

ESSER Fund Program Equitable Services Requirements Updated September 25, 2020

Overview

A U.S. District Court vacated the U.S. Department of Education's Interim Final Rule using student enrollment to calculate the private school's proportionate amount. In a letter dated September 25, 2020, the U.S. Department of Education stated that it would not take any action against States or local districts that followed the guidance and/or the IFR prior to notice of the court's decision. Going forward, districts must calculate the minimal proportional share for CARES Act equitable services according to the formula provided in Section 1117(a)(4)(A) of the ESEA. (Title I Part A method)

Affected districts must amend or revise their ESSER application to recalculate the private school equitable share amount using the Title I Part A method described in Section 1117 of the ESEA. This method is based on low-income students that are enrolled in or reside in Title I school participating attendance areas and grade spans.

Districts should reference their Consolidated Application's Title I school selection section which shows the participating Title I schools/attendance areas low-income student counts. The District may choose to use either the FY 20 or the FY 21 application. The private school counts may vary from the Title I application because a private school's participation in the ESSER program is not dependent on its participation in the Title I program or on the location of the private school. The private school count date should reasonably correspond to the same date as the district used for the Title I counts in the Title I application. Some districts will need to consult again with private schools or out-of-district private schools to determine the resident low-income student counts.

This process should be completed by October 31, 2020.

Affected District should take the following steps.

- Immediately consult with the private school officials to discuss the changes to the allocation amounts and services caused by the District Court's action vacated and the new direction provided by US ED.
- The SD DOE will provide a spread sheet with the Title I count and date from the Consolidated Application from FY 20 and FY 21. The actual private school counts may vary from the Title I counts as described above.
- Amend or revise the ESSER application to recalculate the equitable services amount using the Title I Part A method based on low-income students that reside in participating Title I attendance areas and grade spans as soon as possible.

1. What is a "Title I eligible attendance area" referred to in this guidance?

A Title I eligible attendance area is the school's geographical area in which children reside where they would be assigned by the district if they attended a public school.

2. Does this change which Private Schools the District is required to offer equitable services under ESSER?

It might. Districts need to include private schools that have students enrolled that reside in one of their Title I attendance areas. This may include private schools outside of the district.

** US Ed issued new guidance on October 9, 2020 indicating that the LEA in which a non-public school is located is responsible for providing equitable services.

3. If it is determined that a private school has no low-income students residing in the district's Title I attendance area and grade span, is it eligible for equitable service?

No, since there are no low-income students to generate equitable services funds.

4. If the private school does not participate in the National School Lunch program how do we determine low-income students in the private school?

See Question 10 with Q & A from the US ED Title I Part A Equitable Services Guidance.

5. Does the district have the final authority to decide which poverty method that will be used to calculate the number of children who are from low-income families and attend private schools?

Yes. 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))

6. Are all students and teachers in a private school eligible to receive equitable services under the ESSER program?

Yes. All students and teachers in a private school are eligible to receive equitable services under the ESSER program. The Title I formula is only used to calculate the amount of the equitable share. The ESSER program does not limit services to students from Title I public school attendance areas and grade spans, or to low-achieving students and their teachers. Regardless of a private school's participation in the Title I Program, the school district must offer it equitable services under ESSER.

7. The District already calculated the proportional share and spent some of the money, what do we do now?

Re-run the calculations based on the Title I method. Review the resulting calculation against the existing calculation. Consult with the private school to determine how to allocate and adjust services. Adjust the remaining, unobligated balances as best as possible.

8. What does the district do if existing purchase orders/contracts exceed the recalculated proportionate share amount for a particular private school?

Discuss options to reduce the purchase order amount, cancel, or adjust contracts, etc. If the district cannot cancel or make changes to purchase orders/contracts fully document the circumstances and attempts to cancel.

9. Should the district retrieve over-provided equitable services items or request reimbursement from the private school if the district already expended more on equitable services than the new calculation method provides?

US ED stated in a letter dated September 25, 2020 that it will not take any action against States or local districts that followed the guidance and/or IFR prior to notice of the court's decision. The district should consult with its attorney if it wants to retrieve equitable services items already distributed to private schools.

10. How does an LEA determine the number of children who are from low-income families, that reside in participating Title I public school attendance areas, and attend private schools?

The following is from US ED's Title I Part A Non-Regulatory Guidance dated October 7, 2019

The ESEA 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 in order to allocate the proportional share. With respect to private school students, the ESEA permits an LEA, based on timely and meaningful consultation, to use:

1. 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., FRPL data) and an LEA concludes, after consultation with appropriate private school officials, that the data will yield an accurate count of private school students, the Department recommends that the LEA use the same measure.

2. Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable. An LEA 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)). An LEA should not require that the private school officials give the names of low-income families. The only information necessary for an LEA to collect from such a survey of private school children is—

- (1) verification of residence in a participating Title I public school attendance area;
- (2) grade level and age of each child; and
- (3) income level of parents.

If, based on consultation with private school officials, an LEA chooses to extrapolate the survey results to the private school's entire enrollment, the LEA 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.

3. Comparable poverty data from a different source. An LEA 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, an LEA uses FRPL data, but private school children do not participate in the free and reduced-price lunch program; however, private school officials are able to provide an LEA 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.

4. Proportionality. An LEA 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, an LEA 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 private school children from low-income families who reside in the attendance area.

5. An equated measure. An LEA 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, an LEA uses FRPL data, but those data are not available for private school students. However, if TANF data are available, the LEA could determine an equated measure of poor children in private schools based on FRPL data by correlating the two sets of data as follows:

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

In this example, the LEA 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.

After consultation with private school officials occurs, an LEA has the final authority to decide which method it will use to calculate the number of children who are from low-income families and attend private schools. (ESEA section 1117(c)(1)).