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CARES Act ESSER Equitable Services

Updated Guidance
October 2020

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Disclaimer

- This presentation is designed to help you understand federal and state requirements related to equitable services for the ESSER subaward.
- This presentation is *not a substitute* for reading the ESSER subgrant award, the program-specific assurances, the SCDE's Assurances and Terms and Conditions for Federal Subawards, and the applicable federal regulations for this subaward.

Purpose

- The purpose of this session is to provide updated information about the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and specifically the funds provided by it under the Elementary and Secondary Schools Emergency Relief (ESSER) Fund and the requirements for equitable services to students and teachers in participating, nonprofit non-public schools as of October 2020

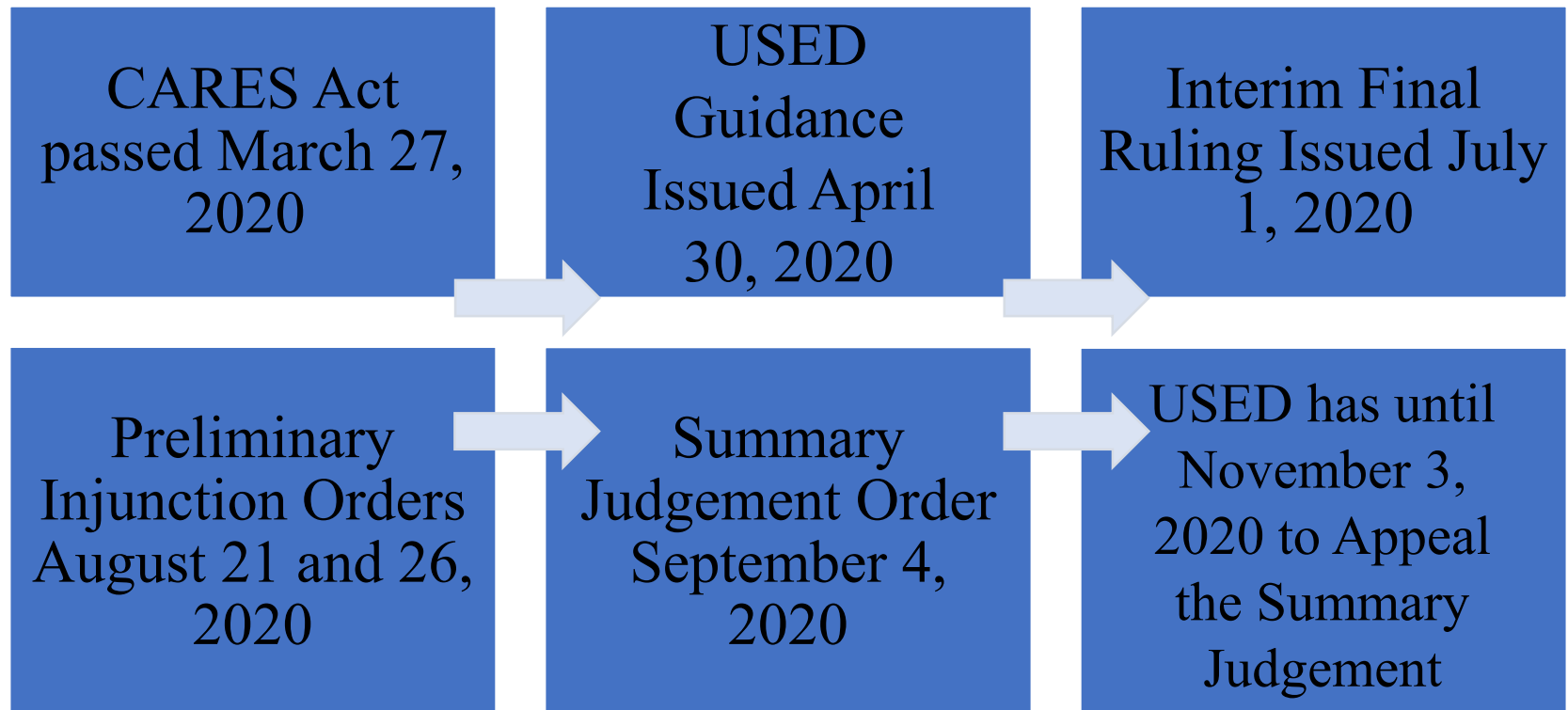
Proportionate Share Calculation

- Section 18005 of the CARES Act Provides for Equitable Services
- This applies to the Elementary and Secondary Schools Emergency Relief Fund (ESSER) and the Governors Emergency Education Relief Fund (GEER)
- Equitable Services should be provided to students and teachers in non-public non-profit schools in the same manor as provided under section 1117 of [ESEA](#)
- The LEA must maintain control of the funds provided for equitable services
- Nonprofit, private school “means a non-public elementary and 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 which grants are awarded under this section” (Section 18007)

ESEA Equitable Services

- “To the extent consistent with the number of eligible children identified under section 1115(c) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools” LEAs should provide services “on an equitable basis”

Timeline



Summary Judgement Order

- NAACP v. DeVos suit September 4, 2020
 - “In the Interim Final Rule promulgated in July 2020, the USED incorrectly construed the CARES Act to require LEAs to treat all private schools as entitled to equal funding as public schools, regardless of their low-income student populations.”
 - Judge Friedrich held that the Interim Final Rule is “contrary to the unambiguous mandate of the (CARES) Act”
- Congress intended for funding to follow the Title 1 allocation including in equitable services
 - There is no ambiguity in the language “in the same manner as”
 - USED lacks the ability to regulate on these issues (USED may still appeal until November 3, 2020 but does not plan to at this time)

USED Response

- September 9, 2020 CARES Act Update
 - “On July 1, 2020, the U.S. Department of Education (Department) published an Interim Final Rule (IFR) regarding equitable services under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. (The rule is available at: <https://www.govinfo.gov/content/pkg/FR-2020-07-01/pdf/2020-14224.pdf>). On 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.”

Moving Forward

- Option #1
 - Districts who have determined and expended their proportionate share based on enrollment and have expended all funds
 - No other action is required at this time. Districts may not recoup goods or services provided excepting assets that are inventoried (laptops)

Moving Forward

- Option #2
 - Districts who have determined but have not yet expended all of the proportionate share based on enrollment
 - May elect to reconvene and adjust proportionate share based on Title 1 status
 - If during the adjustment the district determines it has met the equitable services obligation by reaching or exceeding the proportionate share no other action is required
 - If after the adjustment the district determines the proportionate share has not been met the district should re-engage in a meaningful consultation with participating private schools to determine how remaining funds will be used

Moving Forward

- Option #3
 - Districts that have not yet determined the proportionate share
 - Districts should now determine the proportionate share amount based on the methodology outlined in section 1117 of [ESEA](#)

Moving Forward

- Option #4
 - Districts who have determined and expended the proportionate share based on Title 1 status
 - No additional action is required with respect to the equitable services provision
 - Provided that all eligible students in private schools were included in the calculation methodology
 - Districts that determined proportionate share based on Title 1 status are no longer obligated to expend ESSER funds solely on Title 1 schools, therefore districts should consider whether or not it needs to revise its ESSER budget and submit an ESSER spending plan [amendment](#)

Frequently Asked Questions

Q: What if my district has POs currently being processed or completed for private schools?

A: If a purchase order has already been completed and is an allowable expense under the allowable activities, it may count towards the allocation the non-public school receives even if it exceeds the allocation under the new calculation. It is allowable to freeze or cancel POs until additional consultation can occur. However, LEAs must reconsult with non-public schools and allow them to decide whether the school wants to cancel, freeze or adjust order.

FAQs

Q: Does this mean my district does not need to provide equitable services *anymore*?

A: **No.** This new rule does not mean districts are no longer required to provide equitable services. This means that districts will be able to change how the equitable services are distributed.

Q: What if my district has recalculated and all of the eligible private schools have received allocations that equal or exceed the new calculation under Title I?

A: No additional services need to be provided.

FAQs

Q: Can my district keep its current allocation even if it exceeds the Title I calculation?

A: The current IFR regarding this would not allow it. However, if an LEA documents that it was following previous guidance from the USED then it may be allowable. (Mitigating Circumstances 34 CFR 81.33(b)) LEA should still reconvene and re-consult with non-public schools and **document all dialogue between parties.**

Reminders

- Anytime an LEA chooses to change how equitable services are to be allocated you must re-consult the non-public schools eligible for participation
- Consultation must be meaningful and timely
- Districts who reengage in meaningful consultation should submit a new non-public school [consultation form](#)
- **No funds may go directly to a private school**
- Document all dialogue and interaction between LEA and non-public school

Dispute Resolution

- Any disputes between LEAs and non-public schools about equitable services will be facilitated by Theresa Gregory, SCDE's Equitable Services Ombudsperson tgregory@ed.sc.gov.

Questions

- Please email scesser@ed.sc.gov
- Additional Resources <https://ed.sc.gov/policy/federal-education-programs/esser-funding-information/>
- Program Coordinators
 - Caroline Heinz: cheinz@ed.sc.gov
 - John Massengill: jwmassengill@ed.sc.gov