



**PROVIDING EQUITABLE SERVICES TO STUDENTS AND TEACHERS
IN NON-PUBLIC (PRIVATE) SCHOOLS UNDER THE CARES ACT PROGRAM
UPDATED OCTOBER 20, 2020**

CARES ACT OVERVIEW:

The CARES Act provides education funding to state education agencies and local education agencies to support schools as they are dealing with the effects of COVID 19. The CARES Act has two funds specific to K-12 education:

1. Governor's Emergency Education Relief Fund (GEER; 18002)

- ✓ \$2.9 billion nationally
- ✓ Administered by Governor
- ✓ Oregon: Comprehensive Distance Learning Supports
- ✓ Eligible for equitable services

2. Elementary and Secondary School Emergency Relief Fund (ESSER;18003)

- ✓ \$13.2 billion nationally
- ✓ SEA must allocate not less than 90% to districts:10% at discretion of Governor/SEA
- ✓ Eligible for equitable services

NOTE: THIS GUIDANCE HAS BEEN UPDATED TO REFLECT THAT THE UNITED STATES EDUCATION DEPARTMENT (USED) HAS VACATED THE INTERNAL FINAL RULE (IRF); WITH NO PLAN TO APPEAL AT THIS TIME.

FREQUENTLY ASKED QUESTIONS:

1. Why must districts refigure the CARES Act allocation for private schools?

The USED guidance (4/30/2020) and Internal Final Rule (7/1/2020) required districts to use one of three options in determining the allocation for private schools.

On September 4, 2020, the United States District Court of the District of Columbia ordered the IFR to be vacated. On September 9, 2020, the U.S. Department of Education (USED) made it known that the Interim Final Rule that they published on July 1, 2020 was no longer in effect. Districts are now required to calculate the equitable share using the guidance in Section 1117 (low income and residency in a Title I attendance area). This was the original intent of the CARES Act.

2. Can the private school grade levels be different than those in the Title IA school attendance area?

No. The grade levels must be the same. A private school 8th grade student who meets low income and residency criteria would not be counted in the allocation if the Title IA school only served grades K-6.

3. Does this mean that some private schools may not be receiving ESSER funds/services?

Yes. Only schools who have both low-income students and reside in a Title 1 school attendance area are eligible for CARES Act funding.

4. Are the ESSER and GEER funds proportionate share calculated separately?

Yes. The district determines the proportionate share under each CARES Act fund separately.

5. Can a private school that has not previously participated in equitable services under Title IA choose to participate in CARES Act equitable services?

Yes. Providing the private school meets the low-income and residency criteria, they are eligible to participate in either or both ESSER and GEER.

6. Does ODE have information on the amount and percentage of the total allocation a district has set aside for its private schools based on low-income and residency?

Yes. On the Budget Narrative Targeting page (lower left hand corner) the percentage the district has set aside for equitable services for the 2019-2020 school year is listed. The district may use the percentage either from school year 2019-2020 or 2020-2021 to determine the proportionate share.

7. Is there a difference between how allocation and services are determined for purposes of the CARES Act?

Yes. The allocation is determined by the number of low-income students and the area of residence. Once the allocation is determined, the private school's plan may incorporate any of the 12 ESSER allowable activities and serve all students and staff. The plan should be based on needs directly related to COVID-19.

8. What happens if a district has already reimbursed private schools for COVID 19-related expenses or provided services before this law was vacated?

Districts that calculated the ESSER equitable share using either Option 1b or Option 2 (total enrollment) should consider any funds expended by private school prior to September 9, 2020, to be allowable given the reasonable reliance on the regulations in place at the time. Private schools should not be expected to reimburse the district for any funds spent prior to September 9, 2020, which is the date the IFR was rescinded.

Now that the IFR is no longer in effect, all equitable shares should be recalculated using the guidance in Section 1117 and adjusted accordingly. Any expenditures after September 9, 2020 cannot exceed the private school's equitable share based on this calculation.

- 9. How will these changes be communicated to both districts and private schools?**
Districts will receive an official notification from the Federal Systems Team Director, along with guidance further explaining these changes. Notification and guidance will also be sent out to all private schools.
The Federal Systems Team is prepared to assist districts and private schools as they implement the new CARES Act guidance.
- 10. What is the timeline for implementing these changes?**
While there is not an established timeline, districts should communicate with private schools as soon as possible. This ruling will impact the budgets of many private schools.
- 11. If an LEA already consulted with a private school does the LEA need to have another consultation due to the CARES Act equitable services allocation changes?**
Yes. The updates change the parameters of the grant which requires a new consultation.
- 12. Should there be a separate Affirmation of Consultation form for the equitable services under the CARES Act?**
For monitoring purposes, a separate Affirmation of Consultation for CARES Act equitable services is recommended. The CARES Act grants may be combined during the consultation. The new CARES Act Affirmation of Consultation should be signed by both the LEA and private school official. A copy must be sent to the ODE Ombudsman at jeni.gilles@state.or.us.
- 13. If a private school is currently participating in CARES Act equitable services (using total enrollment) and does not want to provide the poverty information that is now required, what are the next steps?**
The LEA should determine whether the private school does not want to provide poverty data or may not have access to the poverty data.
DO NOT WANT TO PROVIDE POVERTY DATA: Private schools that do not wish to provide poverty data may decline further services.

UNCLEAR AS TO POVERTY DATA OPTIONS: LEAs and private school officials should review all Title I poverty methodologies (FRL, income survey, scholarship information etc.) to determine which methodology is best suited to determine proportionate share.
- 14. Can an LEA apply a different poverty methodology to each private school?**
Yes. The poverty methodology used can vary across private schools.
- 15. Are private school students who reside in Targeted Assistance attendance areas eligible to generate a CARES Act proportionate share and receive services or only students who reside in schoolwide schools?**
All private schools students who reside in Targeted Assistance or Schoolwide schools are eligible to generate a proportionate share as long as low income criteria is also met.

16. Do only those students generating a proportionate share receive services?

No. ALL students in the private school are eligible to receive ESSER and GEEER services.

17. Does the court order impact the total allocation of CARES Act formula funds to the LEAs from ODE?

No. The LEAs CARES Act original allocation for ODE will not change; it is based on the formula outlined in law. However, the proportionate share available to both LEAs and private schools is expected to change.

18. Who is responsible for providing CARES Act proportionate share if a private school student resides in a district different from where the private school is located?

Following the traditional Title IA model (Section 1117), the district in which the private school student resides is responsible for providing CARES Act proportionate share as long as the student meets the low income and residency criteria.

19. Many districts choose to transfer funding to a lead district for Title I purposes if there are multiple districts that have eligible students enrolled in a specific private school. This same process may be utilized for the CARES Act funding. Will there be separate monitoring for the CARES Act equitable services?

Yes. The most recent communication from USED states, “Going forward, districts must calculate the minimal proportional share for CARES Act equitable services according to the formula provided in Section 1117 (a)(4)(A) of ESEA of 1965. Section 1117 requires robust consultation with private schools, among other things, and we will use our enforcement authority aggressively to ensure districts comply with this and other relevant equitable services requirements.”

20. How should a district prepare for a potential monitoring from ODE and/or USED?

Document! Document! Document! This includes any correspondence, phone calls, e-mails etc. that the district has had with the private school.

This would include artifacts of communication strategies the district used to inform the private schools of the change in allocation, such as letters, meetings, forms etc.

For any private schools that met the low-income and residency eligibility requirement, provide consultation information. This would include: how the allocation was determined, review of ESSER and GEER (CDL) allowable activities; a plan and budget narrative provided by the private school; a rationale for the administration cost and a signed Affirmation of Consultation. The signed Affirmation should be kept on file at the district level and a copy sent to joni.gilles@state.or.us it is also important to include evidence of ongoing consultation (school visits, periodic check-ins, review of budgets etc.).

21. What is the CARES Act grant period for equitable services?

CARES Act funding may be used for any allowable expenditure incurred on or after March 13, 2020, the date the President declared the national emergency due to COVID-19. The

grant period ends on September 30, 2022. There may be a reconciliation mid-way through the grant period to ensure funds are being drawn down in a timely manner.

22. Can private schools pool their funds?

Yes. With agreement between the district and participating PNP schools, the pooling of funds is allowed.

23. What is the responsibility of a district if a private school declines services, or does not respond to the district's request for consultation?

The district has no further responsibility to provide equitable services to students or teachers in that private school. The district must be able to demonstrate that it made a good faith effort to contact all the private schools in the district's boundaries.

24. Can a private school request reimbursement for equitable services?

No. With the exception of prior purchases through September 9, equitable services are provided by the district or through a third party contractor. Private schools may not request reimbursement. The district maintains control of all CARES Act equitable services funds and retains ownership of equipment/materials/property.

25. What happens to the materials/technology that have been purchased by the district as part of the CARES Act equitable services program at the end of the grant period?

Once materials/technology/supplies are no longer needed for purposes of ESSER and/or the grant period has ended, the district must remove equipment or supplies from the private school. The district may continue to use equipment or supplies in the private school to the extent they are needed for other allowable purposes under another federal program such as ESEA or IDEA. The district retains title to, and must maintain administrative control over, the equipment and supplies.

26. Do the ESEA requirements that equitable services be secular, neutral and non-ideological apply to the CARES Act funding?

Yes, services must be secular, neutral and non-ideological. Districts may require private school accepting ESSER funds to sign an assurance stating all materials purchased with federal funds will be only used for secular, neutral and non-ideological activities and curriculum.

27. What services and benefits are available to private school students and teachers?

In general, the same as those available to public school students and teachers: "A broad range of allowable activities" including 12 categories of use defined in 18003(d) of the CARES Act for ESSER funds, or 18002(c)(1) or (3) for GEER funds.

28. What is the role of the ODE Private School Ombudsman?

An SEA must use the ombudsman to monitor and enforce the requirements of CARES Act programs that a school district provide equitable services to students and teachers in non-

public schools. The private school, if dissatisfied, may file a complaint with the SEA ombudsman.

29. Must a district and all participating private schools within the district use the same enrollment date for student counts?

The agreed upon date the count is taken is not required to be the exact date for both the district and private school, but there must be consistency. For example, all official district and private school student counts should be taken during 30-day to 45-day period that is discussed during the consultation.

Is a private school whose students and teachers receive equitable services under the CARES Act programs a “recipient of Federal financial assistance”?

No. A district or public agency must control and administer the CARES Act funds; no funds may go directly to a private school. Thus, a private school is not a recipient of Federal financial assistance by virtue of its students and teachers receiving equitable services from a district under a CARES Act program.

30. Can the ESSER funds be used for construction?

No, although the allowable uses are quite flexible, construction is not an allowed activity under ESSER funding.

31. Are there activities that are specifically unallowable for private school equitable services?

The following activities are unallowable per USDE:

- Expenditures related to state or local teacher or faculty unions or associations
- Bonuses, merit pay, or similar expenditures unless related to disruptions or closures resulting from COVID-19

32. If a district and private school agree upon using a third-party contractor for services, are there two separate administrative costs (district and third party) that may be subtracted from the equitable share?

Yes, the district must still manage the contract and monitor compliance and may charge administrative costs. The third-party contractor may also require administrative costs, which will be deducted from the equitable share. Those contractor administrative costs must be included in the contract, budgeted, and specified in the terms and conditions

33. May a district buy a private school a vinyl nurse’s cot as equitable services? The school has one covered in cloth, but it cannot be sanitized as well. If allowable, must it be returned to the district at the end of the grant, September 2022?

Potentially yes, if this is the identified need by the private school and it can be justified as allowable under the statutory allowable uses. The items would be returned to the district at the end of the grant period since this would not be considered a consumable supply.

34. May a district contract with a company to sanitize and/or deep clean the private school throughout the year?

Yes, if this is the need identified by the private school.

35. While a private school may not pay custodial staff salary, could they use CARES ESSER funds for contracting with a custodial service for regular sanitizing?

Yes, if this is the need identified by the private school and the contract is managed by the district.

36. If a private school requests extra duty pay for after school tutoring, must the teachers be hired by the district to be eligible and paid with ESSER funds?

Yes.

37. Are private schools allowed to pay for COVID-19 tests, masks, face shields, and thermometers, thermal screening devices with CARES ACT funds?

Yes. These items could qualify as equitable services provided by the district, if identified as a need by the private school. They must be purchased by the district or a third party contractor and not by the private school.

38. How does a district monitor or assure private school staff and students are not using electronic devices, equipment, and/or property for religious content? Would a signed district-private school assurance and/or internet policy be enough?

It is recommended that the private school sign an assurance certifying to the requirement. The private school may also want to consider having the student and parent or guardian sign some type of assurance.

The district is required to demonstrate that it has met the intent of the statute and done its due diligence under the circumstances.

39. If a private school requests electronic devices (i.e., laptops, iPad, chrome books, etc.) with ESSER funds but the district does not have a secure method of monitoring to ensure religious content is not being accessed, may the district deny the private school's request?

No, the district must implement some type of policies and procedures to monitor the use of the equipment. The district should start with reviewing its own policies and procedures for computer use and then determine, through consultation with private school officials, how to find a reasonable process for meeting the compliance requirement. Under the current circumstances, it is not advisable to deny this type of request for equitable services.

40. If software is purchased with ESSER funds and loaded onto the private school's computers, how can it be returned after the grant?

Any software licenses remain in the name of the district and the software must be removed (either by district IT staff or by private school staff and verified by district staff) at the end of the grant period. If the software is no longer useful at the end of the grant period, then the district may dispose of it following district policy and federal grant requirements.

41. At the end of the ESSER grant cycle, September 30, 2022, must the district pick up any equipment, property, and non-consumable materials purchased with the private school's equitable share?

Yes. All purchased items must be returned to the district at the end of the ESSER grant cycle, September 30, 2022. The district must keep control and title to all equipment, property, and materials purchased with ESSER Act funds for private school equitable services.

42. Using CARES ESSER funds, a district purchases one-to-one electronic devices that go home with private school children as a part of a distance learning initiative. Some of those devices are damaged or lost with no insurance policy to cover it. Must the district fix and/or replace equipment using non-equitable services funding, or does the district use the equitable services portion available to all participating schools to cover costs?

It is recommended that the district draft an inventory policy including a lost/damaged clause that clearly outlines responsibilities of both the district and private school. During consultation, the district must be clear and transparent with private school officials. It is also suggested that each participating private school may want to draft a policy for their students, so the student and/or family is also aware of the district's policies and procedures. In addition, the district should have a signed assurance that the private school accepts liability and that any devices, equipment, and/or materials will be used only for secular, neutral, a nonideological activities.

43. May an LEA use CARES Act funds for repairs, renovation, or remodeling in a non-public school?

No. An LEA must maintain title to any materials, equipment and property purchased with CARES Act funds, and the LEA must administer and control the materials, equipment, and property. (Section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f)). In addition, under Department regulations applicable to equitable services under the CARES Act, equipment and supplies placed in a private school must be removable from the private school without remodeling (34 C.F.R. § 76.661(c)(2)), and program funds may not be used for construction (including renovation, remodeling, and repairs) of private school facilities (34 C.F.R. § 76.662).

An LEA may, however, provide equitable services in the form of non-permanent improvements in a non-public school, provided that these improvements are easily removable. For example, an LEA might set up a temporary screening area in a tent in front of a non-public school, rent and install temporary partitions to assist with social distancing, or provide hand-sanitizing stations.

OTHER ESSER ALLOWABLE USE ITEMS:

✓ **Furniture**

An LEA may use funds to purchase furniture for a classroom in a private school if that cost is reasonable and necessary to provide equitable services. Statute requires that title to materials, equipment, and property purchased with funds be in a public agency and that a public agency administer the resources.

✓ **Textbooks**

An LEA funded teacher may use the same textbooks and materials as those used in the regular private school classroom so long as the textbooks and materials are secular, neutral, and nonideological. Costs need to be considered on a case-by-case basis.

✓ **Equipment and Supplies**

Regulations state that the title for equipment and supplies must stay with the public agency. They say equipment and supplies for private schools can only be used for the project (CARES Act), for the period of time needed for the program, can be removed from the private school without remodeling the facility, and shall be removed from the private school if no longer needed for the purposes of the project (which expires Sept. 2022). The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

✓ **Compensation for Private School Staff**

○ Stipends

Funds may be used to pay for stipends for private school instructional staff, if reasonable and necessary. An LEA must pay such stipends directly to the private school instructional staff and not to the private school.

○ Salary

An LEA may employ a private school teacher to provide services to private school participants provided certain conditions are met. An LEA may hire a private school teacher to provide services only if the teacher is independent of the private school in the provision of services. The private school teacher must be employed by the LEA for services outside of the time he or she is employed by the private school, and the private school teacher must be under the direct supervision of the LEA with respect to all program-funded activities.

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