

# Louisiana Believes

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**The CARES Act - Equitable Services  
Interim Final Rule-FAQ's  
August 6, 2020**

# Agenda


- CARES Act Interim Final Rule FAQ's Review
  - Interim Final Rule Background
  - Which Non-Public Schools Can Receive Services
  - Calculating the Amount to Spend on Equitable Services
  - Administrative and Indirect Cost
  - Allowable Activities and Uses of Funds
  - Equitable Services and the ESSER Incentive Funds
  - Technical Operating Questions

# Background Summary

The CARES Act requires local educational agencies (LEAs) that receive CARES Act funds to set aside and spend some of those funds on equitable services for non-public school students and teachers. This requirement applies to funds an LEA receives through: (1) the Elementary and Secondary School Emergency Relief (ESSER) Formula Fund, (2) the ESSER Incentive Fund, and (2) the Governor's Emergency Education Relief (GEER).

On July 1, 2020, the U.S. Department of Education published an [Interim Final Rule](#) (IFR) on CARES Act equitable services requirements. The IFR is currently in effect, although it is being challenged in court and could also be subject to future legislative action.

This FAQ document answers questions LDOE received on the IFR and CARES Act equitable services obligations. This document is subject to change if a court or Congress takes action affecting the IFR.



Which Non-Public Schools Can Receive Services?

# Relevant Interim Final Rule Summary

According to the IFR, LEAs must offer equitable services to all non-public elementary and secondary schools. This is true no matter how the LEA chooses to calculate the amount it must spend on equitable services (see section below).

*Please note the CARES Act defines a non-public school as a nonprofit elementary or secondary school that existed before March 13, 2020, and is accredited, licensed and otherwise operates in accordance with state law. For-profit schools are not eligible for services.*

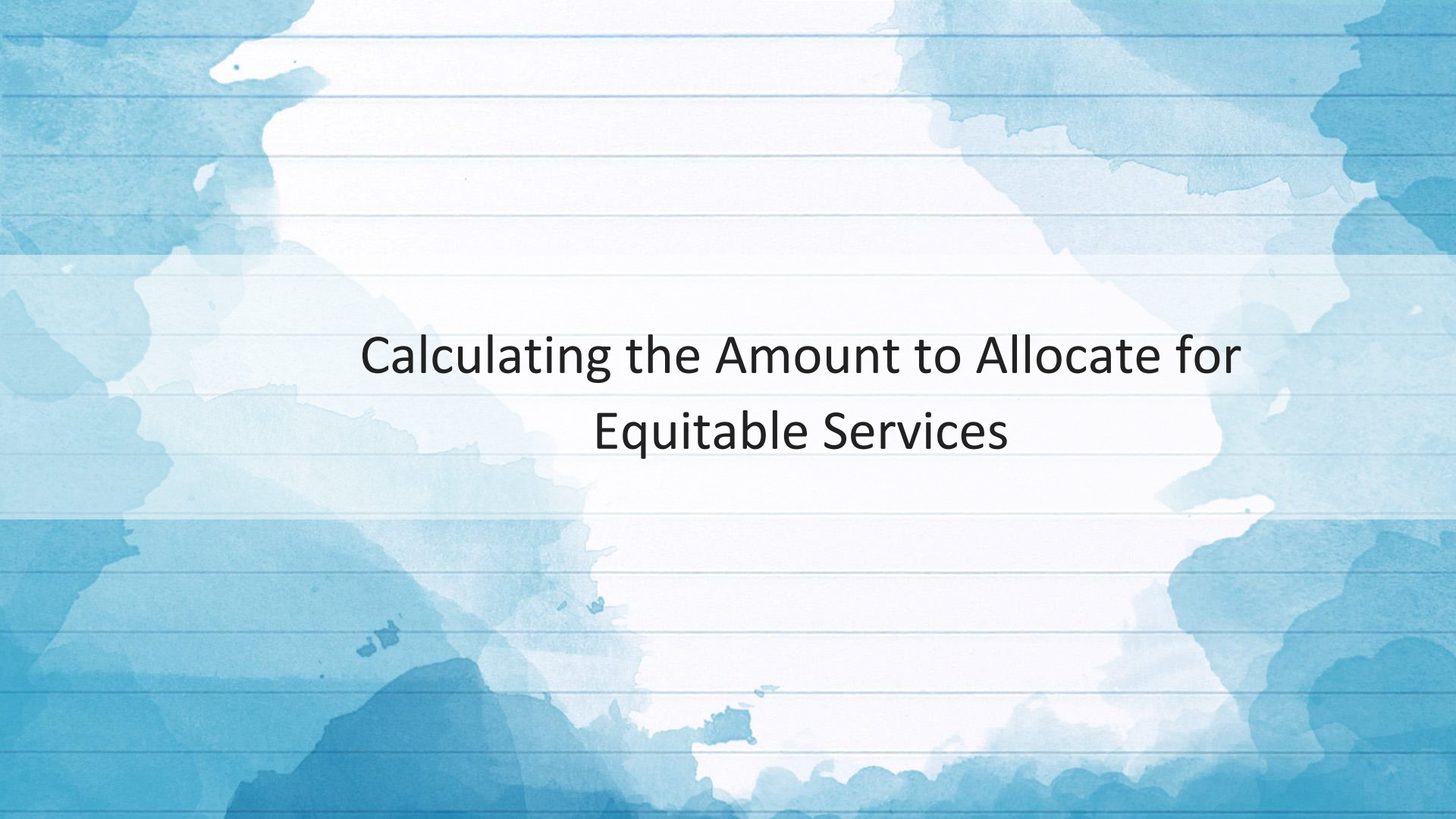
# Which Schools?

**Question:** All of our schools in the district are Title I Schools. The private school does not participate in Title I. Are non-publics supposed to receive CARES Act funding?

**Answer:** A non-public school has the option to receive CARES Act equitable services even if they did not participate in Title I this year. Please note non-public schools are eligible to receive CARES Act-funded *services* but they do not receive CARES Act *funds*.

**Question:** If we have a non- public school that will be closed for the 20-21 school year how do we handle this? Do we still have to distribute funds and such?

**Answer:** A non-public school that has ceased operations is not eligible for equitable services. If the LEA has documentation that the non-public school will be closing for SY 20-21, then the LEA does not need to include the school in its planning for SY 20-21 equitable services.



# Calculating the Amount to Allocate for Equitable Services

# Relevant Interim Final Rule Requirements

According to the IFR, LEAs have two options for calculating the amount they must set aside and spend on equitable services.

**Option 1:** If an LEA limits its CARES Act spending to its Title I schools, then it can calculate the equitable services amount based on poverty. The LEA can either use the same percentage as it set aside and spent from Title I, Part A for equitable services in the 2019-2020 school year, **or** the LEA can perform a new poverty-based calculation (see below for more information).

**Option 2:** If an LEA does not limit its CARES Act spending to its Title I schools, then it must calculate the equitable services amount based on total enrollment.

*Please note LEAs do not have to choose the same option for each of its CARES Act programs. For example, an LEA can use one option for its ESSER funds and a different option for its ESSER incentive funds or GEER funds.*



# Equitable Services Calculation

**Question:** How would we determine the low-income number from the private schools that do not participate in Title I?

**Answer:** If an LEA chooses to limit its CARES Act spending to its Title I schools and calculate the equitable services amount based on poverty, it can calculate the amount one of two ways.

The first way is to use the same percentage the LEA used for Title I equitable services in 2019-2020. For example, if an LEA set aside 20% of its Title I, Part A funds for equitable services in 2019-2020, then the LEA could set aside 20% of its CARES Act funds for equitable services. If an LEA elects to calculate equitable services this way, then it does not need to determine how many low-income children attend private schools that participate in CARES Act programs.

# Equitable Services Calculation

**Answer:** Continued

The second way is to determine the proportion of low-income children who attend private schools that participate in CARES Act programs and apply that percentage to the equitable services calculation.

To do that, the LEA would compare the number of low-income children in participating private schools to the total number of low-income children in Title I schools and participating private schools.

For example, if there are 800 low-income children in an LEA's Title I schools and 200 low-income children in participating private schools (1,000 low-income students total), then 20% of total low-income children attend participating private schools. The LEA would set aside 20% of its CARES Act funds for equitable services.

# Equitable Services Calculation

**Question:** A nonpublic school does not participate in the Title I program nor do they collect any economic or poverty data on their students. Would choosing Option 1 and providing them with a zero allocation violate the IRF requirement that we direct funding to all nonpublic schools in our LEA that wish to participate in this program?

**Answer:** Yes, the district cannot assume the school has no students from low income families just because they do not collect economic income data. If an LEA cannot obtain reliable data on low-income students in participating private schools, it can calculate the equitable services amount using the proportion it set aside for equitable services from Title I, Part A in 2019-2020.

# Equitable Services Calculation

## **Answer:** Continued

Please note that unlike Title I where a non-public school must enroll at least one low-income student who lives in a participating Title I attendance area in order to receive services, the IFR requires LEAs to provide services to any non-public school in the LEA that wishes to participate. This is true even if an LEA uses Option 1 to calculate the equitable services amount based on poverty. In other words, under the IFR, the number of low-income children in participating non-public schools is only relevant for determining the total amount the LEA must set aside and spend on CARES Act equitable services. Any non-public school can then receive equitable services even if it does not enroll any low-income students.

# Equitable Services Calculation

**Question:** Our district chose to utilize the Equitable Share percentage as noted in the 2019-2020 Super App. Then, we utilized the total K-12 Counts for all nonpublic schools that chose to participate in ESSER Formula Funds to distribute the Equitable Percentage 3.41% evenly. Is this correct?

**Answer:** There are two issues to consider when calculating the equitable services amount for CARES Act funds.

The first issue is how to calculate the amount to set aside for equitable services. Under the IFR, LEAs must use total enrollments unless they limit their CARES Act spending to Title I schools, in which case they can use poverty to determine the share.

# Equitable Services Calculation

## **Answer:** Continued

The second issue is how to distribute the equitable services amount among participating private schools. The IFR does not address this, but in [guidance issued in April](#), ED said that after calculating the equitable services amount, LEAs should:

- First, reserve a reasonable and necessary amount for administering equitable services,
- Then, divide the remaining amount by the total enrollment in participating nonpublic schools to determine a PPA, and

# Equitable Services Calculation

**Answer:** Continued

Then, either

- o Determine how much to spend on services for individual nonpublic schools by multiplying the per-pupil amount by each school's total enrollment, or
- o Pool the funds earmarked for any nonpublics that choose to pool their funds.

# Equitable Services Calculation

## **Answer:** Continued

### Pooling Options:

- o Establish a reasonable amount of funds for the pool to provide services for all participating non-public schools, or
- o In the case where option 1 is elected, meet with each non-public school(s) with no low income student counts and determine their CARES Act needs and proceed to:
  - Prioritize their needs and designate funding levels to meet the greatest need
  - Allocate the funds according to the district's percentage of low income students attending its Title I schools (i.e. 50%).



# Equitable Services Calculation

**Question:** Would we as an LEA be able to choose Option 1 and negotiate an alternative and equitable calculation of poverty data with our nonpublic school to determine their allocation?

**Answer:** Generally, LEAs must consult with nonpublic schools over how it will collect poverty data, but if collecting such data will delay services, ED suggests LEAs use its 2019-2020 Title I equitable services amount to determine the CARES Act equitable services amount.

**Question:** Should an LEA who is following Option 1 wait until after the 30-day comment period to expend excess funds that had been reserved for non-publics using the total enrollment formula?

**Answer:** No the Interim Final Rule guidance is effective immediately; therefore, the districts need to make their final decisions regarding which option they will be using to determine the equitable services and begin consultation meetings with the non-public school officials to determine what their needs are relative to the funding they will receive.

# Equitable Services Calculation

**Question:** I calculated the initial funds based upon total enrollment, so I have used initial funds to support the start of school for all schools (even non- Title I schools). I would like to use the free and reduced numbers for the Incentive Funds, which were allocated based upon the plan put forth by our school system. I would also like to do the same with the GEERF funds. However, based upon the latest webinar by LDOE, it looks like I must continue with using the entire student enrollment. Is this correct?

**Answer:** *No, the IFR allows districts to use either of the options you've noted on the funding resources you will receive.* There is no requirement for districts to use the same option on each funding source in calculating the private school's proportionate share. In other words, your district could use one option for ESSER formula funds and another option for your ESSER Incentive and GEER funds or you could use the same option on all three funding sources.

# Equitable Services Calculation

**Question:** With the addition of funds and having to create a new App for 2020-2021, are schools that declined participation to be given another opportunity to state their intent to participate?

**Answer:** The LEA is required to conduct meaningful consultation with all non-public schools within the boundaries of the LEA even if the school previously declined the ESSER Formula portion of the CARES Act funding.

# Equitable Services Calculation

**Question:** When we receive our Incentive funds and GEERF funds, will I be required to apply the total enrollment for the non-public school to obtain the amount they are to receive?

**Answer:** No, the Interim Rule (IFR) allows you to use low income counts to calculate equitable services for non-public schools if the LEA limits spending to its Title I schools.

**Question:** For option #2 do you use K-12 or Pre-K-12 student counts for the calculation?

**Answer:** Only K-12 student counts can be used for determining equitable services.

# Equitable Services Calculation

**Question:** Our LEA only has one nonpublic school. If following Option 1 results in a zero allocation for our nonpublic school, are we then limited to choosing Option 2?

**Answer:** No, but the LEA cannot assume the nonpublic school has no students from low income families just because they do not collect economic income data. The LEA has a few options for determining the non-public school's poverty rate.

- If the non-public school participates in Title I, the LEA can set aside the same proportion of CARES Act funds for equitable services as it did in 2019-2020.
- The LEA can consult with the non-public school about ways to collect poverty data.
- If collecting poverty data from non-public school families would delay services, LEAs can presume the non-public schools have the same level of poverty as the LEA's Title I schools.

# Equitable Services Calculation

**Question:** If the Heroes Act includes clarifying language around the intent of the CARES Act Funding for K-12, could that reverse this interim ruling?

**Answer:** Yes the Heroes Act could impact the Interim Final Rule.

**Question:** Can an LEA budget more funding than the amount calculated on the non-public proportionate share page?

**Answer:** The non-public proportionate share calculation is the minimum amount that must be reserved for equitable services. LDOE still awaiting ED's confirmation.

# Equitable Services Calculation

**Question:** Who ultimately decides on what option will be applied for the equitable services calculation for CARES Act funding? Is it the local educational agency or the state?

**Answer:** The local educational agency is responsible for making the decision regarding which option in the Interim Final Rule to use.

**Question:** Will districts need to redo their equitable share calculations to be in line with the new Interim Final Rule options, correct?

**Answer:** Districts will need to finalize their non-public equitable services calculations as needed based on the requirements of ED's Interim Final Rule.

# Administrative and Indirect Cost



# Brief Summary of Interim Final Rule

## **Administrative and Indirect Cost**

LEAs may use a necessary and reasonable amount of the equitable services share for administrative costs including indirect costs.

# Administrative and Indirect Cost

**Question:** Is there any way to apply admin cost to NPs for ESSER funding that is not directly linked to LEA salaries?

**Answer:** None that the agency is aware of, however keep in mind that districts could account for these types of cost by applying Indirect Cost to the nonpublic equitable services.

**Question:** Since we already allowed our NPs to begin spending funds, and we had not previously taken IDC out of the ESSER funds for NPs nor applied Admin Costs, can we adjust the IDC rate to a lower amount for ESSER and not apply admin costs to accommodate for the fact that they did not know this was coming, but then use the full amount of IDC allowed and apply Admin Cost moving forward to incentive and GEER?

**Answer:** Yes, the LEA can make different decisions for the different CARES Act funding streams. Remember any IDC and admin funds should meet the reasonable and necessary requirement and must be discussed in consultation with the non-public school officials prior to including in the Strong Start App.

# Administrative and Indirect Cost

**Question:** Should non-publics be able to see breakdown of indirect and admin costs? In an itemized way?

**Answer:** Non -public school official should know how much the district is reserving for indirect cost and administrative costs.

**Question:** Has the Indirect Cost changed or was it simply an example?

**Answer:** The unrestricted indirect cost rate provided in the original 19-20 Strong Start application release will be provided in the Strong Start 20-21 application.

# Administrative and Indirect Cost

**Question:** If we now can charge indirect cost to Non-publics, this will take from their funds available. This may cause a problem for what they anticipated to spend their funds on. How do you propose we address this with the Non-publics?

**Answer:** All changes regarding a non-public's equitable services allocations should be discussed with the non-public school during meaningful consultation meetings. The district should be able to justify all indirect cost and administrative cost to be deducted from the non-public school allocations.

# Allowable Activities and Use of Funds

# Interim Final Rule Reference

## **Brief Summary of Rule**

Equitable services can include any allowable CARES Act activity unless limited by the State (like the limits imposed on the ESSER Incentive Funds, see section below).

# Allowable Activities and Use of Funds

**Question:** Under Option 1 can the money be used for districtwide solutions or is it limited to be applied to Title I eligible students only?

**Answer:** Under Option 1, an LEA must limit services under a CARES Act program to only students and teachers in Title I participating schools.

**Question:** Can the funds be used for all of the students in the non-public regardless of the option used?

**Answer:** Yes.

**Question:** Does supplement not supplant apply to the equitable services provided to non-public schools?

**Answer:** No, supplement not supplant does not apply to equitable services to non-public schools provided under a CARES Act program.

# Allowable Activities and Use of Funds

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

**Answer:** 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.



# Allowable Activities and Use of Funds

**Question:** How long may equipment and supplies purchased with CARES Act funds and placed in a non-public school remain in that non-public school?

**Answer:** Equipment and supplies purchased with CARES Act funds for students and teachers in a non-public school may be used for the authorized purposes of the CARES Act during the period of performance or until the equipment and supplies are no longer needed for the purposes of a CARES Act program (See 34 C.F.R. § 76.661(b); 2 C.F.R. §§ 200.313(a)(1), (c)(1) and 200.314(a)). The period of performance is the time during which an LEA may incur new obligations to carry out the work authorized under the CARES Act award—i.e., through September 30, 2022. (2 C.F.R. § 200.77).

# Allowable Activities and Use of Funds

**Answer:** Continued.

In general, once equipment or supplies are no longer needed for purposes of a CARES Act program, an LEA must remove them from the private school. (34 C.F.R. § 76.661(d)(1)). However, after equipment and supplies are no longer needed for the purposes of a CARES Act program, the LEA may continue to use the equipment or 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). The LEA retains title to, and must maintain administrative control over, the equipment and supplies.

# Allowable Activities and Use of Funds

**Question:** May an LEA use CARES Act funds to reimburse a non-public school for allowable COVID-19 related expenses that the school incurred on or after March 13, 2020 but prior to the onset of equitable services by the LEA?

**Answer:** Under section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f), an LEA must control funds for services and assistance provided to non-public school students and teachers under a CARES Act program and keep title to materials, equipment, and property purchased with such funds, and the LEA must administer such funds, materials, equipment, and property. Thus, an LEA may only reimburse a non-public school for necessary expenditures the non-public school incurred in response to COVID-19 under limited circumstances where it can do so while also meeting these requirements. In doing so, the LEA must ensure those activities, materials, or equipment are allowable under the CARES Act and are secular, neutral, and non-ideological.

# Allowable Activities and Use of Funds

**Answer:** Continued.

For example, if a non-public school purchased laptops for students and teachers to facilitate online learning, and if the non-public school officials and LEA both agree, the LEA may use CARES Act funds to purchase those laptops from the non-public school, thereby also obtaining title for the laptops from the non-public school. Provided these conditions are met, the LEA may continue to allow the laptops to be used by non-public school students and teachers.

# Allowable Activities and Use of Funds

**Question:** Can non-public schools hire nurses to facilitate health and sanitation needs (i.e. checking students temperature; student examination, providing professional development to staff and contacting parents, etc.).

**Answer:** A nurse could be an allowable equitable service provided to a non-public school because it relates to preparation and response to COVID-19. The LEA, however, not the non-public school, is ultimately responsible for providing the equitable services to a participating non-public school which the LEA can do either directly or through a contract. In other words, a non-public school could not hire a nurse and expect reimbursement; instead the LEA must maintain control over the equitable services funds.

# Allowable Activities and Use of Funds

**Question:** Can a non-public school use CARES Act funding to obtain an Interventionist to assist with the remediation of students during the school day?

**Answer:** An interventionist could be an allowable equitable service provided to a non-public school to the extent an interventionist is needed in response to COVID-19 (for example, if students missed instructional time due to COVID school closures). The LEA, however, not the non-public school, is ultimately responsible for providing the equitable services to a participating non-public school which the LEA can do either directly or through a contract. In other words, a non-public school could not hire an interventionist and expect reimbursement; instead the LEA must maintain control over the equitable services funds.

# Allowable Activities and Use of Funds

**Question:** How long may equipment and supplies purchased with CARES Act funds and placed in a non-public school remain in that non-public school?

**Answer:** Continued.

In general, once equipment or supplies are no longer needed for purposes of a CARES Act program, an LEA must remove them from the private school. (34 C.F.R. § 76.661(d)(1)). However, after equipment and supplies are no longer needed for the purposes of a CARES Act program, the LEA may continue to use the equipment or 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). The LEA retains title to, and must maintain administrative control over, the equipment and supplies.



# Equitable Services and the ESSER Incentive Fund



# Interim Final Rule Reference

## **Brief Summary of Rule**

Because ESSER Incentive Funds are limited to certain activities (curriculum materials, distance learning, aligned professional development, etc.), equitable services are also limited to those activities.

# Equitable Services and ESSER Incentive Fund

**Question:** Is the LEA required to provide equitable services on the incentive funds that were just awarded?

**Answer:** Yes, equitable services applies to the incentive funds.

**Question:** To be eligible for incentive funds the district had to agree to a set of objectives (Core Academics, Diverse Needs, Workforce talent, LEA Systems). Is this also a requirement of non-public schools?

**Answer:** Non-public equitable share will be limited to the same targeted activities for the incentive funds (i.e. curriculum, curriculum PD, etc.). Non-publics do not have to agree to the same objectives to be eligible for equitable share. Non-publics are not required to implement a Tier 1 curriculum nor will they be required to select vendors from the LDOE's approved vendor guide.

# Equitable Services and ESSER Incentive Fund

**Question:** As we understand it, our district can add incentive funding opportunity to the already signed Intent to Participate, and the NPs can just initial next to it with yes or no? If they accept Incentive funds, then they must complete a Needs Assessment?

**Answer:** Correct

**Question:** Should the non-public needs regarding the Incentive funds equitable share be the same as LEAs?

**Answer:** Not exactly, the NPs are not required to implement a Tier I curriculum nor or they tied to selecting a vendor from LDOE's vendor guide, however they are required to identify cost in those areas (i.e. curriculum materials, distance learning, aligned PD, etc.). They wouldn't be allowed to request expenditures outside of the priority areas for the incentive funds.

# Equitable Services and ESSER Incentive Fund

**Question:** If district is not participating with incentive funds, then non-public does not either, correct?

**Answer:** Non-public equitable services only applies to CARES Act funding actually received by the district.

**Question:** For the Strong Start Incentive funds, are NP schools limited to the same curriculum options and PD vendor options as public schools?

**Answer:** No, the non-publics will be able to request equitable services relative to their own curriculum. In addition, any related professional development does NOT have to be limited to the LDOE PD vendor guide.



# Technical Questions

# Technical Questions

**Question:** Should LEAs amend budgets in eGMS now and upload updated non-public affirmations, or should we wait until after the LaGov transition's require resubmission?

**Answer:** LEAs will be required to upload the updated Affirmation of Consultation documents in their initial submission of the 20-21 Strong Start application. Included in this submission will be the finalized non-public proportionate share calculations with updated consolidated budgets.

**Question:** Regarding timelines, when will the 2019-2020 application need to be amended? When will the Strong Start 2020-2021 open with allocations for Formula (carryover), Incentive, and GEERF?

**Answer:** The allocations for the Incentive and GEER funds will be included in the 20-21 Strong Start application which was released on July 17, 2020. Strong Start 2019-2020 rollover ESSER formula funds will be included in the 20-21 application once school systems complete their June 30<sup>th</sup> Periodic Expenditure Report and the agency approves it.

# Technical Questions

**Question:** There are things we need to purchase now and cannot wait - is there an expediting of the process so we can move forward? Or the consideration of being refunded?

**Answer:** The period of obligation has not changed regarding the ESSER formula funds, therefore the district can continue to expedite its purchases as planned. Once the school system submits its budget for the ESSER Incentive and GEER funds they can begin to obligate funding towards allowable activities.

**Question:** Are our previous Cares Act funding and allocations void as of June 30, 2020?

**Answer:** No, school systems may continue to obligate their ESSER Formula funding as planned. The balances as of June 30<sup>th</sup> will be included in the Strong Start 20-21 application once their June 30<sup>th</sup> Periodic Expenditure Report is approved by the agency.

# Technical Questions

**Question:** Do we complete the ESSER Formula 6/30 periodic expenditure report to allow the remaining funds to move to 20-21 and then do an amendment and change the equitable share allocation?

**Answer:** Yes, districts will apply the Interim Final Rule Options to their remaining ESSER Formula Funds once their 6/30 PERs are approved and the funding is loaded in their Strong Start 20-21 applications. Note that this will be a newly created Strong Start 20-21 application for which your district will budget its remaining ESSER Formula funds.



# State Ombudsman Responsibilities

- The state ombudsman will monitor and enforce the equitable services requirements to help ensure that LEAs provide equitable services to students and teachers in nonpublic schools.
- If LEA cannot conduct the required consultation it must notify the State Ombudsman via email for assistance.
- Contact Daphne Flentroy, LDOE State Ombudsman, at [Daphne.Flentroy@la.gov](mailto:Daphne.Flentroy@la.gov)