Email from US Department of Education Office of Non-Public Education:
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To: ONPE <ONPE@ed.gov>
Subject: CARES Act Equitable Services Resource

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CARES Act Equitable Services – Questions

Does 34 C.F.R. § 76.665(c)(3) add a supplement not supplant requirement to a CARES Act program?

No. Section 76.665(c)(3) does not establish a supplanting prohibition with respect to CARES Act funds. 34 C.F.R. § 76.665(c)(1)(i) acknowledges that an LEA may choose to use all its CARES Act funds only for students and teachers in Title I schools in order to focus those funds in schools with the highest needs, and then authorizes the LEA to determine the proportional share available for equitable services based on poverty, rather than enrollment. Section 76.665(c)(3) merely cautions an LEA that so targets its CARES Act funds that the LEA would likely violate the *Title I, Part A* supplement not supplant requirement in section 1118(b)(2) of the ESEA if the LEA were to use CARES Act funds to supplant State and local funds in its Title I schools and redirect the State and local funds to its non-Title I schools. This is because, under section 1118(b)(2), an LEA must treat Title I schools neutrally in the distribution of State and local funds—i.e., irrespective of whether they are a Title I school. If an LEA redirects State and local funds from its Title I schools because they are receiving CARES Act funds, the LEA would not be treating its Title I schools neutrally with respect to State and local funds. Rather, it would be reducing the amount of State and local funds they receive because they are Title I schools and receive all the LEA's CARES Act funds.

Must an LEA that receives a discretionary grant or enters into a contract under the GEER Fund or the ESSER SEA Reserve reserve a proportional share for equitable services to students and teachers in non-public schools?

Yes. An LEA that receives a discretionary grant or enters into a contract under the GEER Fund or the ESSER SEA Reserve must reserve a proportional share to provide equitable services to students and teachers in non-public schools consistent with 34 C.F.R..

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

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).

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.

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?

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.

For example, an LEA may use CARES Act funds to reimburse a non-public school for costs related to cleaning and sanitizing a school facility that occurred on or after March 13, 2020, in response to the COVID-19 pandemic, but before the LEA and non-pubic school officials engaged in timely and meaningful consultation. To maintain control over the CARES Act funds, the LEA must ensure that the non-public school's expenditures represent allowable expenses, that the non-public school has sufficient documentation supporting such expenditures, and that the school actually received the services or assistance related to those expenditures.

Similarly, 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.

In each case, such educational services or other benefits, including materials and equipment, must be secular, neutral, and nonideological. For example, under the conditions outlined above, it would be permissible for an LEA to reimburse a private school for devices used to establish a wireless hotspot for remote learning, but not for software designed to provide religious instruction.

May an LEA use CARES Act funds to facilitate remote learning for students and teachers in a non-public school?

Facilitating remote learning, such as purchasing laptops, increasing bandwidth, providing improved cyber security or purchasing virtual classroom platform licenses, as a result of COVID-19 for students in a non-public school may be an allowable expense under the CARES Act, provided that certain conditions are met. If increased bandwidth or improved cyber security requires the purchase of materials or equipment, such as IT equipment or security software, an LEA must maintain title to the materials, equipment, and property purchased with CARES Act funds and must administer such materials, equipment, and property. If such materials and equipment are provided through contract with a third-party provider, the LEA must contract with the third-party provider.

Consistent with ESEA section 1117(a)(2) and 34 C.F.R § 76.665(e), any services or other benefits, including materials and equipment, provided to non-public school students and teachers must be secular, neutral, and nonideological.

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

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.