Ohio | Department of Education

Special Note: CCIP Note #442 was unveiled to the public the afternoon of July 10, 2020. Shortly after the CCIP Note was unveiled, the U.S. Department of Education (USED) provided important updates regarding how states and LEAs must administer and calculate equitable services for nonpublic schools under the CARES Act. The information provided on CCIP Note #442 should be reviewed together with CCIP Note #443 (click here). The USED instructions and guidance on equitable services may be accessed here. (7/27/20)

CCIP Note # 442

Re: Equitable Services Interim Rule and Non-Public Equitable Services under ESSER Training
Date: July 10, 2020
To: Public School District and Community Schools Superintendents, Treasurers, Title I Directors/Coordinators and Consolidated Application Contacts; Nonpublic Principals and Superintendents

U.S. Department of Education Releases Interim Rules on Non-public Equitable Services and Offers 30 Day Comment Period

The U.S. Department of Education (USED) has published in the Federal Register an Interim Final Rule (IFR) on the equitable services requirements of the USED administered programs in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The rule is located on the USED website here. Once published, the rule became effective immediately. There is a 30-day public comment period. Interested parties may submit comments through the Federal eRulemaking Portal by going to www.regulations.gov.

Application of the Rule

There are a few notable concepts relative to the application of the rule.

- ***No impact on community schools:*** Nothing in the rule, and nothing in this document impacts community school spending of USED CARES Act program funds, since they do not have set geographic boundaries. Only traditional public school districts are impacted by this rule and responsible for equitable services determinations and support.
- ***Applies only to USED administered CARES Act programs:*** The rule's applicability is only to the CARES Act programs administered by the USED and received by State Educational Agencies or Local Educational Agencies (LEAs or districts). These programs are the Elementary and Secondary School Emergency Relief (ESSER) funds, including the state activities reservation, and the Governor's Education Emergency Relief (GEER) funds. (The rule does not apply to other CARES Act funds not administered by the USED, but which may be made available to schools and districts.)

Interpreting the Rule

The Ohio Department of Education (Department) and its Office of Federal Programs (OFP) are reviewing the IFR for its impact on the implementation of the USED CARES Act programs (ESSER and GEER funds). There are still many unknowns and we will provide guidance as it becomes available. (Of note is that the Attorneys General for four states and the District of Columbia have filed a legal challenge to overturn the IFR.) The USED will be updating their frequently asked questions document found here. LEAs have until September 2022 to spend the ESSER fund formula grant funds.

Highlights of Rule (based on the Department's Initial Interpretation)

It is important to understand that how a district chooses to ***spend its own share of USED CARES Act program funds,*** will determine the amount that must be spent by the district on ***equitable services*** for non-public schools. A district does not need to spend amounts received under the various USED CARES Act programs in the same

way.

Options for How a District Can Spend USED CARES Act Program Funds: When receiving any of the USED CARES Act program funds, the LEA has two options for how to spend them. Each option has particular requirements and ramifications, including the amount and manner in which equitable services amounts for non-public schools must be computed:

1. **Spending USED CARES Act program funds <u>ONLY</u> in Title I schools**
   In this case, the district chooses to use its share of USED CARES Act program funds only in its Title I schools.
   - *<u>Determining Equitable Services Amounts:</u>* The equitable services amount that the district must spend can be calculated using one of the following two approaches:
     i. Making a calculation in a manner comparable to the computation made under Title I, Part A in the 2019-20 school year. This required using 2019-20 school year data to compute the proportion of the number of low-income children in participating non-public schools (***including outside-the-district non-public schools***) compared to the combined number of low-income children in participating district Title I schools plus the low-income children in non-public schools; or
     ii. Making a calculation based on the number of low-income children in participating non-public schools ***within the district only*** compared with the number of low-income children in participating district Title I schools plus the low-income children in non-public schools ***within the district.***
   - *<u>Supplement, not Supplant Applies:</u>* The district's use of the USED CARES Act program funds ***must comply with Title I, Part A supplement not supplant requirements***. In other words, the funds must be used only at Title I schools ***and*** in a supplemental manner, not replacing the state and local responsibility.

2. **Spending USED CARES Act program funds districtwide or in any <u>non-Title I school</u>**
   In this case, a district chooses to use its funds more broadly and not limited to Title I schools.
   - *<u>Determining Equitable Services:</u>* The equitable services amount must be calculated using the total enrollment of participating non-public school students as a proportion of the total enrollment of students in the district plus total enrollment of participating non-public school students.
   - *<u>Supplement, not Supplant Does Not Apply:</u>* If the LEA chooses this option, the ***supplement, not supplant provision does not apply*** to how the LEA uses its funds, and LEA funds may be used in any school in the district, not just Title I schools.

Consultation Requirement: The LEAs must consult with non-public schools prior to making a decision impacting the non-public school participation, including consultation on the approach the LEA should take regarding the option of spending the CARES Act funds which will determine how the LEA will make the equitable service calculations.

In conducting the consultation, LEAs should communicate with the appropriate non-public schools the following, in particular the bolded sentence, which is specifically quoted from the IFR:

> *The U.S. Department of Education "…discourages the small number of financially well-resourced non-public K-12 schools from accepting CARES Act-funded equitable services. Such schools include non-public boarding and day schools with tuition and fees comparable to those charged by the most highly selective postsecondary institutions. These schools tend to serve families from the highest income brackets, although they sometimes offer a limited number of scholarships to low- and middle-income students each year.* ***The USED believes such non-public schools have ample resources to serve their students and teachers during the COVID-19 national emergency and should not rely on taxpayer funds to do so."***

Private schools are afforded the opportunity to file a formal complaint against any LEA they believe has not complied with the timely and meaningful consultation requirements.

Obligation to Offer Equitable Services: Regardless of how the LEA determines the equitable services amounts, the rule indicates that the LEA must offer USED CARES Act program services to any non-public school (excluding for-profit schools) located in the LEA. According to the CARES Act (section §76.665(d)(2)), each non-profit private school in an LEA may request CARES Act services for its students and teachers.

Recommendations for Compliance with the Rule

As described above, the rule includes choices, each of which has specific implications. The Department is still reviewing the language and determining the guidance and supports it can offer to LEAs and private schools to facilitate their implementation of these important provisions. Below are some recommendations and considerations:

- ***Begin consultation promptly:*** Since this interim rule is effective immediately once published, the Department recommends the LEAs begin consulting with all non-public schools (excluding for-profit schools) within their boundaries to discuss the impact of this rule and the method and manner of providing USED CARES Act program services to the non-public schools. The Department recommends explicitly discussing the USED statement discouraging participation by "financially well-resourced non-public schools" during the consultation process.
- ***Review amounts previously reserved.*** The Department recommends reviewing the equitable service amounts the LEAs were required to reserve when submitting the ESSER application in the CCIP using both the low-income approach and enrollment approach. Ohio's initial requirement for LEAs to calculate both approaches and spend no more than the lowest of the two approaches should help smooth the transition to meeting the requirements of the rule.
- ***Non-public school participation in equitable services.*** Regardless of the method used to determine the equitable services share, the non-public school may benefit from the services for any authorized USED CARES Act program activity and is ***not limited to serving only Title I eligible students and supporting educators***. However, should the district choose to spend USED CARES Act program funds only in Title I schools, the LEA and the non-public schools receiving equitable services are subject to the supplement, not supplant requirements.
- ***Districts with no private schools in their boundaries:*** More than half of the school districts should not be impacted by the rule. This is the case for school districts with no private schools within their boundaries. The Department encourages LEAs that are not impacted by the rule to continue executing and spending funds according to their approved plans.
- ***Thoughtful consideration when deciding on the option to use:*** The Department encourages LEAs with private schools within their boundaries to be thoughtful and strategic in deciding the manner in which the LEA will spend its USED CARES Act program funds according to the limitations of the new rule – either solely in Title I schools (and subject to supplement, not supplant requirements) or in all schools (and not subject to supplement, not supplant requirements). LEAs that spend funds solely in Title I schools and do not determine the equitable service amounts based on total participating private school enrollment are subject to supplement, not supplant requirements. For each funding allocation, a district can make a separate determination about how it will spend its own funds which then determines the manner in which equitable services are computed, and whether supplement, not supplant applies.

Important Announcement on Risk-Based Monitoring

It is important to note that LEAs will be subject to significant USED CARES Act program monitoring and reporting requirements. The Department, as well as other state and federal agencies, will provide oversight to ensure LEAs are complying with the USED CARES Act program provisions, including the non-public equitable

service rule. LEAs must ensure they have proper processes and procedures in place to account for the equitable service funds, retain control and oversight of the funds and ensure private schools are implementing services according to the allowable uses of the USED CARES Act program funds. Furthermore, since the USED rule stipulates that LEAs selecting to determine equitable service amounts according to low-income student counts are subject to Title I, supplement, not supplant requirements, these LEAs will be subject to additional risk-based monitoring by the Department.

Nonpublic Equitable Services under ESSER Training

The Office of Federal Programs (OFP) has reserved a date in July for a training on Nonpublic Equitable Services under ESSER. The information will be relevant to both public districts and nonpublic school leaders.

The session will be held on **Tuesday, July 28th from 10:00 AM – 11:30 AM**.

Registration
Please register in STARS V2.0, which can be accessed through your OH|ID Account. To find a session that works with your schedule, we recommend searching any of the following fields:

Event Name: Equitable Services under ESSER
Keywords**:** nonpublic, ESSER, federal programs

Session Format
In light of the current COVID-19 related circumstances and to best provide support, this session will be held remotely. Attendees will be able to join using the Skype link shared in the STARS event. At the time of the session, please use the link to join the meeting.