



2024 Art Contest



Contest Rules

No purchase is necessary to enter or win. Void where prohibited. Valid in the continental United States only. Entry in this contest constitutes your acceptance of these official rules.

The ESS Art Contest 2024 (the "**Contest**") is designed to encourage eligible U.S. school students and their parents/guardians on their behalf ("**Applicant(s)**" or "**You**") to use their creativity to create their own interpretation of "Imagine going to school underwater, what would your day be like?" Judges will choose the winning entries, and prizes will be awarded in accordance with these Official Rules (these "**Rules**").

- 1. Binding Agreement:** In order to enter the Contest, you must agree to the Rules. Therefore, please read these Rules prior to entry to ensure you understand and agree. You agree that submission of an entry in the Contest constitutes an agreement to these Rules. You may not submit an entry to the Contest and are not eligible to receive the prizes described in these Rules unless you agree to these Rules. These Rules form a binding legal agreement between you and ESS with respect to the Contest.
- 2. Eligibility:** To be eligible to enter the Contest, an Applicant must: (a) be a U.S. citizen or a permanent legal U.S. resident (i.e., must be able to show proof of permanent legal residence) and (b) be enrolled in a public school or charter school (grades K-12) in the continental United States. Minors who enter must have the written consent of a parent or legal guardian in order to be eligible to receive any prizes. The Contest is void where prohibited by law. Employees, interns, contractors, and official office-holders of ESS, and its parent company, subsidiaries, affiliates, and their respective directors, officers, employees, advertising and promotion agencies, representatives, and agents ("**Contest Entities**"), and members of the Contest Entities' immediate families (parents, siblings, children, spouses, and life partners of each, regardless of where they live) and members of the households (whether related or not) of such employees, officers and directors are ineligible to participate in this Contest.
- 3. Sponsor:** The Contest is sponsored by ESS ("**Sponsor**"), with the principal place of business at 9202 S Northshore Drive, Suite 200, Knoxville, TN, 37922.
- 4. Contest Period:** The Contest begins on December 8, 2023, at 8:00 am Eastern Time in the United States and ends on February 25, 2024, at 8:00 pm Eastern Time ("**Contest Period**"). All dates are subject to change.

5. **How to Enter:** No purchase is necessary to enter or win. To enter the Contest, visit the Contest website located at ArtContest.ESS.com ("**Contest Site**") during the Contest Period. You will be requested to fill out an official entry form ("**Entry Form**") with (a) art that reflects Applicant's creative interpretation of the Contest theme "Imagine going to school underwater, what would your day be like?;" (b) all information on the Entry Form, including parent's/ guardian's consent or teacher's permission form. Entry Forms can only be submitted by parents, guardians, and teachers on behalf of Applicants. The artwork must meet the "**Contest Requirements**" described below.
 - a. ESS is not responsible for illegible or incorrectly submitted entries made via the digital upload tool.
 - b. Entries received without a completed Entry Form or without a parent's or legal guardian's consent will be disqualified.

6. **Entries:** Limit One (1) Entry Per Applicant. Subsequent entries will be disqualified. To be considered for the Contest, entries must be: (i) complete (as determined by ESS); (ii) received by February 25, 2024, 8:00 pm Eastern Time; and (iii) in English (unless otherwise specified). Machine or computer-generated mass entries will be disqualified. Any submission not meeting the aforementioned criteria will be disqualified. ESS accepts no responsibility for submissions lost, delayed, damaged, defaced, or mislaid, howsoever caused. All entries will be deemed made by the Applicant submitted at the time of entry.

7. **Art Requirements:** The artwork must meet the following criteria ("Art Requirements"):
 - a. They must not be derogatory, offensive, threatening, defamatory, disparaging, libelous, or contain any content that is inappropriate, indecent, sexual, profane, tortuous, slanderous, discriminatory in any way, or that promotes hatred or harm against any group or person, or otherwise does not comply with the theme and spirit of the Contest.
 - b. They must not contain content, material, or any element that is unlawful or otherwise in violation of or contrary to all applicable federal, state, or local laws and regulations, including the laws or regulations in any state where the artwork is created.
 - c. They must not contain any content, material, or element that displays any third-party advertising, slogan, logo, trademark, or representation of characters indicating sponsorship or endorsement by a third party or commercial entity or that is not within the spirit of the Contest, as determined by ESS, in its sole discretion.
 - d. They must be original, unpublished works that do not contain, incorporate, or otherwise use any content, material, or element that is owned by a third party or entity.
 - e. They cannot contain any content, element, or material that violates a third party's publicity, privacy, or intellectual property rights.
 - f. The artwork is not the subject of any actual or threatened litigation or claim.
 - g. The Applicant does not include any disparaging remarks relating to ESS or a third party.
 - h. The submitted artwork is two-dimensional and scannable (e.g., no sculptures, videos, or animations).

8. **Art Media Types and Techniques:** Students are encouraged to use bold colors and strong lines. Any of the following media or techniques may be used:
 - Traditional: watercolors, acrylic paint, oil paint, pencils, charcoals, colored chalk, pastels, markers, etc.
 - Digital: digital photography, digital painting, digital drawing, etc.
9. **Submitted Artwork:** Artwork must be scanned or taken with a digital camera. Save your digital image at the largest size possible, not exceeding 5 MB. Your artwork should be large enough for judges to see detail while still being smaller than 5 MB. The image must not be blurry and have good lighting. If your digital image is larger than 5 MB, you can use a photo editing program (such as Photoshop or Microsoft Office Picture Manager) to resize it by either lowering the resolution (DPI) or by shrinking the image dimensions. Artwork must be saved as a JPG or PNG.
10. **Disqualification:** During the Contest Period, ESS will evaluate the artwork to ensure that it meets the Art Requirements. ESS reserves the right, in its sole discretion, to disqualify any Applicant who submits artwork that does not meet the Art Requirements. Incomplete entries or entries not complying with these Rules are subject to disqualification.
11. **Communication:** At times during the Contest, an ESS representative may contact Applicants for customer service purposes. By entering, Applicants agree to receive phone calls and emails from ESS regarding the artwork for ESS Art Contest 2024.
12. **Grade Groups:** Submissions will be divided into four "**Grade Groups**" for judging:
 - a. Grades K-2
 - b. Grades 3-5
 - c. Grades 6-8
 - d. Grades 9-12
13. **Judging:**
 - Each art piece will be evaluated and scored based on the following "Criteria":
 - Artistic skills
 - Creativity and originality
 - Contest theme: "Imagine going to school underwater, what would your day be like?"
 - Unique and novel approach to the artwork
 - Technical skill by age level
 - Adherence to the Art Requirements and the Rules
 - Each submission in each Grade Group will be given a score from 1 to 43, 1 being the lowest score. There will be a combined score from five (5) ESS judges. The top four traditional art finalists and the top digital art finalist with the highest score in each Grade Group will move to the next round.

- The top five (5) finalists in each Grade Group will be posted on ESS' social media accounts ([Facebook](#) and [Instagram](#)) for judging from the public between March 18, 2024, 12:00 am and March 24, 2024, 8:00 pm Eastern Time.
 - A percentage of the total score from the number of likes, comments, and shares from ESS' social media ([Facebook](#) and [Instagram](#)) combined with the highest total score from the ESS judges will determine the winner from each Grade Group.
- 14. Tie-breaker:** In the event of a tie at any level of judging, the judges will re-evaluate the tied submissions according to the Criteria until the tie is broken. The tied submissions will be put up for a re-vote amongst the ESS judges and the public judges on [Facebook](#) and [Instagram](#) at the respective level until the tie is broken.
 - 15. Winners:** The decisions of the judges are final and binding. In the event there are not enough eligible entries, not all prizes will be awarded. If a potential winner is unable, for whatever reason, to accept their prize, then ESS reserves the right to award the prize to another Applicant.
 - 16. Notification of Winners:** Becoming a finalist is subject to validation and verification of eligibility and compliance with all the terms and conditions set forth in these Rules. If a potential finalist or winner is disqualified for any reason, the submission that received the next highest total score will be chosen as the potential finalist or winner. The potential finalist(s) and winner(s) will be selected and notified by telephone and/or email at ESS' discretion. If a potential finalist/winner does not respond to the notification attempt within three (3) days from the first notification attempt, then such potential finalist/winner may be disqualified, and an alternate potential finalist/winner will be selected from among all eligible entries received based on the judging Criteria described herein. With respect to notification by telephone, such notification will be deemed given when the potential finalist/winner or potential finalist/winner's parent or guardian engages in a live conversation with ESS or when a message is left on the potential finalist/winner's voicemail service or answering machine by ESS, whichever occurs first.
 - 17. Announcement:** The winner will be announced on ESS' social media for each Grade Group on March 27, 2024.
 - 18. Prizes:** The Winner for each Grade Group will win a \$500 American Express gift card and \$500 for their school. Prizes will be sent to Winners by May 10, 2024.
 - 19. General Conditions:** All federal, state, and local laws and regulations apply. ESS reserves the right to disqualify any Applicant from the Contest if, in ESS' sole discretion, it reasonably believes that the Applicant has attempted to undermine the legitimate operation of the Contest by cheating, deception, or other unfair playing practices.
 - 20. Intellectual Property Rights:** As between ESS and the Applicant, the Applicant retains ownership of all intellectual and industrial property rights (including moral rights) in and to the artwork. As a condition of entry, Applicant grants ESS a perpetual, irrevocable, worldwide, transferable, royalty-free, and non-exclusive license to use, reproduce, adapt, modify, publish, distribute, publicly perform, create a derivative work from, and publicly display the artwork for any

purpose, including display on the ESS website and social media, without any attribution or compensation to Applicant. Entries will not be returned. ESS retains all rights in the entry into this Contest and will in no case serve to transfer any ESS intellectual property rights to the Applicant.

21. **Privacy:** Applicants agree and acknowledge that personal data submitted with an entry, including name, mailing address, phone number, and email address, may be collected, processed, stored, and otherwise used by ESS for the purposes of conducting and administering the Contest. All personal information that is collected from parents, guardians, and teachers on behalf of Applicants is subject to ESS' Privacy Policy, located at [ESS.com/terms-conditions](https://www.ess.com/terms-conditions). Individuals submitting personal information in connection with the Contest have the right to request access, review, rectification, or deletion of any personal data held by ESS in connection with the Contest by writing to ESS at the following address: ESS Art Contest, 800 Kings Highway N., Suite 405, Cherry Hill, NJ 08034.
22. **Publicity:** By entering the Contest, Applicants agree to participate in any media or promotional activity resulting from the Contest as reasonably requested by ESS at ESS' expense and agree and consent to the use of their name and/or likeness by ESS. ESS will contact Applicants in advance of any ESS-sponsored media request for interviews.
23. **Marketing:** The artwork may also be used for press and media purposes, and Applicant agrees to waive any rights and not assert any intellectual property rights that Applicant has or may have in the artwork. ESS reserves the right to publish the Applicant's name, grade level, and school district on social media or through other media for publicity purposes. ESS reserves the right to publish the name, grade level, school district, and likeness of the Winners on social media or through other media for publicity purposes.
24. **Warranty:** Applicants warrant that their artwork is their own original work and, as such, they are the sole and exclusive owner and rights holder of the submitted artwork and that they have the right to submit the artwork in the Contest and grant all required licenses. Each Applicant agrees not to submit any artwork that: (a) infringes any third-party proprietary rights, intellectual property rights, industrial property rights, personal or moral rights, or any other rights, including without limitation, copyright, trademark, trade names, industrial designs, patent, trade secret, privacy, publicity, or confidentiality obligations; or (b) otherwise violates applicable state, federal, or local law.
25. **Indemnify:** To the maximum extent permitted by law, the Applicant indemnifies and agrees to keep indemnified ESS at all times from and against any liability, claims, demands, losses, damages, costs, and expenses resulting from any act, default, or omission of the Applicant and/or a breach of any warranty set forth herein. To the maximum extent permitted by law, the Applicant agrees to defend, indemnify and hold harmless ESS from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or accruing from: (i) any artwork or other material uploaded or otherwise provided by Applicant that infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy; (ii) any

misrepresentation made by Applicant in connection with the Contest; (iii) any non-compliance by Applicant with these Rules; (iv) claims brought by persons or entities other than the parties to these Rules arising from or related to Applicant's involvement with the Contest; (v) acceptance, possession, misuse or use of any prize or participation in any Contest-related activity or participation in the Contest; (vi) any malfunction or other problem with the Contest Site in relation to the entry and participation in the Contest by Applicant; (vii) any error in the collection, processing, or retention of entry or voting information in relation to the entry and participation in the Contest by Applicant and in the voting process by consumers; or (viii) any typographical or other error in the printing, offering or announcement of any prize or winners in relation to the entry and participation in the Contest by Applicant.

- 26. Elimination:** Any false information provided within the context of the Contest by Applicant concerning identity, mailing address, telephone number, email address, ownership of right, or non-compliance with these Rules or the like may result in the immediate elimination of the Applicant from the Contest.
- 27. Internet and Disclaimer:** ESS is not responsible for any malfunction of the entire Contest Site or any late, lost, damaged, misdirected, incomplete, illegible, undeliverable, or destroyed artwork or votes due to system errors, failed, incomplete or garbled computer or other telecommunication transmission malfunctions, hardware or software failures of any kind, lost or unavailable network connections, typographical or system/human errors and failures, technical malfunction(s) of any telephone network or lines, cable connections, satellite transmissions, servers or providers, or computer equipment, traffic congestion on the Internet or at the Contest Site, or any combination thereof, including other telecommunication, cable, digital or satellite malfunctions which may limit Applicant's/consumer's ability to participate/vote respectively. ESS is not responsible for the policies, actions, or inactions of others, which might prevent Applicant from entering, participating, and/or claiming a prize in this Contest. ESS' failure to enforce any term of these Rules will not constitute a waiver of that or any other provision. ESS reserves the right to disqualify Applicants who violate the rules or interfere with this Contest in any manner. If an Applicant is disqualified, ESS reserves the right to terminate that Applicant's eligibility to participate in the Contest.
- 28. Right to Cancel, Modify, or Disqualify:** If for any reason the Contest is not capable of running as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures, or any other causes which corrupt or affect the administration, security, fairness, integrity, or proper conduct of the Contest, ESS reserves the right at its sole discretion to cancel, terminate, modify, or suspend the Contest. ESS further reserves the right to disqualify any Applicant who tampers with the submission process or any other part of the Contest or Contest Site. Any attempt by an Applicant to deliberately damage any website, including the Contest Site, or undermine the legitimate operation of the Contest is a violation of criminal and civil laws, and should such an attempt be made, ESS reserves the right to seek damages from any such Applicant to the fullest extent of the applicable law.
- 29. Not an Offer or Contract of Employment:** Under no circumstances shall the submission of artwork into the Contest, the awarding of a prize, or anything in these Rules be construed as an offer or contract of employment with ESS. Applicants acknowledge that they submitted their

artwork voluntarily, not in confidence or trust. Applicants acknowledge that no confidential, fiduciary, agency, or other relationship or implied-in-fact contract now exists between Applicant and ESS or the Contest Entities and that no such relationship is established by Applicant's submission of artwork under these Rules.

30. **Forum and Recourse to Judicial Procedures:** These Rules shall be governed by, subject to, and construed in accordance with the laws of the State of New Jersey, United States of America, excluding all conflict of law rules. If any provision(s) of these Rules are held to be invalid or unenforceable, all remaining provisions hereof will remain in full force and effect. To the extent permitted by law, the rights to litigate, seek injunctive relief, or make any other recourse to judicial or any other procedure in case of disputes or claims resulting from or in connection with this Contest are hereby excluded, and Applicants expressly waive any and all such rights.

31. **Arbitration:** By entering the Contest, you agree that exclusive jurisdiction for any dispute, claim, or demand related in any way to the Contest will be decided by binding arbitration. All disputes between you and ESS of whatsoever kind or nature arising out of these Rules shall be submitted to the American Arbitration Association in New Jersey, USA before one arbitrator to be mutually agreed upon by both parties. The parties agree to share equally in the arbitration costs incurred.