



COVID-19 Equitable Services

Under the Coronavirus Aid, Relief and Economic Security Act

June 1, 2020

Section 18005 of the Coronavirus Aid, Relief and Economic Security (CARES) Act requires equitable services be provided to non-public schools. On April 30, 2020, the U.S. Department of Education (USED) published [non-regulatory guidance](#) clarifying districts' responsibilities around providing these services.

This document annotates portions of the guidance from the USED by providing Kentucky-specific guidance (in red), including clarification about the reservation of administrative costs.

Specifically, the Kentucky Department of Education (KDE) offers the following additional explanation from USED's "Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs" guidance document:

2. What is a "non-public school" under the CARES Act programs?

A "non-public school" means a non-public elementary or secondary school that (A) is accredited, licensed or otherwise operates in accordance with state law; and (B) was in existence prior to the date of the qualifying emergency for the CARES Act programs. For purposes of this definition, the date of the qualifying emergency is March 13, 2020. (Section 18007(6) of the CARES Act.) **In Kentucky, this includes all not-for-profit, non-public and home schools.**

Generally, private non-public schools have to demonstrate non-profit status, which could be through a letter from the IRS conveying 501(c)(3) status or by providing the Articles of Incorporation filed pursuant to KRS 273 with the Kentucky Secretary of State. Please note, however, that KDE considers homeschools to be non-profit by nature and not subject to the requirement of demonstrating non-profit status. For more on this interpretation, see the [FY2021 Declaration of Participation Notification](#).

4. Which Local Education Agency (LEA) is responsible for providing equitable services to non-public school students and teachers under the CARES Act programs?

The USED has determined that, under the CARES Act programs, the LEA in which a non-public school is located is responsible for providing equitable services to students and teachers in the school, as it is under most Elementary and Secondary Education Act (ESEA) programs that require an LEA to provide equitable services. Outside of Title I, Part A, the responsibility typically falls on the LEA in which a non-public school is located because equitable services generally are available to all students or teachers in the non-public school in the LEA, and the LEA in which the school is located is closest and best able to meet the needs of students and teachers.



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Title I, Part A of the ESEA is different. ESEA section 1117 sets forth a student residency requirement, rather than a school location requirement, for receipt of equitable services under Title I, Part A. Only low-achieving students who live in a participating Title I public school attendance area are eligible for services and, therefore, the LEA where students reside is responsible for providing equitable services.

The CARES Act programs have no such residency requirement for eligibility for services. Rather, the CARES Act programs provide LEAs full discretion, unless funds are targeted for a specific purpose or population of public and non-public school students by the governor under the Governor's Emergency Education Relief (GEER) Fund or by an SEA through the SEA reserve under the Elementary and Secondary School Emergency Relief (ESSER) Fund (see Section 18003(e) of the CARES Act) to use CARES Act funds to provide educational services to students in public and non-public schools in the LEA through a broad range of allowable activities.

Thus, providing equitable services with CARES Act funds is similar to other ESEA programs where equitable services are provided by the LEA in which a non-public school is located.

GEER funds may only be used to provide equitable services for the purposes outlined by the governor's office. Those are 1) support for remote learning and 2) food services activities. [This guidance document](#) provides more specific examples of allowable activities for GEER funds.

ESSER funds have considerably broader allowable uses, including 1) cleaning and sanitation, 2) professional development, 3) technology to enhance distance learning and 4) any activity authorized under the Every Student Succeeds Act. This is not an all-inclusive list of ESSER allowable costs. [This guidance document](#) provides more specific examples of allowable activities for GEER funds.

6. Who is responsible for initiating the consultation process and how should it begin?

Similar to how an LEA provides equitable services under the ESEA, an LEA is responsible for initiating the consultation process. It must contact officials in all non-public schools in the LEA to notify them of the opportunity for their students and teachers to obtain equitable services under the CARES Act programs. Through this initial contact, the LEA can explain the services available under the CARES Act programs and how non-public school students and teachers can participate. If non-public school officials have not been contacted, they may contact the LEA or state ombudsman to inquire about equitable services under the CARES Act programs.



COVID-19 Equitable Services

Under the Coronavirus Aid, Relief and Economic Security Act

June 1, 2020

If non-public school officials want equitable services for their students and teachers, the LEA must consult with those officials during the design and development of the LEA's programs and before the LEA makes any decision that affects the opportunity of non-public school students and teachers to participate in the activities funded under the CARES Act programs.

If a non-public school declines to participate in the CARES Act programs or does not respond to an LEA's good-faith effort to make contact, the LEA has no further responsibility to provide equitable services to students or teachers in that school. The LEA, however, must be able to demonstrate that it made a good faith effort to contact all the non-public schools in the LEA.

GEER and ESSER letters may be sent at the same time and consultation forms for both programs can be completed simultaneously. Further, districts may consider emailing letters and forms if they have accurate email addresses for private schools. In either case, districts must keep documentation that initial contact was made and consultation was provided. For mailed forms, this might include signed delivery receipts, consultation communication logs or other documentation. For emailed forms, this might include copies of the original message sent, consultation emails, read/delivery receipts or other documentation.

10-B. What data does an LEA use to determine the proportional share?

An LEA uses enrollment data in non-public schools whose students and teachers will participate under the CARES Act programs compared to enrollment in public schools in the LEA to determine the proportional share. Under the CARES Act programs, services are available for all students — public and non-public — without regard to poverty, low achievement or residence in a participating Title I public school attendance area.

An LEA that receives CARES Act funds uses those funds to provide educational services to students in both public and non-public schools through a broad range of allowable activities.

Using enrollment to determine the proportional share from which to provide equitable services will contribute to the equitable treatment of children and teachers within the statutory universe of permissible uses for CARES Act dollars by allowing all students and teachers in a non-public school to receive services that are equitable compared to those available to all public school students and teachers. (See ESEA Section 1117(a)(3).)

The date of enrollment data must be March 12, 2020, for both public and private schools and must include grades K-12. Do not count preschool students in these counts.

11. After an LEA has determined the proportional share of funds for equitable



COVID-19 Equitable Services

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June 1, 2020

services under each CARES Act program, how does it then determine the amount of funds available for services to students and teachers in individual non-public schools?

For consultation purposes, in order to determine what equitable services to provide to students and teachers in a given non-public school, an LEA, after reserving funds that are reasonable and necessary for administering equitable services under the CARES Act programs, would divide the remainder of the proportional share of funds available for equitable services by the total enrollment in non-public schools whose students and teachers will participate in each of the CARES Act programs to obtain a per-pupil amount.

The LEA then would then multiply that per-pupil amount by the enrollment in an individual non-public school to determine the amount of services the LEA can provide to students and teachers in that school.

With agreement between the LEA and appropriate non-public school officials, the LEA may pool funds among a group of non-public schools and provide equitable services to students and teachers in non-public schools within the pool based on need without regard to how the funds were generated. (See ESEA Section 1117(b)(1)(J)(i).)

The term “administrative cost” refers to administrative activities that are directly attributable to the equitable services program and may include, for example, the time a district’s federal programs director spends on equitable services; the time clerical personnel spend on accounting and other processing work; and mileage to and from a private school for consultation. This is not an exhaustive list of administration activities.

Districts may consider hiring a staff member to facilitate oversight of equitable services. All decisions about equitable services must be discussed with private schools as part of the consultation process.

As a note, the term “administrative costs” does not refer to indirect costs.

14. What services and benefits under the CARES Act programs are available to non-public school students and teachers?

In general, the services and benefits available to non-public school students and teachers are the same as those available to public school students and teachers. Specifically, the ESSER funds that flow to LEAs by formula may be used for a broad range of allowable activities. (See Section 18003(d) of the CARES Act.)



COVID-19 Equitable Services Under the Coronavirus Aid, Relief and Economic Security Act *June 1, 2020*

The ESSER funds that an SEA may reserve for state purposes also may be used for a broad range of activities to address issues responding to COVID-19, unless the SEA decides to target them for a specific purpose or population of public and non-public school students. For example, an SEA could target the SEA reserve to provide technology to support distance learning for public and non-public school students from low-income families. (See Section 18003(e) of the CARES Act.)

Similarly, a governor may target GEER funds it makes available to an LEA for a specific purpose or population of public and non-public school students. (See Section 18002(c)(1) or (3) of the CARES Act.)

In sum, equitable services permitted under sections 18002(c)(1) or (3), as applicable, and 18003(d) of the CARES Act must be available to best meet the needs of non-public school students and teachers, as determined through timely and meaningful consultation and consistent with any specific purposes established by a governor under the GEER Fund or SEA through the SEA reserve under the ESSER Fund, regardless of the specific uses determined by the LEA to meet its own students' and teachers' particular needs.

As noted in Question 5, the control of any services or assistance provided to students and teachers in a non-public school – and title to materials, equipment and property purchased with CARES Act funds – must be in a public agency, and a public agency must administer those funds, materials, equipment and property. A public entity must provide those services either directly or through a contract with a public or private entity. **Additionally, please reference Question 4 of the USED's guidance, which is included above.**

KDE previously released sample letters and consultation forms for use in offering and planning equitable services under the ESSER Fund as well as the GEER Fund, which are the two funding streams available to K-12 education entities under the CARES Act. These resources are available KDE's [Non-Public School Ombudsman webpage](#).

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