



CARES Act Equitable Services Updated December 3, 2020

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Providing Equitable Services to Students and Teachers in Participating Private Non-Profit Schools Under the CARES Act Programs

The purpose of this document is to provide information about equitable services for students and teachers in private non-profit (PNP) schools under the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\), Public Law 116-136, 134 Stat. 281](#). This guidance must be read and interpreted in its entirety. LEAs may not pick and choose sentences out of context of the entire document.

UPDATED
12/3/20

The CARES Act authorized the [Education Stabilization Fund \(ESF\)](#) that creates funding streams for several distinct education programs that address the [impact of the Novel Coronavirus Disease 2019 \(COVID-19\) on educational services](#). Provisions and additional information on the CARES Act relevant to the ESF and other Texas Education Agency (TEA) programs are available on the [TEA COVID-19 Support and Guidance](#) website.

Two programs in the ESF require a local educational agency (LEA) that receives funds to provide equitable services to students and teachers in PNP schools:

- The Governor's Emergency Education Relief Fund (GEER) if grants are awarded to LEAs (Section 18002 of the CARES Act).
- The Elementary and Secondary School Emergency Relief Fund (ESSER) (Section 18003 of the CARES Act).

This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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Providing Equitable Services to Students and Teachers in PNP Schools under the CARES Act Programs

General Guidance– Updated October 8, 2020

Only equitable services may be provided to participating private nonprofit schools (PNP). Funding may not be provided to the PNP, except in limited cases where the PNP may be reimbursed for allowable costs that occurred between March 13, 2020, and the date of the first ESSER equitable services consultation as described below.

New Federal Interim Final Rule (IFR) – Updated October 15, 2020

TEA acknowledges the difficulties caused by these circumstances and how the guidance has changed slightly since September 10, 2020, and that districts may be conducting a recalculation of the equitable services amount.

On Friday evening, September 4, 2020, a federal judge in the United States District Court for the District of Columbia issued an order striking down the CARES Act equitable services Interim Final Rule (IFR). The decision is an order for summary judgment vacating the IFR in its entirety nationwide. This order “vacates” the rule, leaving no IFR in place for USDE to enforce in any jurisdiction.

On September 25, 2020, USDE issued a policy letter to states, and posted it on their website, stating that it will not appeal the summary judgment. The IFR has been vacated in its entirety and is no longer in effect. USDE further stated they will not take any action against States or local districts that followed the guidance and/or the IFR while it was in effect prior to notice of the court’s decision. For Texas districts, this notice was provided on September 10, 2020.

USDE released a small revision to its guidance on October 9, 2020. While the revised guidance document does not make any significant changes, it does offer some flexibility as described below.

Districts who calculated their private school equitable services amount using Option 1a (prior year (2019-2020) Title I, Part A percentage of low-income students) under the IFR may: 1) continue to provide equitable services as planned, or with agreement of all participating private schools may 2) update the school year of the Title I, Part A percentage of low-income students to 2020-2021, or 3) compute a new calculation consistent and compliant with ESSA, Section 1117.

- The district is no longer restricted to only providing ESSER services to Title I-served campuses under this option, as that restriction only existed in the IFR.

Districts who calculated their private school equitable services amount using Options 1b (low-income based on private school location) or Option 2 (total private school enrollment) *must* now take the following steps.

- Immediately consult with the private nonprofit school officials to discuss the changes to allocation calculation and services caused by the IFR being vacated.

- Recalculate the equitable services amount using either 1) the 2019-2020 or 2020-2021 Title I, Part A percentage of low-income PNP students,¹ or 2) a new calculation consistent and compliant with ESSA, Section 1117, based on low-income students that reside in participating attendance areas (referred to hereafter as a new Section 1117 calculation) as quickly as possible. This calculation must be completed by October 31, 2020, after new consultation with private school officials.
- Continue to implement equitable services using the new calculation.
- The district is no longer restricted to only providing ESSER services to Title I-served campuses as that restriction only existed in the IFR.
- The district may choose, but is not required, to hold the difference in funding amounts between the prior calculations and the new Section 1117 Calculation in reserve until if/when USDE issues future guidance.

On November 9, 2020, USDE clarified that the LEA may count only PNP children from low-income families who live in a participating Title I public school attendance area which serves the grade level of the PNP child for determining equitable services proportionate share.

Title I public school attendance area is defined as the “geographical area in which the children who are normally served by that [public] school reside.”

Determining the CARES Act Eligibility for PNP Equitable Services

1. **Does the requirement to provide equitable services to students and teachers in PNP schools apply to any programs under the CARES Act? [Posted May 28, 2020](#)**

The CARES Act establishes two new funds to which equitable services requirements apply. Specifically, an LEA (interchangeable with ‘district’ hereafter) that receives funds under either the GEER or ESSER to provide equitable services to students and teachers in PNP schools in the same manner as provided under section 1117 of the [Elementary and Secondary Education Act of 1965 \(ESEA\)](#). (Section 18005(a) of the CARES Act). “As provided under Section 1117” is defined in this guidance document per USDE guidance.

2. **What is a “non-public school” under the CARES Act programs? [Posted May 28, 2020](#)**

A non-public school means a private nonprofit (see question 3 below) elementary or secondary school that: (A) is accredited, licensed, or otherwise operates in accordance with Texas state law; and (B) was in existence prior to March 13, 2020.

¹ Calculating the equitable services percentage using the 2019-2020 or 2020-2021 Title I, Part A percentage of low-income students is added flexibility allowed by USDE’s October 9, 2020, guidance. However, before using this method the LEA should acknowledge that the Title I, Part A calculated percentage of low-income students, depending on the district’s individual situation, 1) may include additional low-income PNP students who do not attend private schools located within the district boundaries (increasing the equitable services amount for ESSER), or 2) may not include all the low-income PNP students at all the private nonprofit schools that have elected to participate in ESSER equitable services (decreasing the equitable services amount). The district must consult with private school officials before selecting this option and discuss both the pros and cons of the option.

Non-public and PNP terms are used interchangeably.

3. Is a for-profit non-public school eligible to receive equitable services for its students and teachers under the CARES Act programs? [Posted May 28, 2020](#)

No. A for-profit non-public school is not eligible to receive equitable services for its students and teachers under the CARES Act programs.

4. Must a district offer equitable services under the CARES Act programs to students and teachers in *all* PNP schools located within its boundaries, even if a PNP school has not previously participated in equitable services under Title I, Part A or Title VIII of the ESEA? [Posted May 28, 2020](#)

Yes.

5. Are all students and teachers in a PNP school eligible to receive equitable services under the CARES Act programs? [Updated September 17, 2020](#)

Yes. All students and teachers in a PNP school are eligible to receive equitable services under the CARES Act programs, unless the Governor (under the GEER Fund) or TEA (through the TEA reserve under the ESSER Fund) targets discretionary funds for a specific purpose or population of public and PNP school students.

Unlike Title I, Part A, equitable services under the CARES Act programs are not based on residence in a participating Title I public school attendance area and are also not limited only to low-achieving students and their teachers.

Regardless if the equitable services calculation includes low-income students from a particular PNP, the school district must serve all private nonprofit schools choosing to participate in equitable services under ESSER. This is not changed with the vacating of the IFR.

6. What does it mean to ‘operate in accordance with Texas state law?’ What PNP documentation could be shared with a district to satisfy this requirement? [Posted June 25, 2020](#)

The eligibility requirement means the private nonprofit school is operating legally within the State of Texas. The PNP should share its 501(c)(3) nonprofit status documentation from the state. In addition, private schools located in Texas that are accredited under TEPSAC or IALDS may choose to share their accreditation status, instead.

7. Are PNP schools able to participate in the CARES Act programs if they are also participating in the Small Business Association paycheck protection program (PPP)? [Posted June 25, 2020](#)

Yes. Nothing in the CARES Act prohibits a PNP school from receiving equitable services under the ESSER grant for students and teachers if the school has also received benefits under the PPP. However, there may be no duplication of services (double-dipping) provided with the two sources of federal funds. This means if payroll was paid under PPP, then no services related to

payroll may be requested as ESSER equitable services.

8. May a homeschool participate and receive ESSER equitable services? [Posted June 25, 2020](#)

Only if the homeschool can provide documentation of 501(c)(3) nonprofit status and can document that it was in operation prior to March 13, 2020. In Texas, homeschools are classified as private schools. Remote (virtual) learning at home while schools were closed is not homeschooling.

9. May a homeschool student be served with ESSA equitable services if the student has a disability? IDEA has insisted districts serve homeschool students as a PNP school. [Posted June 25, 2020](#)

See question 8 above.

10. Our PNP school is an accredited preschool ranging in age from 18 months to 5 years, may ESSER equitable services be provided? [Posted June 25, 2020](#)

Yes, but only if the school serves at least the Kindergarten grade level at the school. Federal funds may not serve stand-alone PK, preschool, or Early Childhood programs without a Kindergarten grade level in the school.

Requirements for Providing the CARES Act PNP Equitable Services

1. Which district is responsible for providing equitable services to PNP school students and teachers under the CARES Act programs? [Posted May 28, 2020](#)

The district responsible to provide equitable services for students and teachers is the one in which the PNP school is physically located regardless of any student's residence.

2. Who is responsible for initiating the consultation process and how should it begin? [Posted May 28, 2020](#)

The district is responsible for initiating the consultation process. It must contact officials in all PNP schools within the district boundaries to notify them of the opportunity for their students and teachers to obtain equitable services under the CARES Act programs. Through this initial contact, the district can explain the services available under the CARES Act programs and how PNP school students and teachers can participate. If PNP school officials have not been contacted, they may contact the district or the TEA ombudsman to inquire about equitable services under the CARES Act programs.

If PNP school officials request equitable services for their students and teachers, the district must consult during the design and development of its own program and before the district makes decisions that could affect the opportunity of PNP schools and before the district submits its application to TEA for funding.

3. How does a district that receives funds under the CARES Act programs provide equitable services to PNP school students and teachers “in the same manner as provided under section 1117 of the ESEA” as stated in statute? Updated September 17, 2020

A district must provide equitable services to students and teachers in a PNP school in the same manner, as provided under ESEA section 1117, as determined in consultation with representatives of PNP schools (section 18005(a) of the CARES Act). The district may serve *all* PNP school students and teachers without regard to family income, residency, or eligibility based on low achievement.

The following describes how the provisions of ESEA section 1117 (Title I, Part A) apply, reconciled when necessary, to meet the purposes of the CARES Act programs according to USDE guidance.

- Equitable services are available to *any* students and teachers in any PNP schools within the district’s boundaries.
- A district must provide equitable services, materials, equipment, and other benefits that are secular, neutral, and nonideological.
- A district must provide services and other benefits for PNP school students and teachers in a timely manner that are equitable in comparison to services and benefits provided to the public-school students and teachers.
- The TEA Ombudsman will monitor and enforce the requirements of the CARES Act.
- A district must determine the proportional share based on calculation methodology defined above that aligns to Section 1117.
- A district must obligate CARES Act funds for equitable services in the 2020-2021 school year to address the impact of COVID-19.
- A district must consult with PNP school officials during the design and development of all relevant program issues. The district and PNP shall both have the goal of reaching agreement on how to provide equitable and effective services. The district must transmit the results of that agreement annually to the TEA Ombudsman through the Affirmation of Consultation form.
- A district must provide written rationale of any district disagreements to the PNP equitable services requests and views following consultation. This includes if the PNP officials do not agree with the calculation methodology chosen by the district.
- A district must provide consultation before the district makes any decision that affects the opportunities of PNP students and teachers to receive equitable services and before submitting the district’s application for funding to TEA. Expenditures for services, both to the school district and private nonprofit schools, may not begin until after the consultation process is completed. Consultation meetings need not occur in person if they cannot be conducted due to closed schools or social distancing orders due to COVID-19. In this case, TEA recommends districts and PNP schools consult remotely (which may be virtual or by phone).
- The consultation process must include discussion of district service delivery

mechanisms.

- A district must control CARES Act funds used for equitable services and retain ownership and title to all equipment, materials, and/or property provided to the PNP. In addition, services for PNP school students and teachers must be provided by the district directly or through contract with another public or private entity. (Section 18005(b)).
- TEA must provide notice to PNP school officials of the [LEA's allocation of funds](#) for educational services and other benefits that are determined available for PNP school students and teachers.
- A district must submit to the TEA Ombudsman a written CARES ESSER Affirmation of Consultation form signed by the district and each participating PNP school that timely and meaningful consultation has occurred.
 - The signed *CARES Act ESSER PNP Affirmation of Consultation* form must be submitted by the district through the TEA Login (TEAL) ESSA Reports Application system by TEA's determined due date.
 - If the PNP school does not sign the Affirmation of Consultation, the district must keep documentation on file that such consultation has taken place, or multiple attempts at consultation have taken place, and provide documentation available upon TEA request.
 - TEA must provide equitable services directly or through 3rd party contractors, if a PNP school files an official complaint against the district, TEA determines the district did not meet the applicable requirements, and the PNP makes the request.
 - However, TEA or a 3rd party contractor providing direct equitable services will *only* occur if TEA substantiates the validity of the PNP complaint after an official investigation. If the complaint is substantiated, the TEA will follow policies and procedures located in the [TEA Procedure for Offering PNP Equitable Services Upon Request](#) document.

4. Do the requirements in [34 CFR § 200.66](#) apply to equitable services under the CARES Act programs? [Posted May 28, 2020](#)

No, those Title I, Part A regulations requiring supplemental services, *do not* apply to equitable services under the CARES Act programs.

Equitable services under the CARES Act programs, by definition, may benefit a PNP school, such as purchasing supplies to sanitize and clean the facility, or all students in a PNP school. Moreover, the CARES Act *does not have a supplement not supplant* (SNS) requirement.

5. Must a district operating remotely continue to provide equitable services to eligible English learners enrolled in private schools? [Posted May 28, 2020](#)

Yes, the district has an obligation to provide equitable services to eligible private school ELs and their teachers as agreed upon during the consultation process between the district and private school officials (Section 8501). However, due to school closures, additional consultation with

private school officials may be required to determine if there are potential barriers to students receiving services via remote learning and how such barriers might be overcome. This discussion might also include the option of temporarily suspending equitable services during school closures. Services could then resume once schools reopen and possibly extend into the summer.

If funds allocated for equitable services in the 2019-2020 school year remain unobligated, they must be carried over to provide services in the next academic year in addition to services the students otherwise would receive based on the 2020-2021 school year allocation. (USDE Fact Sheet: [Providing Services to ELs During the COVID-19 Outbreak](#) May 18, 2020)

6. How would a district handle a request in January from a PNP school to start receiving equitable services under ESSA programs when the PNP has turned down services in the consultation meetings earlier in the year? [Posted July 9, 2020](#)

The district should politely notify the private school official that the deadline for requesting equitable services for 2020-2021 has passed and that program funds have been allocated to other uses.

Note: USDE has in the past supported districts in closing the time period for a private school to request equitable services at the end of the fall semester.

7. What if a PNP school declines to participate in the CARES Act programs or does not respond to a district's request for consultation? [Posted May 28, 2020](#)

The district then has no further responsibility to provide equitable services to students or teachers in that private school. The district, however, must be able to demonstrate that it made a good faith effort to contact all the non-public schools in the district's boundaries.

8. May a district use Facebook or other social media and virtual meeting options to conduct meetings for the required consultation? [Posted May 28, 2020](#)

The required consultation may be held in a variety of virtual settings due to the circumstances. Document the meeting and those participating as best as you can. TEA will be flexible in compliance reviews if you document your circumstances and try to meet the intent of the law as best as you can at the time.

9. If a district requires a completed needs assessment from participating private schools for all ESSA programs and indicates a deadline, can they follow the same process for CARES Act – require a needs assessment and indicate a deadline for that completed needs assessment? [Posted June 4, 2020](#)

Generally, yes, but a needs assessment is not statutorily required for equitable services. This can be done during the required consultation process with private school officials.

10. How would a district provide CARES ESSER direct instruction for equitable services if the PNP school was providing solely online learning for students? [Posted June 25, 2020](#)

The district would hire staff to provide instruction through online learning the same way it serves public school students with online learning.

- 11. Using CARES ESSER funds, a district purchases one-to-one electronic devices that go home with private school children as a part of a distance learning initiative. Some of those devices are damaged or lost with no insurance policy to cover it. Must the district fix and/or replace equipment using non-equitable services funding, or does the district use the equitable services portion available to all participating schools to cover costs? [Posted June 25, 2020](#)**

It is recommended that the district draft an inventory policy including a lost/damaged clause that clearly outlines responsibilities of both the district and PNP. During consultation, the district must be clear and transparent with PNP school officials. It is also suggested that each participating private school may want to draft a policy for their students, so the student and/or family is also aware of the district's policies and procedures. In addition, the district should have a signed assurance that the PNP school accepts liability and that any devices, equipment, and/or materials will be used only for secular, neutral, a nonideological activities.

If the above district policy and clauses are in place, it is not the expectation of TEA that the district repair or replace the equipment from non-equitable services funding.

Determining Proportional Share for the CARES PNP Equitable Services

- 1. How does a district determine the proportional share of funds that must be reserved to provide equitable services to PNP school students and teachers under the CARES Act programs?**

- A. What is the base amount on which the proportional share is determined?**

A district must use the total allocation it receives under each CARES Act program (GEER and/or ESSER) to determine the proportional share available for equitable services before reserving any funds for other purposes, such as administration.

- B. What data does a district use to determine the proportional share? [Updated September 17, 2020](#)**

The district needs the amount of its total ESSER allocation and poverty data on PNP children residing in participating Title I public school attendance areas who attend public and private schools.

- C. Are district and PNP children who are 5 years old but enrolled in a Pre-Kindergarten program included in the total enrollment count for the CARES Act ESSER grant?**

Yes, if the PNP has at least a Kindergarten grade level at the school. For funding purposes to the district and for determining equitable services amounts for participating private nonprofit schools, you only count age 5-17 students (on the agreed upon date the count is taken). Any student in EC-12 may be served, regardless of age.

2. How does a district calculate the proportional share? Updated October 15, 2020

Districts who calculated their private school equitable services amount using Option 1a (prior year (2019-2020) Title I, Part A percentage of low-income students) under the IFR may: 1) continue to provide equitable services as planned, or with agreement of all participating private schools may 2) update the school year of the Title I, Part A percentage of low-income students to 2020-2021, or 3) compute a new calculation consistent and compliant with ESSA, Section 1117.

Districts who calculated their private school equitable services amount using Options 1b (low-income based on private school location) or Option 2 (total private school enrollment) *must* now recalculate the equitable services amount using either 1) the 2019-2020 or 2020-2021 Title I, Part A percentage of low-income PNP students,² or 2) a new calculation consistent and compliant with ESSA, Section 1117, based on low-income students that reside in participating attendance areas by October 31, 2020, after new consultation with private school officials.

ESEA, Section 1117 requires an LEA to determine an accurate count of children from low-income families who attend public and private schools and reside in participating Title I public school attendance areas, which serve the grade level of the student, in order to allocate the proportional share.

With respect to private school students, ESEA, Section 1117 and therefore ESSER permits an LEA, based on timely and meaningful consultation, to use:

- a. **The same measure of poverty used to count public school children.** If the same measure of poverty used to count public school children is available for private school students (e.g., federal free and reduced price lunch (FRPL) data) and the district concludes, after consultation with appropriate private school officials, that the data will yield an accurate count of private school students, USDE recommends that the district use the same measure.
- b. **Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable.** The district may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. (ESEA section 1117(c)(1)(B)). The district should not require that the private school officials give the names of low-income families. The only information necessary for the district to collect from such a survey of private school children is—

² Calculating the equitable services percentage using the 2019-2020 or 2020-2021 Title I, Part A percentage of low-income students is added flexibility allowed by USDE's October 9, 2020, guidance. However, before using this method the LEA should acknowledge that the Title I, Part A calculated percentage of low-income students, depending on the district's individual situation, 1) may include additional low-income PNP students who do not attend private schools located within the district boundaries (increasing the equitable services amount for ESSER), or 2) may not include all the low-income PNP students at all the private nonprofit schools that have elected to participate in ESSER equitable services (decreasing the equitable services amount).

- i. verification of residence in a participating Title I public school attendance area;
- ii. grade level and age of each child; and
- iii. income level of parents.

If, based on consultation with private school officials, the district chooses to extrapolate the survey results to the private school’s entire enrollment, the district will also need the private school’s enrollment. For example, in a private school with an enrollment of 400, if an LEA receives survey data for 300 children that indicate that 150 children are from low-income families (50 percent), to extrapolate the results the LEA would multiply 400 by 0.5 to determine that there are 200 children in the school from low-income families.

- c. **Comparable poverty data from a different source.** The district may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same. For example, the district uses FRPL data, but private school children do not participate in the FRPL program; however, private school officials are able to provide the district with a count of children who are from low-income families using other comparable sources of poverty data such as eligibility for means-tested tuition scholarship programs.
- d. **Proportionality.** The district may apply the low-income percentage of each participating Title I public school attendance area to the number of private school children who reside in that school attendance area to derive the number of private school children from low-income families. To do this, the district will need the addresses, grade levels, and ages of those students attending private schools.

For example, if the percentage of poverty in a public school attendance area is 60 percent and there are 50 private school children residing in the public school attendance area, the LEA would derive 30 (60% of 50) private school children from low-income families who reside in the attendance area.

- e. **An equated measure.** The district may use an equated measure of low-income by correlating sources of data—that is, determining the proportional relationship between two sources of data on public school children and applying that ratio to a known source of data on private school children. For example, the district uses FRPL data, but those data are not available for private school students. However, if TANF data are available, the district could determine an equated measure of poor children in private schools based on FRPL data by correlating the two sets of data as follows:

$$\frac{\text{TANF (public)}}{\text{FRPL (public)}} = \frac{\text{TANF (private)}}{X \text{ (private)}}$$

In this example, the district may then use the equated number of private school children based on FRPL data (“X”) as the number of private school children from low-income families. (ESEA section 1117(c)(1); 34 C.F.R. § 200.64(a)(3)(i)).

3. After a district has determined the total proportional share of funds for equitable services under each CARES Act program, how does it then determine the amount of funds available for equitable services to each participating individual PNP schools? [Updated September 17, 2020](#)

For consultation purposes, to determine what equitable services are available for students and teachers in an individual PNP school, after reserving funds that are reasonable and necessary for district administration of equitable services, a district would divide the remainder of the proportional share of funds available for equitable services by the total enrollment in all participating PNP schools to obtain a per-pupil amount.

The district would then multiply that per-pupil amount by the enrollment in an individual PNP school to determine the amount of services the district can provide to students and teachers in that school. With agreement between the district and participating PNP school officials, the district may pool funds among a group of PNP schools and provide equitable services to students and teachers within the pool based on need without regard to how the funds were generated.

For example, the district begins with the total equitable services calculated amount (from the calculation in #2 above) and then calculates as follows to determine the individual PNP equitable services amounts for the two participating PNPs.

Line #	Calculations	Totals	
1	Calculated Total PNP Equitable Services Reservation -- ESSER	\$2,426	
2	Total Participating PNP School ages 5-17 Enrollment	90	
3	PNP Per-Pupil Amount (line 1 / line 2)	\$26.95	
4	Individual PNP School ages 5-17 enrollment	PNP #1 – 40	PNP #2 – 50
	Individual PNP School Equitable Services allocation (line 3 X line 4)	\$1,078	\$ 1,348

4. Must a district and all participating PNP schools within the district use the same enrollment date for student counts? [Posted June 25, 2020](#)

The agreed upon date the count is taken is not required to be the exact date for both the district and PNP, but there must be consistency. For example, all official district and PNP student counts should be taken during 30-day to 45-day period that is discussed during the consultation. All student counts should be the same time period for district and PNP schools, either at the beginning of the year or the end of the prior year.

5. **May a district and all participating PNP schools use official student enrollment dates from different school years? (i.e., the district uses a date during 2019-2020 and PNP uses a date in August 2020) [Posted June 25, 2020](#)**

No.

6. **Does the district and PNP need to omit students who were counted as grade 12 but were 18 years old on the enrollment date? [Posted June 25, 2020](#)**

Yes, for funding purposes to the district and determining equitable services amounts for participating private nonprofit schools, you only count age 5-17 students. Any student in EC -12 may be served, regardless of age.

7. **Does the district and PNP need to omit students from the total enrollment count who fit the K-12 grade level but turned age 5 after the enrollment count date? [Posted June 25, 2020](#)**

Yes, for funding purposes to the district and determining equitable services amounts for participating private nonprofit schools, you only count age 5-17 students. Any student in EC-12 may be served, regardless of age.

8. **How does the district calculate administrative cost? Where is it on the application? [Posted June 25, 2020](#)**

Administrative costs, which should be reasonable and necessary, are not reflected in the ESSER grant application. The district must calculate the amount of equitable services first from the total ESSER award and then deduct the administrative amount prior to providing equitable services. The amount reserved for administration of equitable services must be discussed with the private school officials during consultation and may not exceed the percentage reserved for district administration of the program.

9. **Are the CARES ESSER grant entitlement amounts that districts receive posted? [Posted June 25, 2020](#)**

Yes. [District ESSER Grant Entitlements](#) have been posted on TEA's Coronavirus webpage.

10. **Must a private nonprofit school share individual student names with student ages (5-17) for district verification? Or is the PNP only required to share student enrollment numbers with the district? [Updated October 8, 2020](#)**

The PNP must provide the same types of data and documentation that would be required for other federal ESSA programs. Depending on the PNP low-income methodology selected above, the PNP may be required to provide the addresses of low-income students for residency verification, age, grade level, and/or parent income.

- 11. Are the May 21, 2020, posted CARES ESSER district allocations the planning amounts? If so, could there be an increase or decrease in PNP equitable services once ESSER final amounts are generated? When will the final amounts be posted? [Posted June 25, 2020](#)**

The planning amounts and equitable services amounts may change slightly, either increasing or decreasing, in November-December 2020 when final allocations are calculated. The only change to the allocations is expected to be the impact of new charter school Title I eligibility.

- 12. If one PNP school has expended the majority of the originally calculated proportionate share of ESSER funds based on option #2, how do we allocate the new calculated proportionate shares to the remaining two PNP schools when there is not enough ESSER funds remaining? [Updated October 15, 2020](#)**

For example, Option 2 calculated an equitable share of \$5,000 total. The new 1117 compliant calculation generates \$3000 total equitable services with each of the three private nonprofit schools eligible for roughly \$1000 each. PNP #1 has already received \$2000 in services. Does PNP #1 receive no more services and \$1000 is split between PNPs #2 and #3? Or does private nonprofit school #2 and #3 still receive their eligible \$1000 in services?

The remaining private nonprofit schools share the remaining amount of equitable services available.

In this example, private nonprofit school #2 and #3 would receive \$500 each in equitable services. In addition, the equitable services provided to PNP #1 should be reviewed to determine if private nonprofit school #2 and #3 could also benefit from part of those equitable services without increasing the cost of the original service.

- 13. If one PNP school has already expended all the newly calculated proportionate share of ESSER funds, how do we allocate the new calculated proportionate shares to the remaining two PNP schools when there is no ESSER funds remaining? [Posted October 22, 2020](#)**

For example, Option 2 calculated an equitable share of \$5,000 total. The new 1117 compliant calculation generates \$3000 total equitable services with each of the three private nonprofit schools eligible for roughly \$1000 each. PNP #1 has already received \$3000 in services. How do private nonprofit school #2 and #3 receive their eligible \$1000 in services?

Under the new equitable services calculation rules there is no equitable services allocation remaining to provide any additional services.

In this example, private nonprofit school #2 and #3 would receive \$0 each in equitable services. In addition, the equitable services provided to PNP #1 should be reviewed to determine if private nonprofit school #2 and #3 could also benefit from part of those equitable services without increasing the cost of the original service.

- 14. May a district using the *comparable data from another source* calculation method include eligible PNP scholarship students and students who receive tuition discounts (i.e., child of a PNP staff member)? [Posted November 5, 2020](#)**

No. Comparable poverty data should only include those eligible children who are from low-income families. It does not include those students who receive tuition discounts, unrelated to poverty, which would be an incentive and/or benefit for the child.

- 15. Does an LEA count a PNP student if they are of an age where they would actually be attending one of their Title I, Part A participating schools (i.e., a 4th grader living in a participating elementary attendance zone) or do they count any PNP student aged 5-17 living in the Title I participating school attendance zone, even if older (i.e., a 9th grader)? Or does the LEA have the option to choose? [Posted November 12, 2020](#)**

An LEA does not have the option to choose.

An LEA may count only PNP children from low-income families who live in a Title I public school attendance area that serves the grade level of the PNP child. Public school attendance area is defined as the “geographical area in which the children who are normally served by that [public] school reside.” So, a 9th grader would not live in a participating Title I school attendance area unless there is a participating Title I school that includes 9th grade and serves the attendance area in which the 9th grade student resides (e.g., a Title I 9-12, 6-12, or K-12 school.)

- 16. All the elementary schools served are Title I, Part A campuses. When calculating the district’s total low-income student enrollment residing in Title I, Part A campus attendance areas, would an LEA include the low-income population for the entire district since all elementary schools are Title I, Part A served for proportionality purposes? [Posted November 12, 2020](#)**

No, unless the LEA consists only of elementary schools. If an LEA has middle and high schools but only serves elementary schools under Title I, the LEA would determine the percent of children from low-income families for proportionality purposes by counting only public school children from low-income families who reside in its Title I elementary school attendance areas (i.e., public school children from low-income families who attend Title I elementary schools).

- 17. Scenario: PNP School Reservation for CARES Act ESSER using proportionality methodology: [Posted November 12, 2020](#)**

All of the elementary campuses in the district are served with Title I, Part A. The LEA has two middle schools identified as “skipped schools.” When calculating the district total low-income enrollment (ages 5-17) residing in Title I, Part A campus attendance area, which calculation does the LEA use for proportionality?

- 1. Count only economically disadvantaged students from the elementary, Title I, Part A schools; or**
- 2. Count economically disadvantaged students from our elementary and the two “skipped” middle schools; or**
- 3. Count economically disadvantaged students from all schools since they all reside in elementary, Title I, Part A attendance areas.**

This question appears to concern the “skipping provision” in ESEA section 1113(b)(1)(D), under which an LEA may elect not to serve an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if the school meets the comparability requirements; the school is receiving supplemental funds from other State or local sources that are spent according to Title I requirements; and the funds expended from

State or local sources equal or exceed the amount that would be provided under Title I. TEA stated in its question that the two middle schools are “skipped schools.” Therefore, our response assumes that the reference in the question to two middle schools being “skipped schools” means that the LEA is not serving them with Title I funds based on the skipping criteria in ESEA section 1113(b)(1)(D) (and not merely because the LEA is serving by grade span among schools with poverty percentages of 75 percent or below and is choosing not to serve its middle school grade span).

ESEA section 1113(b)(2) contains a “special rule” with respect to counting PNP children from low-income families who reside in a public school attendance area that has been skipped to determine the proportional share. The PNP children from low-income families must be counted without regard to whether the public school attendance area in which such children reside has been skipped and thus is not served under Title I. In other words, PNP students from low-income families who reside in the two “skipped” middle school attendance areas must be counted to generate funds for the proportional share.

The Department has issued guidance on this provision in Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (updated Oct. 7, 2019).

B-17. When an LEA elects not to serve an eligible public school attendance area, as permitted under ESEA section 1113(b)(1)(D), what are the procedures for serving the private school children who reside in that attendance area?

An LEA may elect not to serve (“skip”) an eligible public school attendance area or school that has a higher percentage of children from low-income families than other schools it elects to serve in certain circumstances. In implementing this provision, therefore, an LEA must determine which school attendance areas would have received Title I funds absent any skipping, include children from low-income families who reside in these attendance areas and attend private schools in calculating the proportional share under ESEA section 1117(a)(4)(A), and, from the proportional share, determine the amount of these funds that are available for services for eligible private school children residing in the skipped public school attendance areas. If the LEA skips one or more of its higher-ranked school attendance areas, enabling the LEA to use Title I funds to serve a public school with a lower poverty percentage than the skipped school, ESEA section 1117(b)(1)(E) requires the LEA to consult with private school officials about whether eligible private school children residing in the additional served attendance area will receive services. The LEA is not required, however, to include private school students from low-income families who reside in the additional served attendance areas in calculating the proportional share.

Based on the special rule in ESEA section 1113(b)(2) and consistent with the guidance, the LEA in this scenario must determine which public school attendance areas would have received Title I funds absent skipping the two middle schools—i.e., how many, if any, additional elementary schools the LEA would have been able to serve if the LEA has served the two middle schools. Because the LEA is using proportionality as the measure for determining the number of PNP children from low-income families, the LEA must then count public school children from low-income families who reside in the school attendance areas, including the two skipped middle school attendance areas, it would have served absent any skipping of schools. The LEA need not

count public school children from low-income families who reside in the additional public elementary school attendance areas, if any, that it is able to serve because it skipped the two middle schools. (Please note that this count would not be the total low-income enrollment (ages 5-17) residing in Title I campus attendance area as the question suggests.) The LEA would then apply the resulting poverty percentages to the number of private school children who reside in each Title I public school attendance area from which the LEA counted public school children from low-income families, including the two skipped middle schools and excluding any additional elementary school attendance areas it served by virtue of skipping the two middle schools.

Equitable Services for Participating PNP Students and Teachers

1. Is a PNP school whose students and teachers receive equitable services under the CARES Act programs a “recipient of Federal financial assistance”? [Posted May 28, 2020](#)

No. A district or public agency must control and administer the CARES Act funds; no funds may go directly to a PNP school. Thus, a PNP school is not a recipient of Federal financial assistance by virtue of its students and teachers receiving equitable services from a district under a CARES Act program.

As a result, certain Federal requirements that apply to a recipient of Federal financial assistance are not directly applicable to a PNP school whose students or teachers receive equitable services under the CARES Act programs, unless the school otherwise receives Federal financial assistance for other purposes.

2. What services and benefits under the CARES Act programs are available to PNP school students and teachers as equitable services? [Posted May 28, 2020](#)

In general, the services and benefits available to PNP school students and teachers are the same as those available to public school students and teachers. Specifically, the ESSER funds that flow to districts by formula may be used for a broad range of allowable activities in [section 18003\(d\) of the CARES Act](#).

In sum, equitable services must be available to best meet the needs of PNP school students and teachers, as determined through timely and meaningful consultation regardless of the specific uses determined by the district to meet its own students’ and teachers’ particular needs.

The control of any services or assistance provided to students and teachers in a PNP school, and title to materials, equipment, and property purchased with CARES Act funds, must be in the name of the district and administered by a district. A district must provide those services either directly or through a contract with a public or private entity.

3. May pre-Kindergarten programs located in a PNP school participate and receive ESSER equitable services? [Posted June 25, 2020](#)

ESSER equitable services may not be used in stand-alone PNP pre-K programs for students or staff. However, if a PNP has a pre-K program and any one or more school-aged grade levels (i.e., K-12) in the same building, students and staff may receive services.

Allowable and Unallowable Uses of Funds for PNP Equitable Services

1. Will districts provide expense reimbursement to private schools as part of the Coronavirus Relief Fund (CRF) reimbursement? [Posted May 28, 2020](#)

No. Districts are only required to provide equitable services from ESSER formula funds received and any potential GEER funds received. Districts are not eligible to submit expense requests for private schools through this CRF reimbursement program.

2. Can the ESSER funds be used for construction? [Posted May 28, 2020](#)

No, although the allowable uses are quite flexible, construction is not an allowed activity under the ESSER funding. See Question #30 below.

3. Districts and ESCs have asked if a PNP may use Title I, Part A (eligible students) and Title IV, Part A (all students) to purchase laptops/electronics? Hotspots are discussed elsewhere in the COVID19 FAQ but not if a district may purchase hotspots for eligible PNP students. [Updated June 25, 2020](#)

Under the current pandemic circumstances, in addition to the ESSER equitable services ESSA equitable services funds may be used to purchase technology for instructional purposes. The grant funds may only be used to serve eligible students at the private school and all technology must be maintained in the control of the district, on the district's inventory, and monitored for only secular, neutral, and non-ideological uses.

4. What are the allowable uses of funds [under section 18003(d)(1-12) of the ESSER CARES Act programs] for participating? [Posted May 28, 2020](#)

- Any activity authorized by the ESEA, Individuals with Disabilities Education (IDEA) Act, the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education Act, or the McKinney-Vento Homeless Assistance Act.
- Coordination of preparedness and response efforts of LEAs with State and local public health departments, and other relevant agencies to improve coordinated responses to prevent, prepare for, and respond to coronavirus.
- Providing principals and other school leaders with necessary resources to address the needs of individual schools.
- Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.
- Developing and implementing procedures and systems to improve the preparedness

and response efforts of districts.

- Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
- Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.
- Planning for and coordinating during long-term closures, including for how to provide meals, technology for online learning to all students, guidance for carrying out IDEA to eligible students and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.
- Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
- Providing mental health services and supports.
- Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
- Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

5. Are there activities that are specifically unallowable for PNP equitable services? [Posted May 28, 2020](#)

The following activities are unallowable per USDE.

- Subsidizing or offsetting executive salaries and benefits of individuals who are not employees of TEA or LEAs
- Expenditures related to state or local teacher or faculty unions or associations
- Bonuses, merit pay, or similar expenditures unless related to disruptions or closures resulting from COVID-19

6. What is the grant period for ESSER PNP equitable services? [Posted June 25, 2020](#)

The ESSER grant period for PNP equitable services is May 15, 2020, through June 30, 2021, with pre-award back to March 13, 2020, and 12 additional months carryover under the Tydings amendment. A district may provide equitable services on March 13, 2020 (pre-award start date) through September 30, 2022 to PNP schools.

7. May a PNP purchase ESSER related items without district approval and be reimbursed later? For example, the PNP school purchased sanitizing and cleaning supplies after March 13, 2020, to clean the building. [Posted June 25, 2020](#)

This response has been updated in #29 below.

- 8. May ESSER funds be used to purchase touchless toilets, sinks, soap dispensers, and water fountains if the PNP provides the installation of those items into their buildings? [Posted June 25, 2020](#)**

No, these items would be considered additions/remodeling to the PNP facility which is not allowed. See Question #30 below.

- 9. May a PNP school interview and hire staff to maintain operations and/or continuity of services? In the district CARES Act ESSER application, there is a checkbox for one of the allowable activities for LEAs and PNPs stating '*other activities that are necessary to maintain the operation of services to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.*' [Posted June 25, 2020](#)**

The application reflects it as an allowable use of equitable services because USDE guidance includes it in the list of allowable activities. Under normal circumstances, this would not be allowed as the district may not send funds to the PNP. One way it is allowable is that the district would interview and hire the staff who would be assigned to conduct the cleaning at the PNP facility. Or, for another possible option see Question 29 below.

- 10. If a district and PNP agree upon using a third-party contractor for services, are there two separate administrative costs (district and third-party) that may be subtracted from the equitable share? [Posted June 25, 2020](#)**

Yes, the district must still manage the contract and monitor compliance and may charge administrative costs. The third-party contractor may also require administrative costs which will be deducted from the equitable share. Those contractor administrative costs must be included in the contract, budgeted, and specified in the terms and conditions.

- 11. Can you have administrative costs for the district and third-party provider which totals TEA's recommended ESSA 7%? Or can there be 7% administration fee for both district and 7% for the third-party provider? [Posted June 25, 2020](#)**

There is no 7% recommendation in ESSER. The administrative costs are the total of *both* the district and third-party contractor's administrative costs and must be reasonable and necessary. The district must calculate the amount of equitable services first from the total ESSER award and then deduct the administrative amount prior to providing equitable services.

The amount reserved for administration of equitable services must be discussed with the private school officials during consultation and may not exceed the percentage reserved for district administration of the program. The district must still manage the contract and monitor compliance and may charge administrative costs. The third-party contractor may also require administrative costs which will be deducted from the equitable share.

- 12. What is the maximum direct administration cap for the CARES ESSER PNP equitable services? Would direct administration be considered as the person that handles as the paperwork and administrative services? [Posted June 25, 2020](#)**

Administration is defined the same for providing equitable services as it is defined by the district for administering other federal grant programs. The percentage of administrative costs for the ESSER equitable services program may not exceed the percentage of administrative cost for the district ESSER program.

- 13. May a district buy a PNP a vinyl nurse's cot as equitable services? The PNP school has one covered in cloth, but it cannot be sanitized as well. If allowable, must it be returned to the district at the end of the grant, September 2022? [Posted June 25, 2020](#)**

Potentially yes, if this is the identified need by the PNP and it can be justified as allowable under the statutory allowable uses. The items would be returned to the district at the end of the grant period since this would not be considered a consumable supply.

- 14. May a district contract with a company to sanitize and/or deep clean the PNP school throughout the year? [Posted June 25, 2020](#)**

Yes, if this is the need identified by the PNP.

- 15. While a PNP school may not pay custodial staff salary, could they use CARES ESSER funds for contracting with a custodial service for regular sanitizing? [Posted June 25, 2020](#)**

Yes, if this is the need identified by the PNP.

- 16. Since districts can reimburse public teachers during the pandemic, may ESSER funds also reimburse private school teachers? [Posted June 25, 2020](#)**

While this is allowable for public school teachers, it is normally not allowed under PNP equitable services. However, since USDE did include these types of items in the allowable activities in their PNP guidance document, we have asked USDE for further clarification and will update this response once it is received.

- 17. If a PNP requests extra duty pay for after school tutoring, must the teachers be hired by the district to be eligible and paid with ESSER funds? [Posted June 25, 2020](#)**

Yes.

- 18. Are private schools allowed to pay for COVID-19 tests, masks, face shields, and thermometers, thermal screening devices with CARES ACT funds? [Posted June 25, 2020](#)**

PNPs are only allowed to receive equitable services from the school district in which boundaries it is located. No funding is provided to private nonprofit schools. These items could qualify as equitable services provided by the district, if identified as a need by the PNP.

- 19. If the district purchased materials, equipment, or items to assist with social distancing, such as but not limited to additional tables and chairs, to support PNP equitable services during school year 2020-2021, may the PNP continue using those items until September 30, 2020? Posted August 20, 2020**

Yes, however, the equipment and any materials not considered consumable must be returned to the district at the end of the grant period.

- 20. How does a district monitor or assure PNP staff and students are not using electronic devices, equipment, and/or property for religious content? Would a signed district-PNP assurance and/or internet policy be enough? Posted June 25, 2020**

It is recommended that the PNP sign an assurance certifying to the requirement. The PNP may also want to consider having the student and parent or guardian sign some type of assurance.

The district is required to demonstrate that it has met the intent of the statute and done its due diligence under the circumstances.

- 21. If a PNP school requests electronic devices (i.e., laptops, iPad, chrome books, etc.) with ESSER funds but the district does not have a secure method of monitoring to ensure religious content is not being accessed, may the district deny the PNP's request? Posted June 25, 2020**

No, the district must implement some type of policies and procedures to monitor the use of the equipment (see question 20 above). The district should start with reviewing its own district computer use policies and procedures and determine, through consultation with private school officials, how to find a reasonable process for meeting the compliance requirement. Under the current circumstances it is not advisable to deny this type of request for equitable services.

- 22. If software is purchased with ESSER funds and loaded onto the PNP's computers, how can it be returned after the grant? Posted June 25, 2020**

Any software licenses remain in the name of the district and the software must be removed (either by district IT staff or by PNP staff and verified by district staff) at the end of the grant period. If the software is no longer useful at the end of the grant period, then the district may dispose of it following district policy and federal grant requirements.

- 23. What information may the district collect from the PNP to properly support internal controls and monitor the use of technology? Posted June 25, 2020**

The district should develop its monitoring protocol in consultation with private school officials during on-going consultation. The district should feel comfortable it has a process to meet compliance and the PNP should feel comfortable that the requests are not unreasonable and understand the required need for monitoring and internal controls.

24. At the end of the ESSER grant cycle, September 30, 2022, must the district pick up any equipment, property, and non-consumable materials purchased with the PNP school's equitable share? [Updated July 16, 2020](#)

Yes. All purchased items must be returned to the district at the end of the ESSER grant cycle, September 30, 2022. The district must keep control and title to all equipment, property, and materials purchased with ESSER Act funds for PNP equitable services.

25. Is the district required to pick up the materials and equipment during extended school breaks and summer? [Posted June 25, 2020](#)

The district would follow the same internal processes and procedures for ESSER equitable services as for other ESSA equitable services. If there is an extended break or summertime when the materials and equipment are not being used, the district should pick them up, inventory them, and check for any needed repairs before re-issuing them to the PNP at the start of the next instructional setting. Materials that are considered consumables are not required to be picked up.

26. May PNP items be procured prior to the opening of school in August? [Updated October 8, 2020](#)

Yes, just like in the district, the district and private school officials should be consulting on the needs, the service to be provided, and the service delivery to be ready for the start of school. This includes procuring items for the start of the school year.

27. May a PNP school interview and hire staff to monitor the use of masks and social distancing of students on the PNP campus? [Posted July 16, 2020](#)

Under normal circumstances, the PNP staff would not be allowed as the district may not send funds to the PNP.

Hiring a monitor for the PNP is only allowable if the district interviews and hires the staff person who would be assigned to the PNP to monitor students, if this is the identified need of the PNP and they choose to receive this as their equitable services.

28. May an LEA provide a 2-year subscription to the PNP as part of its equitable services instead of a 1-year subscription for 2020-2021 and a second 1-year subscription for 2021-2022? [Posted July 23, 2020](#)

Yes, if the 2-year subscription falls within the period of availability of the ESSER grant, March 13, 2020—September 30, 2022.

29. May an LEA use ESSER funds to reimburse a non-public school for allowable COVID-19 related expenses that the PNP incurred on or after March 13, 2020, but prior to the onset of equitable services by the district? [Posted August 20, 2020](#)

Under section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f), a district must control funds for services and assistance provided to PNP students and teachers under a CARES Act program

and keep title to materials, equipment, and property purchased with such funds, and the district must administer such funds, materials, equipment, and property. Thus, the district may only reimburse a PNP for necessary expenditures the PNP incurred in response to COVID-19 under limited circumstances (on or after March 13, 2020, through the beginning of the consultation process) where it can do so while also meeting these requirements. In doing so, the district must ensure those activities, materials, or equipment are allowable under the CARES Act and are secular, neutral, and non-ideological.

For example, the district may use ESSER equitable services funds to reimburse a PNP 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 district and non-public school officials engaged in timely and meaningful consultation. *“Beginning or engaging in timely and meaningful consultation” for this purpose is defined as the first meeting, either in-person or virtually, where equitable services under the ESSER grant is discussed. Signing the Affirmation of Consultation is not the beginning of the consultation process, but rather occurs at the end of the initial consultation process. Consultation should be an on-going, yearlong process.*

To maintain control over the ESSER funds, the district must ensure that the PNP’s expenditures represent allowable expenses, that the PNP has enough documentation supporting such expenditures, and that the PNP actually received the services or assistance related to those expenditures.

Similarly, for example, if a PNP purchased laptops for students and teachers to facilitate online learning, and if the PNP officials and district both agree, the district may use ESSER funds to purchase those laptops from the PNP, thereby also obtaining title for the laptops from the PNP. Provided these conditions are met, the district may continue to allow the laptops to be used by non-public school students and teachers through the end of the ESSER grant period.

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 a district 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.

30. May a district use ESSER funds for repairs, renovation, or remodeling in a PNP school? [Posted July 23, 2020](#)

No. The district must maintain title to any materials, equipment, and property purchased with ESSER funds, and the district must administer and control the materials, equipment, and property. In addition, under USDE regulations applicable to equitable services under the CARES Act, equipment and supplies placed in a private school must be removable from the PNP school without remodeling, and program funds may not be used for construction (including renovation, remodeling, and repairs) of private school facilities.

A district may, however, provide equitable services in the form of non-permanent improvements in a PNP school, provided that these improvements are easily removable. For example, a district might set up a temporary screening area in a tent in front of a PNP school, rent and install temporary partitions to assist with social distancing, or provide hand sanitizing

stations because these are all easily removed.

31. How long may equipment and supplies purchased with ESSER funds, and placed in a PNP school, remain in that PNP? [Posted July 23, 2020](#)

Equipment and supplies purchased with ESSER funds for students and teachers in a PNP 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—i.e., through September 30, 2022.

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. However, after equipment and supplies are no longer needed for the purposes of the ESSER program, the district may continue to use the equipment or supplies in the PNP school to the extent they are needed for other allowable purposes under another federal education program equitable services, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). The district retains title to, and must maintain administrative control over, the equipment and supplies.

32. May an LEA purchase an air filtration system with the PNP school's equitable services? [Posted August 30, 2020](#)

It depends. If the air filtration system is a stand-alone unit, it could be purchased for the PNP school. However, it would need to be returned to the LEA once the program ends. If the system involves duct, electrical, or construction work, it is not an allowable expense.

33. May ESSER equitable services be used to pay for full or part-time substitutes if private school staff is out due to COVID-19 related illness? [Posted August 20, 2020](#)

No. All federal funds, including ESSER, must be used to provide equitable services which are secular, neutral, and nonideological.

34. Are there various types of trainings that meet the compliance requirements for ESSER that will be considered compliant when TEA conduct program validation monitoring? [Posted August 20, 2020](#)

The following types of training activities will be considered compliant.

- In-Person Live Event: A live meeting or training that LEA conducted in-person.
- Virtual Live Event: A live meeting or training that LEA conducted in a virtual setting.
- Recording Shared: A meeting or training (in-person live, virtual live, or recorded webinar/voiced-over PowerPoint) that LEA recorded and shared with the required audience(s).
Note: Sharing a recorded webinar training without providing the required audience(s) with an opportunity for Q&A does not meet the requirements of the grant.
- Opportunity for Q&A Provided to Event Invitees/Attendees: Event invitees and attendees were offered and provided with an opportunity to ask LEAs questions during a live meeting/training and/or as a separate live event if a meeting/training was shared in a recorded format.
Note: Offering and providing invitees and attendees with the opportunity to ask

questions is a requirement for all required meeting/training events.

- FAQ Document Provided to Event Invitees/Attendees: Meeting or training invitees and attendees were provided with an LEA FAQ document that includes frequently asked questions related to the training topic(s) and/or the questions/answers asked by meeting/training invitees and attendees.

Note: Providing an FAQ document is not required. However, it is strongly encouraged to ensure that LEAs are provided with the most information available.

35. Must the PNP school official research and contact at least three vendors for prices when requesting equitable services from the LEA? [Posted August 20, 2020](#)

No. The LEA is responsible for meeting EDGAR rules and procurement requirements, not the PNP.

UPDATED
12/3/20

36. May the LEA pay for the PNP's insurance (combination package – property, liability for students, and campus vehicles) as equitable services under ESSER? [Updated December 3, 2020 \(from USDE\)](#)

No. Control of funds for services and assistance provided to non-public school students and teachers under the ESSER Fund, and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. (Section 18005(b) of the CARES Act.) In other words, no funds may go directly to a non-public school. Services for non-public school students and teachers may be provided by a public agency directly or indirectly through contract with another public or private entity. (Section 18005(b) of the CARES Act).

In providing services indirectly, the public agency contracts with a public or private entity to provide such services. The non-public school itself may not be a party to a contract for equitable services. An insurance policy is a contractual arrangement between a private school and an insurance carrier. By definition, an insurance policy relies on the behavior of the insured entity to take care that it is not negligent or irresponsible in protecting its students, staff, and property from harm and thus trigger claims under the policy, and the non-public school would be the recipient of any insurance payouts. An LEA would be unable to control the actions of a non-public school with respect to liability covered by the policy. Therefore, the use of CARES Act funds in this case would violate the public control of funds requirement.

Moreover, ESSER funds must be used “to prevent, prepare for, and respond to coronavirus.” Accordingly, any use of ESSER funds, whether to benefit public or non-public school students, must be directly related to these broad purposes, including “other activities that are necessary to maintain the operation of and continuity of services in [LEAs].” (Section 18003(d)(12) of the CARES Act.) Merely because an activity is a necessary expense of an LEA does not automatically qualify the use of ESSER funds for that activity if it is not necessary to prevent, prepare for, or respond to COVID-19. Thus, paying the costs of an LEA’s insurance policy may not necessarily be an allowable use of ESSER funds by the LEA.

37. While a PNP may not pay, or contract for, nurses, janitors, social distancing monitors, or other staff and request reimbursement from CARES Act ESSER funds, could these type of staff be

provided as equitable services from the district? [Posted August 20, 2020](#)

Yes, however, the district must interview, hire, pay, and supervise staff for the PNP school either directly or through a third-party contractor if this is the identified need of the PNP and they choose to receive staff as their equitable services. Consequently, staff hired by the district, must provide equitable services that remain neutral, secular, and non-ideological. In addition, staff may not participate in or receive any school-related religious content, activities, or services.

38. May a PNP decline CARES Act ESSER equitable services in 2020-2021 and then choose to participate in the program during 2021-2022? [Posted August 20, 2020](#)

No. The ESSER grant award is for the 2020-2021 school year and equitable services, if not fully expended, may continue through September 30, 2022.

Note: The PNP may choose not to continue to participate in 2021-2022 after participating in 2020-2021.

39. Does the district or PNP school have the final authority to decide which poverty method will be used to calculate the number of children who are from low-income families and attend private schools? [Posted September 17, 2020](#)

After consultation with private school officials occurs, the district has the final authority to decide which method it will use to calculate poverty. (ESEA section 1117(c)(1))

40. What is the “new Section 1117 Calculation” that is referred to in the September 10 FAQ? [Posted September 17, 2020](#)

The term “new Section 1117 Calculation” was used to indicate going back to using ESSA, Title I, Part A calculations for equitable services calculations under ESSER. This phrase is used to delineate from the prior IFR options.

41. What must an LEA revise if it followed ED’s IFR calculation options prior to TEA’s guidance on September 10? [Updated October 1, 2020](#)

The district will need to eventually do the following:

- Document updated and continuous consultation with PNP school(s) within the district’s boundaries.
 - Ensure all documentation is dated.
- Collect applicable revised Title I, Part A low-income data from PNP schools residing within LEA boundaries (using one of the ESSA, Section 1117 calculation methods).
 - This calculation should be completed by October 31, 2020, after new consultation with private school officials.
- Revise the PNP CARES Act ESSER Affirmation, *resubmit at a later date to be determined by TEA.*
- Amend the CARES Act, ESSER Application; *submit at a later date to be determined by TEA.*
- Keep all dated documentation on file for auditing purposes, including guidance during the applicability of the IFR and afterwards.

42. What happens if the district calculated the equitable services amount under option 1b or 2 originally, and that was much more services than the new calculation provides, and the district has already provided more services to the PNPs than the new calculation allows? [Updated October 1, 2020](#)

TEA's guidance to districts is that funds already expended would be allowable given the reasonable reliance on the regulation in place at the time. However, that would only apply to funds expended prior to September 10, 2020, when TEA revised its guidance to districts. This is supported by USDE's recent policy letter.

For example, if the equitable service has been expended (paid) or already provided (delivered) to the PNP campus before September 10, 2020, the service was allowable and stays with the PNP campus through September 30, 2022. If the item has not been expended (paid) and has not been delivered to the PNP campus, the item should be recoded to a district campus and used accordingly.

43. Should the district retrieve over-provided equitable services items or request reimbursement from the PNP when the district has already expended more on equitable services than the new Section 1117 calculation provides? [Updated October 1, 2020](#)

Unless specifically directed by TEA or USDE, the district does not retrieve equitable services items already distributed to the PNP campuses before September 10, 2020, or request any repayment from the PNP. If the PNP volunteers to reimburse the district for overpayment of equitable services it may do so, but it is not required and not to be requested by the district.

For eligible reimbursements to the PNP (eligible expenditures paid by the PNP between March 13, 2020, and the start date of ESSER consultation before September 10, 2020), the district may still reimburse the PNP if the commitment for the reimbursement was already made to the PNP prior to September 10, 2020, since the expenditure being reimbursed was paid during the allowable period of the IFR by the PNP.

44. If the district has private nonprofit schools who report they have no low-income students in any of the private nonprofit schools, is there no equitable services program since there are no low-income students to generate equitable services funds? [Posted October 1, 2020](#)

This is correct, unless the district and private nonprofit school officials agree during consultation to utilize the proportionality method for calculating the number of low-income students in the private schools.

45. Can the ESSER grant serve only the low-income students who generate the equitable services allocation? [Updated October 2, 2020](#)

No. While age 5-17 low-income students who 1) attend a PNP located within the district's boundaries, and 2) reside in participating eligible Title I attendance areas within the district, generate the funding amount for ESSER equitable services; the ESSER grant can serve any student or staff member at a PNP, located within the district's boundaries, who chooses to participate in the ESSER equitable services program.

46. What is a “Title I eligible attendance area” referred to in this guidance? [Posted October 1, 2020](#)

Title I eligible attendance area means a campus attendance area (the geographical area in which the children reside who are assigned to that campus) in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the district as a whole. These campuses are Title I eligible attendance areas.

47. Can ESSER PNP equitable services pay for private nonprofit schools to have their school name, logo, and/or crest imprinted on masks and other PPE? [Posted October 22, 2020](#)

Imprinting would not be allowable to be paid with federal funds. Equitable services should be used for other services or plain masks without school branding. School branding is not reasonable and necessary.

48. The district has always disallowed capital outlay items as equitable services due to past audit findings but made an exception for ESSER. After ESSER ends, can the district reinstate the previous policy to not allow capital outlay as equitable services? [Posted November 5, 2020](#)

Yes, a district may continue the past policy of not allowing capital outlay to PNP schools as part of equitable services.

49. Is the ongoing lease of a copier at the PNP an allowable purchase for equitable services? The PNP had to make a large amount of copies for packets that their students used during remote learning due to COVID-19. [Posted November 12, 2020](#)

Yes, but only for the period for which the PNP was making paper packets for student remote learning.

NEW
12/3/20

50. May an LEA pay a private school’s utility bills (i.e., water, electricity, gas, phone, etc.,) directly to the company for continued operations? [New December 3, 2020 \(from USDE\)](#)

No, As noted above, services for non-public school students and teachers must be provided by an LEA directly or indirectly through contract by the LEA with another public or private entity. (Section 18005(b) of the CARES Act). According to the question, the contract for utilities is between a non-public school and a utility company. Thus, an LEA may not pay a non-public school’s utility bills directly to the provider for continued service because the LEA is not a party to the contract. Moreover, a non-public school itself may not be a party to a contract for equitable services.

NEW
12/3/20

51. May an LEA pay a private school’s internet bill (directly to the company) to support its connectivity needs? [New December 3, 2020 \(from USDE\)](#)

No. As noted above, services for non-public school students and teachers must be provided by an LEA directly or indirectly through contract by the LEA with another public or private entity. (See section 18005(b) of the CARES Act). According to the question, the contract for internet services is between a non-public school and the internet services provider. Thus, an LEA may not pay a non-public school’s internet bill directly to the provider for continued service because the LEA is

not a party to the contract. Moreover, a non-public school itself may not be a party to a contract for equitable services.

This question is distinct from the question of whether an LEA may enter into a contract to provide internet services for non-public school students and teachers in response to COVID-19. The Department has indicated that, after timely and meaningful consultation, an LEA may contract with a third-party provider to provide such services if certain conditions are met. If such services are provided through contract with a third-party provider, the LEA must contract with the third-party provider and administer the contract.

Questions Submitted to USDE for Response

NEW
12/3/20

At this time, USDE has responded to all questions. **New December 3, 2020**

Acronyms

Below is an alphabetical list of frequently used acronyms and their definitions.

Acronym	Definition
CARES	Coronavirus Aid, Relief, and Economic Security Act
CEP	Community Education Provision
CFR	Code of Federal Regulations
CIP	Campus Improvement Plan
CNA	Comprehensive Needs Assessment
COP	Committee of Practitioners
COVID-19	Novel Coronavirus Disease 2019
CRF	Coronavirus Relief Fund
DIP	District Improvement Plan
EC	Early Childhood
EDGAR	Education Department General Administrative Regulations
EL	English learner
ESC	Education Service Center
ESEA	Elementary and Secondary Education Act of 1965
ESF	Education Stabilization Fund
ESSER	Elementary and Secondary School Emergency Relief [Fund]
ESSA	Every Student Succeeds Act
FAQ	Frequently Asked Questions
GEER	Governor's Emergency Education Relief [Fund]
IALDS	International Association for Learner Driven Schools
IDEA	Individuals with Disabilities Education Act
IFR	Interim Final Rule
IHE	Institutes of Higher Education
LEA	Local Educational Agency
ONPE	Office of Nonpublic Education
PFE	Parent and Family Engagement
PNP	Private Non-Profit [Schools]
SEA	State Educational Agency
SNS	Supplement, Not Supplant
SWP	Schoolwide Program
TAP	Targeted Assistance Program
TEA	Texas Education Agency
TEAL	Texas Education Agency Login
TEPSAC	Texas Private School Accreditation Commission
USDE	United States Department of Education