

# CARES Act ESSER Equitable Services

Changes under the Interim Final Rule

July 13, 2020



MISSISSIPPI  
DEPARTMENT OF  
EDUCATION

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## VISION

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To create a world-class educational system that gives students the knowledge and skills to be successful in college and the workforce, and to flourish as parents and citizens

## MISSION

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To provide leadership through the development of policy and accountability systems so that all students are prepared to compete in the global community

1

**ALL**

Students Proficient and Showing Growth in All Assessed Areas



2

**EVERY**

Student Graduates from High School and is Ready for College and Career



3

**EVERY**

Child Has Access to a High-Quality Early Childhood Program



4

**EVERY**

School Has Effective Teachers and Leaders



5

**EVERY**

Community Effectively Uses a World-Class Data System to Improve Student Outcomes



6

**EVERY**

School and District is Rated "C" or Higher



# AGENDA

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- Background
- What has changed?
- Method and related procedures for calculating proportional share
- “Reset” of Consultation and Disputes
- What has NOT changed?
- General provisions
- Allowable Uses
- Disputes and Dispute Resolution
- ESSER Application Updates

# Questions

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Please type questions into the question box. We will review and answer in writing. Questions and answers will be distributed to LEAs and private schools.

# Background

# Background – “Interim Final Rule” 34 CFR 76.665

In response to the national controversy about ESSERF equitable services, US ED has published a new regulation: 34 CFR 76.665.

- Called the “Interim Final Rule;” immediately effective on July 1, 2020
- 30-day public comment period, but no obligation on US ED to change
- “Reset” of the ESSER equitable services process
- Unlike prior guidance, this regulation has the weight of law
- Read 34 CFR 76.665 (the “Interim Final Rule”), and comment, here: <https://www.regulations.gov/document?D=ED-2020-OESE-0091-0001>

# What has changed?



# What has changed? – Proportioning Method

Primarily, the prior method of proportioning the private school equitable share has changed from a state’s decision to use “low-income students” or “total enrollment,” to a new menu of proportioning methods, from which the individual LEA chooses.

- Before, Mississippi had decided to use “low-income” proportioning
- Now, the LEA must decide what proportioning method to use

MDE is complying with the Interim Final Rule.

# What has changed? – Proportioning Methods 1A & 1B

The LEA must choose a proportioning method, depending on how the LEA will use its ESSER funds:

1. “An LEA using all its [ESSER funds] to serve **only students and teachers in public schools participating under Title I, Part A of the ESEA** may calculate the proportional share” by using either:
  - A. The proportional share calculated under Title I-A for the 2019-20 school year; **or**
  - B. The proportional share resulting from a March 2020 comparison of low-income qualifying students attending public and participating private schools [ordinary Title I-A equitable share proportioning]

# What has changed? – Proportioning Method 2A

2. An LEA choosing to reserve ESSER funds **at the District level and/or for use in its non-Title I schools** must calculate the total private school proportional share by:
  - A. Using the proportional share resulting from a comparison of the **total K-12 enrollment** of students attending public and participating private schools in March 2020.

# What has changed? – Proportioning Method

A private school student's residence location is not relevant.

- Under no chosen proportioning method does a private school student's residence matter.
- There is no District-of-Residence / Fiscal Agent District arrangement where an outside District contributes based on a student's residence in the outside District's attendance area.
- Each LEA is responsible for the private schools in its attendance area and the students enrolled there.

# What has changed? – Considerations re: Method

## Important Considerations for LEA choice of proportioning method:

- 76.665(c)(3): An LEA using ESSER funds per choice 1A or 1B (i.e., only for students/teachers in schools participating under Title I-A) “**must comply with the supplement not supplant requirement in section 1118(b) of the ESEA, which would prohibit the LEA from allocating CARES Act funds to Title I schools and then redirecting State or local funds to non-Title I schools, among other things.**”

# What has changed? – Considerations re: Method

- 76.665(b)(1) Consultation: “An LEA must promptly consult” [with its private schools] during the design and development of the LEA's plans to spend” [ESSER funds] **“before the LEA makes any decision affecting the opportunities of students and teachers in non-public schools to benefit from those funds.”**

An [ESSERF Interim Final Rule Affirmation of Consultation form](#) must be uploaded by the LEA to MCAPS for each private school consulted with. This form is available at the above link or will be available for DL in MCAPS MDE Document Library, Equitable Services ESSERF section.

# What has changed? – Considerations re: Method

76.665(d) *Equity*.

- (1) [Equitable services] must be equitable in comparison to services and other benefits for public school students and teachers participating in CARES Act programs, and must be provided in a timely manner.
- (2): The proportioning method an LEA uses “**does not limit the obligation of the LEA to provide the opportunity to receive services to students and teachers in any [private school] in the LEA.**”

**Implication:** For an LEA choosing between low-income method 1A and 1B, if, during consultation with a private school that has never participated in *Title I, Part A* equitable services, the private school is willing to gather and provide its low-income student number via household income surveys, and would otherwise be excluded from equitable services if method 1A (SY19-20 %) were used, a private school dispute of its total exclusion would have an unclear outcome.

# What has changed? – Subdividing the Proportion

When the LEA has decided which calculation method to use, **the resulting private school proportion for all participating private schools** is then divided among participating private schools on a per-pupil basis (all enrolled K-12 students):

## Example:

**\$20,000 private school total proportion**

Private school A, 300 K-12 students = \$15,000

Private school B, 100 K-12 students = \$ 5,000



# What has changed? Reset of Consultation, Disputes

Consultation is reset, with all pre- Interim Final Rule (IFR) interactions and forms voided. Redo all consultation using the new form.

Contact, invitation, consultation and a provisional spending plan is now combined on one form, the [ESSER Final Interim Rule Affirmation of Consultation form](#) documenting LEA- private school interactions under the IFR.

All pending ESSER Disputes filed by private schools under the now-superseded old rules are moot and voided. Private schools may file new disputes by marking Disagree on the Affirmation of Consultation form, for disagreements about service provision or if consultation is considered untimely, not meaningful, or the private school feels it is treated inequitably under the law and the Interim Final Rule.

# What has changed? Reimbursement for Prior Expenses

Per an answer released by US ED Office of Nonpublic Education Director Maureen Dowling on July 10, 2020:

An LEA may reimburse (from ESSER equitable share) a private school for COVID-related expenses incurred from March 13, 2020, that are allowable under ESSER uses; “secular, neutral, and nonideological;” and comply with LEA ownership rules. For example:

- For prior cleaning/sanitizing costs that are verifiable through documentation of receipt of, and payment for, the services.
- For prior purchase of technology for distance learning, if the LEA and private school agree, the LEA may purchase items from the private school thereby obtaining title, then continue to allow the use of the equipment.

# What has changed? New Data Collection Regulation

Per a Federal Register Notice for publication of July 7th:

- United States Dept. of Education (US ED) requests the following collection of information: nonpublic school [low-income] count and [total] enrollment data to be collected by [LEAs] that receive [ESSER] funds, be processed [by the Office of Management and Budget] in accordance with [Emergency Processing]
- US ED has determined that this information collection is essential for LEAs to effectively implement the Interim Final Rule

The new MDE [ESSER Interim Final Rule Affirmation of Consultation](#) form has fields for providing both low-income and total enrollment data.

# What has NOT changed?

# ESSER – Private School Eligibility

- All nonprofit private schools are eligible to participate in ESSER equitable services, regardless of past participation in equitable services programs.
- Only nonprofit private schools are eligible. To qualify, the entity operating the school must be a nonprofit corporation registered with the Mississippi Secretary of State. ([MS Sec. State search](#))
- Grades K-12 qualify. A private school serving any of these grade levels is eligible for ESSER equitable services. PreK-only schools do not qualify.

# ESSER – “Low-income” student count

If an LEA chooses Interim Final Rule option 1B for proportioning ESSER funds, a low-income student count will be needed from the private school. If this count has already been obtained in ESSER consultation activity prior to the release of the IFR, use the count obtained. If not, then use the anonymous, email optimized [Household Income Survey](#) form. Recommended use:

- LEA types in District name, saves, and emails to private school head
- Private school head emails to families.
- Families complete and save, email back to private school head, who then emails low-income qualifying forms to the LEA, establishing the low-income count.

# ESSER under IFR – Participation? Upload forms

Because steps have been taken in the preceding weeks, contact information should be readily available. Email the [ESSER Interim Final Rule Affirmation of Consultation form](#) to the private school contact and give him/her notice of mailing by phone or voice message.

If the form has not been returned, or you have not been contacted for discussion, within three business days, follow up. Keep records of phone and email contact attempts. If no response is received by August 1, the LEA may assume the private school has declined participation.

This conclusion may be disputed by an aggrieved private school.

# ESSER under IFR – Participation? Upload forms

LEAs must upload the returned forms to their LEA Document Libraries in MCAPS, in the FY20 Root Directory. Subfolders will be provided in the Equitable Services folder for the [ESSER Interim Final Rule Affirmation of Consultation](#).

Please see the newly created **ESSER Interim Final Rule** folder.



# ESSERF – Allowable Uses (Ground Rules)

- With the exception of the reimbursement of allowable COVID response costs beginning March 13, 2020, as mentioned above, the LEA must maintain control of funds.
- Cash/checks are never handed over to the private school, though individual teachers may be reimbursed directly for travel and enrollment costs associated with Professional Development.
- The needs of the private school may differ from the needs of the LEA.
- Educational services and benefits an LEA provides, including materials and equipment, must be secular, neutral, and nonideological. The LEA retains ownership of equipment, materials and supplies.

# ESSERF – Allowable Uses

Be prepared to discuss the twelve categories of equitable share use during consultation and devise a plan to spend the equitable share.

The uses (generally, substitute “private school” for “local educational agency”):

- 1) Any activity authorized under an ESEA program (think: ordinary equitable services program activities) – *this is the only use not quoted in full.* ([CARES Act 18003\(d\)](#))

# ESSERF – Allowable Uses

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- 2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.
- 3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

# ESSERF – Allowable Uses

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- 4) 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.
- 5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

# ESSERF – Allowable Uses

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- 6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.
- 7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

- 8) Planning for and coordinating during long-term closures, including how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

- 9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency 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.

# ESSERF – Allowable Uses

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- 10) Providing mental health services and supports.
- 11) 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.



- 12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

# ESSER – Expenditures

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Efforts should be made to have private school equitable share expended in FY21 to address the challenges of COVID.

A carryover year is authorized, with expenditures possible until September 30, 2022.

# Disputes and Dispute Resolution

MDE Dispute Resolution Procedures include:

Step 1: Informal settlement conference, attempting to resolve the dispute with technical assistance from MDE experts.

Step 2: Formal Complaint and Response.

Step 3: Consideration and written decision by Ombudsman.

Step 4: Appeals are possible to the MS Superintendent of Education, and to the US Department of Education (US ED).

# ESSER Application Updates

## Program Details

**Question 2: Please share your LEA's proposed timeline for providing services and assistance to students and staff in both public and non-public schools.**

It is important that the timeline reflect, March 13, 2020 to September 30, 2022.

## Program Details

**Question 6: Describe how your LEA will promote the expectations of meeting high standards to students, teachers, and other beneficiaries. (20 U.S.C. §1228(a)(2))**

It is important that LEAs address all students and all teachers.

## Program Details

LEAs must ensure that the narrative headcount matches the personnel FTE listed on the Personnel Details Page.

## Function Codes

1196 – eLearning Programs (Learning Management Systems)

2130 – Health Services (PPE)

2620 – Operating Building Services (Cleaning Supplies)

## Object Code

738 – Internet Connectivity Equipment for costs or value less than \$5,000 and highly walkable (Hotspots)

739 – Internet Connectivity Equipment for costs or value \$5,000 and above (wireless access points)



## **Budget**

The budget details must be as descriptive as possible without naming vendors

## **School Level Budgeting**

ESSER does not require an amount to be spent at each school as in Title I, Part A. However, LEAs are strongly encouraged to budget ESSER funds at the location where funds will be spent.

## Procurement & Purchases Using ESSER Funds

Although districts have the flexibility with emergency procurements, it is important to remember that when using federal funds, all costs must be deemed reasonable and necessary. Micro purchases for commodities of \$5,000 or less do not require multiple quotes, but the purchase must be deemed reasonable and not exceed the normal cost of the purchase.

# ESSER Application Updates

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For commodities that will exceed \$5,000 but are \$50,000 or less, two quotes must be obtained for the purchase. Commodities that exceed \$50,000 (and are not purchased from the State Contract or EPL) must utilize the Reverse Auction process. If you have a service that is between \$10,001 and \$250,000 two (2) quotes can be obtained. Any service exceeding \$250,000, must utilize a formal sealed bid process.

# ESSER Application Updates

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If you have a service that is between \$10,001 and \$250,000 two (2) quotes can be obtained. Any service exceeding \$250,000, must utilize a formal sealed bid process.

Should your LEA determine that a purchase is an emergency, state law must be followed.

31-7-13. Bid requirements and exceptions; public auctions.

**(k) Governing authority emergency purchase procedure.**

# ESSER Application Updates

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From our conversation with the State Auditor, they will look at these emergency approvals to ensure that there was a true emergency and the district must have supporting documentation to provide this information.

Also, they will review the purchase to ensure that the purchase was indeed reasonable. This will mean you must have some type of cost analysis or quote that will show that the district's selection of the vendor was reasonable in the pricing.

# Questions #1

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District A does not have all Title I schools but will serve all students. Therefore they will allocate equitable services to the private school(s) in its district based on enrollment. District B has all Title I schools and will allocate equitable services to the private school(s) in its district based on poverty. If a poverty eligible student in District B's private school lives in District A's attendance zone, will District A have to provide a PPA allocation? If so, this means District A will not only have to allocate funds for all the private school students in A's district but also the students of poverty residing in A's attendance zone but attending a private school in another district.

**Residence of students is irrelevant for ESSER equitable services. There is no outside district contribution. The district where the private school is wholly responsible for all the school's students.**



# New Forms for the IFR

# New Forms for the Interim Final Rule

## **ESSER Interim Final Rule – Affirmation of Consultation** (7-13-20) (email-optimized .pdf)

This form must be completed and uploaded to the District's LEA Documents Library.

Download from the MDE Documents Library, here:

<https://mcaps.mdek12.org/DocumentLibrary/ViewDocument.aspx?DocumentKey=450293&inline=true>

\* \* \*

*(if needed)*

## **ESSER Interim Final Rule – Household Income Survey** (7-13-2020) (email-optimized .pdf)

Download from the MDE Documents Library, here:

<https://mcaps.mdek12.org/DocumentLibrary/ViewDocument.aspx?DocumentKey=450294&inline=true>

# Additional Questions

# Additional Questions

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Please type questions into the question box. We will review and answer in writing.

We will pause for five minutes to allow time for your questions. Afterwards, the webinar will end. Thank you for attending.

# MDE Offices of Federal Programs & Grants Management

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