



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



July 8, 2020

Dear Superintendents,

I am writing to update you on the calculation of the “equitable services” set-aside for nonpublic schools under the CARES Act, Elementary and Secondary School Education Relief (ESSER) fund. In a communication from the Connecticut State Department of Education (the department) on June 8, 2020, districts were notified of a national dispute in how the “equitable services” provision of the ESSER fund was to be implemented. Guidance released by Secretary DeVos and the United States Education Department (USED) on April 30, 2020 significantly broadened how “equitable services” are shared as compared to what is required under Title I.

As you know initially, the department, with support of the Office of the Governor, the Office of Policy and Management, and the Office of the Attorney General, determined that it was appropriate to enact the plain language of the CARES Act. The ESSER application local educational agencies (LEAs) received on June 19, 2020 used this calculation methodology, and also provided each district with an estimate of what their “equitable services” calculation would be under the USED guidance for informational purposes.

Since that time, Secretary DeVos pursued an expedited Interim Final Rule (IFR), which is considered a final rule that is legally enforceable unless overturned by litigation. This rule was published July 1, 2020 and became effective immediately. This new rule details how LEAs must calculate the “equitable services” set-aside from their ESSER funds to provide services to students and teachers in nonpublic schools. The IFR differs not only from our original ESSER application, but also from USED’s initial guidance.

To determine the proportional share of ESSER funds an LEA reserves to provide “equitable services”, the LEA has two options:

Option 1: If the LEA wants to be able to spend its ESSER funds on both its Title I and non-Title I public schools, it must calculate the “equitable services” proportional share based on total enrollment in the elementary and secondary non-public schools in the LEA that choose to participate in the ESSER Fund programs compared to the total enrollment in the public elementary and secondary schools in the LEA.

Option 2: If the LEA wants to limit spending of its ESSER funds only on students and teachers in its Title I public schools, the LEA may base the “equitable services” proportional share calculation on poverty to determine its set-aside for non-public schools by:

- a. using the proportional share it used under Title I in the 2019-2020 school year or;*
- b. using the count of students from low-income families in non-public schools that will participate in the ESSER Funds programs compared to the total number of students from low-income families in Title I schools and participating non-public elementary and secondary schools in the LEA.*

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Option 1 of the IFR distributes more of a district's ESSER funding to the provision of "equitable services" for nonpublic schools residing within the boundaries of the district, but allows LEAs to spend ESSER funds on behalf of all of their public schools. Option 2 limits the amount of ESSER funds required to be set-aside for "equitable services" for nonpublic schools residing within the boundaries of the district, but also limits districts to spending ESSER funds only on their Title I designated public schools. Option 2 also requires the LEA to ensure it does not violate the supplement not supplant requirement in section 1118 (b) (2).

Of note, the IFR provides for the above options related to the *calculation* of funding, however, it does not make the same distinction related to those eligible for equitable services. To the contrary, it states that ***"the LEA still has the obligation to afford students and teachers in any non-public school in the LEA the opportunity to receive CARES Act services."*** Therefore, no matter which calculation method is used, all nonpublic schools in a district may benefit from CARES Act ESSER Fund services.

The department will be modifying the online ESSER grant application to reflect the new requirements of the IFR. Districts will be notified as soon as the changes have been made. If districts have already submitted their application, they will need to recalculate the "equitable services" portion and resubmit their application to the department for final approval.

If you have any further questions regarding this change, please call me at 203-206-4885.

Sincerely,


Kathy Demsey
Chief Financial Officer

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cc: School Business Officials