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## CARES Act Equitable Services Update

### Memo Information

<b>Memo Number</b>	COM-21-029
<b>Memo Date</b>	9/25/2020
<b>Memo Type</b>	Administrative
<b>Unit</b>	Legal Services
<b>Regulatory Authority</b>	Sec. 18005 of the CARES Act
<b>Response Required</b>	NO
<b>Attention</b>	Federal Programs; Superintendents; Assistant Superintendent

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### Memo Reference

No references available.

### Memo Text

The CARES Act requires that LEAs receiving GEER and ESSER funds provide equitable services to students and teachers in non-public schools "in the same manner as provided under § 1117 of the ESEA of 1965 [Title I]". Due to a recent federal court order, it is necessary for DESE to collect new information from LEAs regarding non-public schools that elect to participate in equitable services under the CARES Act.

This new data is needed very quickly to finalize CARES funding allocations. Therefore, we are requesting the attached forms be returned to ADE no later than **October 16, 2020**.

As of the date of this memo, districts should pause current equitable services using CARES Act funds and complete the consultation process and forms described below. When the revised CARES funds allocations are made available, the LEA should begin, or resume, providing equitable services to non-public schools as determined during the consultation. Further background information regarding the actions that led to this change is included below for your information.

#### CONSULTATION FORM:

The CARES Act requires that non-public schools be consulted on their needs for services under the Act, regardless of their previous participation in equitable services from the public LEA. Therefore, such consultation must occur between the public LEA and all private schools to which the public LEA has students attending. Documentation must be retained as proof of this consultation for audit purposes.

The "CARES ACT PS Consultation Form" attached to this memo provides a standard document for this purpose. This form must be completed for each non-public school consulted, regardless of participation selection. All consultation forms must be uploaded to the ESSER Funds folder in Indistar. Should you have questions about this form please email [jayne.green@arkansas.gov](mailto:jayne.green@arkansas.gov).

#### DATA FORM:

Data is needed that reflects the number of poverty students that reside within the public school boundaries and attend a non-public school, regardless of its location. It is only necessary to supply student counts for non-public schools that will participate in equitable services.

ADE has developed a form to assist with this data collection. The form is attached to this memo as the "CARES – PS Data Form". Each LEA should access this form, select the district name from the dropdown list at the top, then review and edit the non-public school data entered. The form should be saved or printed by the LEA. Once the review is complete, the form should be returned to ADE Finance via email to the addresses at the bottom of the form. Should you have questions about this form please email [april.cooper@arkansas.gov](mailto:april.cooper@arkansas.gov) or [mahoganyfranklin@arkansas.gov](mailto:mahoganyfranklin@arkansas.gov).

#### BACKGROUND

On July 1, 2020, the U.S. Department of Education (USED) published an Interim Final Rule (IFR) regarding the calculation of equitable services for non-public schools for the Elementary and Secondary School Emergency Relief (ESSER) Fund under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Through these rules, the USED directed local education agencies (LEAs) to calculate the proportionate share for equitable services to non-public schools based on how they intended to use ESSER funds within their districts. LEAs that intended to use their ESSER funds to support all schools would base the calculation of equitable services on the total population of students in non-public schools in the LEA. If the LEA intended to use their ESSER funds only for Title I schools, then the calculation for equitable services would be based on the proportion of eligible students in poverty in the Title I attendance areas.

On September 4, 2020, in *NAACP v. DeVos*, the U.S. District Court for the District of Columbia issued an order vacating the IFR. The judge granted summary judgment, which means the IFR is no longer binding and cannot be enforced unless the USED seeks and receives a stay of the district court's order. This ruling applies to all states, since it vacates the IFR in its entirety. At this time, it is not clear what guidance the USED will issue regarding ESSER funds that have already been spent, if any, nor whether it will appeal. On September 9, the USED posted an update acknowledging that "[o]n September 4, 2020, in *NAACP v. DeVos*, the U.S. District Court for the District of Columbia issued an opinion and an order vacating the IFR. Accordingly, the IFR is no longer in effect."

In light of the federal court ruling and the statement from USED, districts should follow Section 1117 of ESEA, and not spend more than the Title I methodology calculation amount, which will be provided to you after the receipt of new forms. The chart below provides further explanation of the change in methodology as a result of the court ruling.

Districts should consult with legal counsel regarding any questions about compliance with the law. Please be aware that there may be further developments in the litigation that could affect required activities.

ESEA section 1115(c) Non-regulatory guidance methodology - vacated by judge ruling	ESEA section 1117 Title I methodology
Calculation: Total students in participating non-public school / total students in public school district = proportional share of funds	Calculation: Total low-income students in participating non-public school / total low-income students in participating public school = proportional share of funds
Eligibility: LEA consults with each non-public school within the school district boundaries to determine if the non-public school wants to participate.	Eligibility: LEA consults with each non-public school within the school district boundaries to determine if the non-public school wants to participate. In addition, the LEA must consult with any non-public school outside of the district boundaries if a student residing within the district boundaries attends the non-public school.
Equitable Services Plan: LEA and non-public school collaborate on an equitable services plan.	Equitable Services Plan: LEA and non-public school collaborate on an equitable services plan.

### Attachments

- [CARES\\_ACT\\_PS\\_Consultation\\_Form\\_104352.docx](#)
- [CARES\\_-\\_PS\\_Data\\_Form\\_104404.xlsx](#)

