we Need to Worry About?

Yes, and this is complicated. In April 2025, the Department of Homeland Security (“DHS”) issued new grant conditions through Standard Terms and Conditions implementing new immigration and Diversity, Equity, and Inclusion (“DEI”) requirements. DHS mandated that the conditions “apply to all new” FFA “for which the federal award date occurs in FY 2025.”⁴

The DHS Standard Terms and Conditions require schools that receive FFA to:

- **Communicate and Cooperate with DHS and Immigration Officials**
 - Share information with DHS immigration officials regarding the citizenship or immigration status of any individual.
 - Schools may not encourage or induce an alien to come to, enter, or reside in the United States in violation of law.
 - Schools may not transport or move, harbor, conceal, or shield from detection illegal aliens.
 - Schools must honor requests for cooperation, including “participation in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer.”

¹ This applies to the extent a private school makes housing available to its employees.

² Religious schools may be exempt from Title IX to the extent they show that complying with nondiscrimination requirements on the basis of sex would not be consistent with the church’s tenets.

³ By contrast, the Age Discrimination in Employment Act of 1967 applies to employment-based discrimination by virtually all employers and limits its protections specifically to individuals who are at least 40 years old.

⁴ See https://www.dhs.gov/sites/default/files/2025-08/2025_0418_fy2025_dhs_terms_and_conditions_version_3.pdf

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- Schools must “provide access to detainees, such as when an immigration officer seeks to interview a person who might be a removable alien” and may “not leak or otherwise publicize the existence of an immigration enforcement operation.”
- **Certify under penalty of perjury that that they will comply with the communications and cooperation requirements.**
- **Certify that they:**
 - Do not “operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws.”
 - Do not “engage in a discriminatory prohibited boycott.”
 - Do not “operate any program that benefits illegal immigrants or incentivizes illegal immigration.”
- **Recipients must also:**
 - Report Subawards and Executive Compensation to the Federal Funding Accountability and Transparency Act Subaward Reporting System.
 - Report to DHS “the total number of complaints or lawsuits against the recipient during the past three years alleging discrimination” within 60 days of receipt of the Notice of Award.⁵
 - Provide DHS a copy of school’s nondiscrimination policy statement, discrimination complaints process, and its policy and procedures used to ensure nondiscrimination and equal opportunity for persons with disabilities to participate in and benefit from the school’s programs and services.
 - Provide DHS copies of the school’s policy and procedures “regarding the requirement to provide meaningful access to programs and services to individuals with limited English proficiency (LEP).”

These conditions are controversial, and multiple states (including California) have sued the federal government. Court rulings are still pending, so requirements could change. Additional federal requirements may apply that are not set forth in full detail here, including but not limited to federal laws regarding energy policy and conservation, procurement rules for contracting, false claims, lobbying, and environmental policy.

If your school accepts a DHS security grant, you may be asked to confirm that you do not run programs promoting DEI. At the same time, other federal laws *require*

⁵ See Form 3095, available at https://www.dhs.gov/sites/default/files/publications/dhs-civil-rights-evaluation-tool_0.pdf

nondiscrimination. This creates legal tension and risk. These rules are in flux. Schools should not assume DHS terms are optional, but should also know some may later be invalidated in court. Always review DHS grants with legal counsel before signing.

FAQ #3 – Under the Big Beautiful Bill, States May Allow Scholarships for Private Schools – is that Accepting FFA?

Unlikely. It is not clear yet whether California will participate in the program. On July 4, 2025, President Trump signed the “One Big Beautiful Bill” into law, which includes a new federal tax credit program for donations in states that choose to participate. The federal tax credits take effect in 2027. Eligible taxpayers can donate up to \$1,700 to covered scholarship granting organizations (“SGOs”) and receive a dollar-for-dollar tax credit. SGOs must be independent 501(c)(3) nonprofit entities that are not affiliated with or controlled by a specific school. The federal government is required to draft regulations covering how the program will operate and governing how states certify SGOs.

Because the independent 501(c)(3) nonprofit SGO will award schools scholarship funds rather than the federal government it appears a strong argument may be made the payments do not involve FFA. However, resolution of this issue remains to be determined pending agency rule-making.

FAQ #4 – Which State Laws May Impact California Private Schools That Accept State Financial Assistance (“SFA”)?

California generally provides SFA to private schools typically in the form of state security grants and state-funded special education services. Secular and religious schools are both eligible to receive special education services funding following an October 2024 court ruling that struck down California’s nonsectarian requirement. The California Department of Education agreed in May 2025 to make special education services funding available to religious private schools as well.

Upon accepting SFA, private schools typically become subject to state laws including:

- **Educational Equity (California Education Code § 220)** – Prohibits discrimination based on disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Penal Code § 422.55, including immigration status, in any program or activity conducted by a school that receives or benefits from SFA, or enrolls pupils who receive student financial aid.

- **Discrimination (California Government Code § 11135)** – Prohibits discrimination based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation under any program or activity that is funded directly by the state or receives SFA.

FAQ #5 – Do Federal or State Security Grants impose the same obligations to comply?

Yes. Federal security grants, such as those through DHS’s Nonprofit Security Grant Program (“NSGP”) are often awarded to nonprofits including private schools. The grants are intended to enhance security to prevent, protect against, prepare for, and respond to terrorist or other extremist attacks. Eligible nonprofit organizations must apply to their State Administrative Agency for NSGP funds and may not apply to FEMA directly.⁶

Security grants are typically structured as federal grants. NSGP funding recipients are generally considered recipients of FFA and therefore subject to compliance with the federal nondiscrimination laws and DHS’s Standard Terms and Conditions for the NSGP program. In addition, nonprofit organizations “must ALWAYS abide by federal and state procurement guidelines.”⁷ Nonprofit organizations are encouraged “to seek legal counsel before applying for or agreeing to an NSGP subaward” including based on “potential liability or concerns based on civil rights statutes and regulations.”⁸

Similarly, at the state level, California makes available the California State Nonprofit Security Grant Program (“CSNSGP”) to eligible nonprofit organizations. Eligible nonprofits include religious and private institutions that are at high risk for violent attacks and hate crimes due to ideology, beliefs, or mission. Recipients of SFA through California state security grants “must comply with all local, state, and federal statutes, regulations, program plans, and application requirements.”⁹ Thus, recipients of SFA are typically subject to applicable nondiscrimination laws. The terms of any award should be carefully reviewed with legal counsel.

⁶ See <https://www.fema.gov/fact-sheet/fy-2025-nonprofit-security-grant-program-frequently-asked-questions>

⁷ *Id.* at ¶ 29.

⁸ *Id.* at ¶ 33.

⁹ See <https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/FY-2024-CSNSGP-Guidance.pdf>, at p. 1.

FAQ #6 – How long must California Private Schools comply with Federal and State law obligations?

At least for the term of the grant, and in some cases longer (see FAQ #7 below). While it may be possible to terminate requirements to comply with federal or state law obligations if the school is able to terminate the award or even pay back the financial assistance received, there does not appear to be case law on this specific issue in California. As a good rule of thumb, schools should anticipate that the Federal and State law obligations will apply for the term of the grant award, and to the extent any facilities are built or improved with the support of FFA or SFA, for the useful life of the facility.

FAQ #7 – How long must California Private Schools comply with Federal law obligations in the case of FEMA disaster assistance to rebuild facilities?

For FEMA disaster assistance, the Federal nondiscrimination compliance requirements extend for the useful life of the FEMA-funded project.

FEMA is authorized to provide disaster relief grants to private nonprofit organizations. Under FEMA's public assistance guide, schools must adopt a Procurement Policy that satisfies federal procurement standards to be eligible to receive some FFA programs.¹⁰

When an applicant accepts FEMA funding, it is required to sign Assurances and Certifications agreeing to all applicable federal laws and regulations tied to the use of federal funds. The obligations attach to and extend for the useful life of the school's project, facility, or real property improved with FEMA funds. Specifically, 44 CFR § 7.7 states: "In the case of an application for Federal financial assistance to provide real property or structures thereon, **the assurance shall obligate the recipient**, or, in the case of a subsequent transfer, the transferee, **for the period during which the real property or structures are used** for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits."

Thus, if the school uses FEMA's federal assistance for its buildings or capital improvements, the school's obligations to comply with the nondiscrimination obligations may last decades or longer, even if the school repays an award.

¹⁰ https://www.fema.gov/sites/default/files/documents/fema_pa_pappg-5.0-amended.pdf

FAQ #8 – Do prevailing wage requirements apply to California Private School building projects funded by FFA or SFA?

Prevailing wages can be required depending on the nature of the contract. FFA does not automatically trigger compliance with federal prevailing wage requirements. But the specific grant and construction project must be considered in context.¹¹ Federally funded construction projects involving contracts directly with the federal government or under specific programs must pay prevailing wages. They include for example, construction projects funded through Housing and Urban Development (e.g., through Community Development Block Grants), and the Departments of Energy and Transportation.¹²

For SFA, California law requires prevailing wages if a project is considered a “public works” that is “paid for in whole or in part out of public funds.”¹³ In one instance, the Department of Industrial Relations ruled in response to the Camp Fire in Butte County that a tree removal project funded 90% by FEMA, and 10% by the California Disaster Assistance Act was subject to California’s prevailing wage laws because it was paid for out of public funds.¹⁴

Schools should review all funding sources for a project and consider the specific language of any proposed FFA or SFA award with legal counsel to determine whether prevailing wages are required for a construction project.

FAQ #9 – What record-keeping obligations apply once a School accepts FFA or SFA?

Schools must maintain proper financial management, documentation, and recordkeeping for all grant funds, and must make records available for inspection.

- If the school expends \$1,000,000 or more in federal awards in a fiscal year (including FEMA and other FFA), it is subject to an annual audit requirement.
- The school is responsible for maintaining proper financial management, documentation, and recordkeeping for all grant funds.
- The school should keep receipts, invoices, contracts, and payroll records related to the grant funds.
- The school typically must provide the awarding agency, the Comptroller General of the United States, and, if appropriate, the State of California, the right to examine all records, books, papers, or documents relating to the assistance.¹⁵

¹¹ See 40 USC § 3141 et seq.

¹² 42 USC § 5310.

¹³ Labor Code, § 1720(a).

¹⁴ See DIR Public Works Case No. 2020-0008.

¹⁵ See OMB Form SF-424D, available here: <https://apply07.grants.gov/apply/forms/readonly/SF424D-V1.1.pdf>

FAQ #10 – What, if any, exemptions apply to California Private Religious Schools in context of FFA or SFA?

As noted above, recipients of FFA and SFA are subject to ongoing requirements to comply with federal and state law as to the school’s operation and any facilities rebuilt with the use of supporting federal funds. Private nonprofit houses of worship and faith-based organizations are eligible for FEMA public assistance.¹⁶ Buildings used for both secular and religious education are eligible as educational facilities considered to provide critical services. Some important limitations and potential exemptions for religious schools can apply as follows:

- The federal government is prevented from requiring a religious school to alter or give up its religious character, identity, or activities in order to receive FFA. (See *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017) 582 U.S. 449, 462-463.)
- Religious schools retain their ability to make certain employment decisions on the basis of religion because a religious exemption applies to hiring under 42 U.S.C. § 2000e-1(a) and e-2(e)(2).¹⁷ Courts have found that religious organizations receiving federal funds are not required to waive the religious exemption.¹⁸
- Title IX of the Education Amendments of 1972 – a religious school may be exempt to the extent it is able to show that complying with the nondiscrimination requirements on the basis of sex would not be consistent with the educational institution’s tenets under 20 U.S.C. § 1681(a)(3).
- Americans with Disabilities Act of 1990, Title III (equal access to education and public accommodations for students) - While religious schools are generally exempt from Title III of the ADA, upon accepting FFA religious schools and organizations typically become subject to the ADA.¹⁹ Title I may also apply generally to the religious school for employment, depending on the school’s size.
- Similarly, under California Education Code §§ 220 and 221 religious organizations are excluded to the extent application of the statute’s nondiscrimination requirements would not be consistent with the religious tenets of that organization.

¹⁶ See FEMA Policy Guide (Version 5.0), January 6, 2025; see also 42 USC § 5122(11)B).

¹⁷ See also 6 CFR § 19.9 (exemption from Title VII employment discrimination requirements).

¹⁸ See *Our Lady of Guadalupe Sch. v. Morissey-Berru* (2020) 591 U.S. 732; *Spencer v. World Vision, Inc.* (W.D. Wash. 2008) 570 F.Supp.2d 1279, 1287.

¹⁹ See DHS Standard Terms and Conditions, at C.IV; see also FEMA Policy Guide (V.5.0) at pp. 168, 174.

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- Government Code § 11135 – a narrow exception applies for the “religious activities of a religious corporation or religious association not organized for profit” under new state regulations.²⁰ The exemption applies to ministerial or strictly religious functions, such as the selection of clergy or religious instruction. For non-religious program elements funded by the state of California, however, the nondiscrimination rules still apply.
- California FEHA (employment): FEHA’s definition of “employer” excludes a “religious association or corporation not organized for private profit,” giving broader protection than federal law for qualifying religious schools. A religious school accepting SFA does not automatically waive or lose its FEHA exemption. However, the terms of all grants must be reviewed to determine whether this exception continues to apply upon accepting an SFA award.

Final Note

Government funding can help private schools serve their students and communities. But every dollar of support carries legal responsibilities — sometimes long-term ones.

Before applying for or accepting funds, schools should:

1. Understand the obligations tied to the award.
2. Review whether obligations extend beyond the grant period.
3. Consult with legal counsel to confirm compliance requirements and identify potential exemptions.

This legal summary is provided for informational purposes only and does not constitute legal advice. It is not intended to create, and receipt of it does not establish, an attorney-client relationship. Legal issues are complex and fact-specific; therefore, you should consult with legal counsel before making any decisions based on this summary. If you have specific questions or need legal advice, Liebert Cassidy Whitmore attorneys are available to speak with you. To contact us, please call 310.981.2000 (Los Angeles), 415.512.3000 (San Francisco), 559.256.7800 (Fresno), 916.584.7000 (Sacramento), or 619.481.5900 (San Diego) or email us at info@lcwlegal.com.

²⁰ See 2 C.C.R. § 14183, effective July 1, 2024.