CARES Act: Elementary and Secondary School Emergency Relief (ESSER) Fund Purpose
In general, CARES Act: ESSER funds are intended to provide emergency relief to public and non-public schools to fund activities that are necessary to maintain the operations and continuity of services. The focus should be on lessening the impact of Covid-19 on schools by providing uninterrupted access to instruction while ensuring health and safety of students.

The Role of Consultation in CARES Act: ESSER Implementation
Consultation between LEAs and non-public schools is critical for the successful implementation of the CARES Act. This includes transparent dialogue around needs, timing, and options. While more flexible than many federal programs, CARES Act: ESSER is a federal program that is subject to regulations that must be considered during planning. This includes discussions on 1) allowability as aligned with statutory use of funds, 2) allowability as it relates to ‘reasonable and necessary’, and 3) allowability as it relates to procurement and Uniform Administrative Requirements.

LEAs MUST maintain control of CARES Act: ESSER Funds
In accordance with CARES Act Section 18005 and 34 CFR §76.665 “The control of funds for the services and assistance provided to a non-public school, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).”

Historically, US ED has published guidance to say that to maintain control of funds LEAs must make purchases on behalf of non-public schools and may not reimburse non-public schools. While US ED has advised SEAs and non-public entities in writing [please see Appendix A] that reimbursement under CARES Act: ESSER is possible, they have restricted under which circumstances it can apply. Under limited circumstances for costs that occurred on or after March 13, 2020 and in response to the COVID-19 pandemic, an LEA may reimburse a non-public school for necessary expenditures the non-public school incurred in response to COVID-19, but before the LEA and non-public school officials engaged in timely and meaningful consultation. If reimbursing, the LEA must ensure those activities, materials, or equipment are allowable under the CARES Act and are secular, neutral, and non-ideological. The LEA may have to obtain the title(s) for equipment purchases from the non-public school and ensure the non-public school has sufficient documentation supporting such expenditures, and that the non-public school actually received the services or assistance related to those expenditures.

In Georgia, the allowable timeframe for reimbursement is March 13 – June 30. March 13 is the qualifying date of the federal emergency and June 30 is the date of Georgia’s deadline for initial consultation. Reimbursements to non-public schools may be made after June 30 as long as non-public school orders were placed ( obligated) prior to June 30. In these circumstances, LEAs may pay outstanding invoices directly or reimburse the non-public school. In accordance with 34 CFR 76 (§76.707) “obligation for property occurs on the date which the subgrantee makes a binding written commitment to acquire the property.”

Please note that the ability to reimburse non-public schools “under limited circumstances” (date of emergency through initial consultation) has historically only been authorized by US ED in emergency circumstances. This does NOT extend to routine implementation of ESEA, IDEA and McKinney-Vento.
The Relationship between CARES Act: ESSER Use of Funds and Existing and Applicable Federal Regulations

Unlike ESEA, IDEA and McKinney-Vento, CARES Act: ESSER allows a scope in the allowable use of funds that is broader than instructional materials and supports. However, while the allowable use of funds is broad, existing regulations are more restrictive for non-public schools than public schools. Allowability should be discussed at the expenditure level in consultation. Expenditures that appear to meet the purpose of the CARES Act, but also appear to be restricted by regulations should be forwarded to the State Ombudsman staff for review and to be included in questions communicated to US ED.

What types of costs are allowable in an effort to facilitate remote learning for students and teachers in a non-public school?

In general, anything already allowable under ESEA and IDEA continues to be allowable (laptops, software, etc). Non-physical or removable costs such as increasing the bandwidth available through an internet plan or the purchase of cyber security/monitoring software may be allowable. Any services or other benefits, including materials and equipment provided to non-public school students and teachers must be secular, neutral, and non-ideological. In addition, under Department regulations applicable to equitable services under the CARES Act, equipment and supplies placed in a non-public school must be removable from the non-public school without remodeling (34 C.F.R. § 76.661(c)(2)), and program funds may not be used for construction (including renovation, remodeling, and repairs) of non-public school facilities (34 C.F.R. § 76.662). [Please see answer from US ED in Appendix A]

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

US ED has provided a response [see Appendix A] consistent with current federal regulations stating that equipment and supplies purchased with CARES Act funds for students and teachers in a non-public school may be used for the authorized purposes of the CARES Act for the period of performance April 2020-September 30, 2022. However, they may continue to be used until the equipment and supplies are no longer needed for the purposes of a CARES Act program or until they are no longer needed for other allowable purposes under another federal education program, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). For the length of the time that the equipment is in use, the LEA must retain the title(s) to, and must maintain administrative control over, the equipment and supplies which includes at least annual inventory and consultation to verify use.

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

No [please see Appendix A]; however, an LEA may provide equitable services in the form of non-permanent improvements in a non-public school, provided that these improvements are easily removable. This might include renting or leasing partitions, purchasing non-permanent desktop guards or non-permanent sneeze guards in close contact areas, purchasing additional desks and chairs to space students out and purchasing removable outdoor seating for classes.

May CARES Act: ESSER Funds be used to Cover the Cost of Salaries?

GaDOE advises LEAs and non-public schools to proceed with caution. All employment arrangements should be discussed in consultation and with the LEA’s CFO, HR, and/or Legal Counsel as needed to ensure compliance with federal regulations for control of funds, supervision, and IRS tax guidelines. In general, there are several tiers of allowability to consider:

- Stipends for staff to complete additional planning or attend professional development due to COVID-19 – This is already allowable under many federal programs and generally does not constitute any issues with supervision
- Paying a staffing agency to provide additional sanitizing of buildings or to pay for the services of a part-time nurse, substitute teacher or counselor to address COVID-19 related issues. Several of these examples can be found in the CARES Act statute under Use of Funds and in the US ED Q&A. These options allow the LEA to pay the staffing agency directly, thereby retaining control of the funds.
- Paying for the salaries of full-time teachers, teacher aides, substitute teachers, nurses, and custodians, etc. – These circumstances are much more difficult and require a case-by-case review. Federal regulations 34 CFR 76.660 says that the non-public employee must perform the services under public supervision and control. It would be difficult to accomplish this when assigned to the non-public school. Further the LEA would need to work with the non-public school to ensure the hiring process takes into considerations the restrictions of both public and non-public. This is generally not encouraged.
May CARES Act: ESSER Administrative Funds be Consolidated with ESEA Funds?
Yes. In accordance with US ED guidance released to states July 21, 2020 Sections 8201(a)(2) and 8203(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) permit a State educational agency (SEA) and local educational agency (LEA), respectively, to consolidate administrative funds under certain ESEA programs. The Secretary may designate additional programs from which administrative funds may be consolidated. Under that authority, Assistant Secretary Brogan has designated the ESSER Fund as a program under which an SEA or LEA may consolidate administrative funds. The consolidated administrative funds may be used to administer the programs included in the consolidation as well as administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation. An LEA may consolidate administrative funds under the ESSER Fund with the approval of the SEA.

Are remaining CARES Act: ESSER funds subject to carryover?
The period of performance for CARES Act ESSER is through September 30, 2022, which includes the Tydings period (General Education Provisions Act §421(b)(1)). After that, remaining funds are returned to the Treasury.

Georgia LEA and Non-Public School Questions About Individual Items of Cost

<table>
<thead>
<tr>
<th>Are the following items of cost allowable under the CARES Act?</th>
<th>Yes</th>
<th>No</th>
<th>Pending ED</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consumable cleaning equipment and supplies</strong> including: PPE, air filters, lightbulbs for HVAC sanitizing, air purifiers, handheld sanitizing sprayers</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Installation of permanent equipment to mitigate the spread of Covid-19</strong> including: HVAC systems, touchless sinks, touchless toilets, touchless water fountains, washer and dryer, permanent sanitizing stations</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>** Modifications to and installation of equipment or materials in non-public schools** including: Carpet replacement, plumbing installation, network cable installation, bathroom partitions, heating lamps, unified PA/telecom system, blinds, physical internet server, security cameras, affixed Wi-Fi extenders, permanent outdoor classroom fixtures such as concrete foundations and fencing</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Freestanding and removable items</strong> including: Portable sanitizing stations, removable sneeze guards, desktop partitions</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Alignment to Use of Funds: 3, 7, 12
Supplies used to clean and sanitize buildings as a result COVID-19 are explicitly allowable in statute.

While GaDOE recognizes that the installation of these items would assist in mitigating the potential spread of germs, US ED has confirmed that regulatory restrictions prohibit the use of federal funds to repair, renovate, remodel, construct or permanently install equipment in non-public school facilities.

While GaDOE recognizes that the purchase of many of these items would assist in addressing health and instructional concerns that have arisen as a result of COVID-19, US ED has confirmed that regulatory restrictions prohibit the use of federal funds to repair, renovate, remodel, construct or permanently install equipment in non-public school facilities.

Alignment to Use of Funds: 3, 12
Purchase of items to promote the health of students while providing uninterrupted access to instruction appear to be allowable.
<table>
<thead>
<tr>
<th>Item</th>
<th>Yes</th>
<th>No</th>
<th>Pending ED</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instructional equipment and furniture</strong> including:</td>
<td></td>
<td></td>
<td></td>
<td><strong>Alignment to Use of Funds: 1, 3, 9, 12</strong> The purchase of educational technology (including hardware, software, and technology) that aids in regular and substantive educational interaction between teachers and students is explicitly allowable under the law. Furniture to facilitate instruction has historically been allowed under some ESEA programs and appears to align with the goal of minimizing the spread of infectious diseases.</td>
</tr>
<tr>
<td>Laptops, chrome books, iPads, cameras for recording remote lessons, TV monitors for broadcasting lessons remotely to reduce class size, removable Wi-Fi extenders to broadcast further throughout the building to increase distancing, additional desks and chairs to transition from groups to recommended social distancing, impermanent outdoor classroom furniture such as benches</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Textbooks, curriculum, and ancillary materials including</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Alignment to Use of Funds: 1, 3, 9, 11, 12</strong> Instructional materials that are secular in nature are historically allowable under ESEA. In addition, without a supplement, not supplant, restriction, materials may be purchased sufficient to ensure each student has access to instruction. Statute and regulations require that materials and equipment purchased are secular, neutral, and non-ideological.</td>
</tr>
<tr>
<td>standardized assessment materials—physical or online</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Secular textbooks, curriculum, materials</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>· Religious textbooks, curriculum, materials</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Internet security for remote learning</strong> including:</td>
<td></td>
<td></td>
<td></td>
<td><strong>Alignment to Use of Funds: 3, 9, 12</strong> The purchase of educational technology (including hardware, software and technology) that aids in regular and substantive educational interaction between teachers and students is explicitly allowable under the law.</td>
</tr>
<tr>
<td>Software to monitor electronic devices, cyber security features, internet filtering</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Health equipment:</strong> Thermometers</td>
<td></td>
<td></td>
<td></td>
<td><strong>Alignment to Use of Funds: 3, 12</strong></td>
</tr>
<tr>
<td><strong>Health equipment:</strong> EpiPens</td>
<td></td>
<td></td>
<td></td>
<td>Currently, GaDOE does not see a clear connection between maintaining operations/access to instruction as a result of COVID-19 and the purchase of EpiPens. However, this question has been forwarded to US ED.</td>
</tr>
<tr>
<td><strong>Covid-19 Testing</strong></td>
<td></td>
<td></td>
<td></td>
<td>This question has been forwarded to US ED.</td>
</tr>
<tr>
<td><strong>Student specific assistance</strong> including:</td>
<td></td>
<td></td>
<td></td>
<td>Currently, GaDOE does not believe that this is allowable under the CARES Act and existing regulations; however, this question has been forwarded to US ED.</td>
</tr>
<tr>
<td>Student medical bills, tuition assistance, student scholarships</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Yes</td>
<td>No</td>
<td>Pending ED</td>
<td>Rationale</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>School leases required to maintain operations and comply with health recommendations including: Copiers, electronic equipment, cleaning equipment, school building, portable classrooms not requiring plumbing or hardwiring</td>
<td>X</td>
<td></td>
<td></td>
<td>Alignment to Use of Funds: 1, 3, 7, 9, 11, 12 Costs associated with maintaining operations, access to instruction and complying with health recommendations is explicitly allowable under the law.</td>
</tr>
<tr>
<td>Annual school renewal costs due to loss in revenue or increase in expenses due to Covid-19: • Secular accreditation, student information systems (SIS), secular instructional software licenses, building insurance • Religious accreditation, religious instructional software licenses</td>
<td>X</td>
<td>X</td>
<td></td>
<td>Alignment to Use of Funds: 1, 3, 7, 9, 11, 12 Costs associated with maintaining operations and access to instruction is explicitly allowable under the law. However, statute and regulations are clear that materials and services are secular, neutral, and non-ideological.</td>
</tr>
<tr>
<td>Services required to maintain operations and uninterrupted access to instruction including: Additional custodial services, nursing consultation, counseling services, increasing internet plan capacity, utility bills, air duct cleaning</td>
<td>X</td>
<td></td>
<td></td>
<td>Alignment to Use of Funds: 3, 7, 9, 10, 12 Costs associated with cleaning and sanitizing, ensuring remote learning, providing mental health services and supports, and maintaining operations and continuity of services is explicitly allowable under the law.</td>
</tr>
<tr>
<td>Online and/or Virtual Professional Development (conferences/workshops, etc.) including: Sanitation, minimizing spread of disease, virtual learning, secular academic content, student supports and interventions</td>
<td>X</td>
<td></td>
<td></td>
<td>Alignment to Use of Funds: 1, 3, 5, 6, 8, 9 Professional Development on academic content, student supports and interventions, and sanitizing and minimizing the spread of diseases is explicitly allowable under the law.</td>
</tr>
<tr>
<td>Support for a Local School Nutrition Program</td>
<td></td>
<td></td>
<td>X</td>
<td>Questions related to school nutrition are reviewed on a case-by-case basis and have been forwarded to US ED.</td>
</tr>
<tr>
<td>Legal consultation to ensure compliance with CDC COVID-19 recommendations</td>
<td>X</td>
<td></td>
<td></td>
<td>Alignment to Use of Funds: 2, 3, 8, 12 Costs associated with preparedness, school response efforts and maintaining operations and continuity of services is explicitly allowable under the law.</td>
</tr>
</tbody>
</table>
Apppendix A – Q&A from US ED – Office of Non-Public Education

May an LEA use CARES Act funds to reimburse a non-public school for allowable COVID-19 related expenses that the school incurred on or after March 13, 2020 but prior to the onset of equitable services by the LEA?

Under section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f), an LEA must control funds for services and assistance provided to non-public school students and teachers under a CARES Act program and keep title to materials, equipment, and property purchased with such funds, and the LEA must administer such funds, materials, equipment, and property. Thus, an LEA may only reimburse a non-public school for necessary expenditures the non-public school incurred in response to COVID-19 under limited circumstances where it can do so while also meeting these requirements. In doing so, the LEA must ensure those activities, materials, or equipment are allowable under the CARES Act and are secular, neutral, and non-ideological.

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

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

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

[Q&A provided by email to GaDOE July 10, 2020 and in a NAESP presentation July 21, 2020]

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

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

Consistent with ESEA Section 1117(a)(2) and 34 CFR 76.665(e), any services, or other benefits, including materials and equipment provided to non-public school students and teachers must be secular, neutral, and non-ideological.

[Q&A provided in a NAESP presentation July 21, 2020]

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

Equipment and supplies purchased with CARES Act funds for students and teachers in a non-public school may be used for the authorized purposes of the CARES Act during the period of performance, or until the equipment and supplies are no longer needed for the purposes of a CARES Act program (See 34 C.F.R. § 76.661(b); 2 C.F.R. §§ 200.313(a)(1), (c)(1) and 200.314(a)). The period of performance is the time during which an LEA may incur new obligations to carry out the work authorized under the CARES Act award—i.e., through September 30, 2022. (2 C.F.R. § 200.77).
In general, once equipment or supplies are no longer needed for purposes of a CARES Act program, an LEA must remove them from the private school. (34 C.F.R. § 76.661(d)(1)). However, after equipment and supplies are no longer needed for the purposes of a CARES Act program, the LEA may continue to use the equipment or supplies in the non-public school to the extent they are needed for other allowable purposes under another federal education program, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). The LEA retains title to, and must maintain administrative control over, the equipment and supplies.

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

No. An LEA must maintain title to any materials, equipment, and property purchased with CARES Act funds, and the LEA must administer and control the materials, equipment, and property. (Section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f)). In addition, under Department regulations applicable to equitable services under the CARES Act, equipment and supplies placed in a private school must be removable from the private school without remodeling (34 C.F.R. § 76.661(c)(2)), and program funds may not be used for construction (including renovation, remodeling, and repairs) of private school facilities (34 C.F.R. § 76.662).

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

Update on the Consolidation of Administrative Funds

Sections 8201(a)(2) and 8203(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) permit a State educational agency (SEA) and local educational agency (LEA), respectively, to consolidate administrative funds under certain ESEA programs. The Secretary may designate additional programs from which administrative funds may be consolidated.

Under that authority, Assistant Secretary Brogan has designated the ESSER Fund and the Governor’s Emergency Education Relief (GEER) Fund as programs under which an SEA or LEA may consolidate administrative funds. Accordingly, an SEA that consolidates ESEA administrative funds may now also consolidate administrative funds under the ESSER Fund and GEER Fund, if applicable.

Specifically, an SEA may consolidate the one-half of one percent of its ESSER funds able to be reserved for State administration and, if the SEA is administering a portion of the GEER Fund on behalf of the Governor, a reasonable and necessary amount of those funds. If the SEA consolidates administrative funds under the ESSER Fund or GEER Fund, it is not required to keep separate records for how it uses those administrative funds.

The consolidated administrative funds may be used to administer the programs included in the consolidation as well as administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

An LEA may consolidate administrative funds under the ESSER or GEER Fund with the approval of the SEA to administer the programs included in the consolidation and, as is the case with the consolidated State administrative funds, for administrative activities designed to enhance the effective and coordinated use of funds under programs included in the consolidation.

[Q&A provided by email to GaDOE June 17, 2020 and in a NAESPA presentation July 21, 2020]
Appendix B – CARES Act: ESSER [Allowable] Uses of Funds

USES OF FUNDS.—A local educational agency that receives funds under this title may use the funds for any of the following:


(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.

(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.

(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 for 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. 1400 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.

(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 and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.
Appendix C – Applicable Regulations

34 CFR 76 - STATE-ADMINISTERED PROGRAMS

- Participation of Students Enrolled in Private Schools §§76.650-76.662
- Equitable Services Under the CARES Act §76.665

Participation of Students Enrolled in Private Schools

§76.650 Private schools; purpose of §§76.651-76.662.
(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.
(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.
(Authority: 20 U.S.C. 1221e-3 and 3474)

Note: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These “bypass” provisions—where they apply—are implemented in the individual program regulations.

§76.651 Responsibility of a State and a subgrantee.
(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§76.652-76.662 and in the authorizing statute and implementing regulations for a program.
(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.
(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.
(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§76.651-76.662.
(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.
(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.653 Needs, number of students, and types of services.
A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:
(a) The needs of students enrolled in private schools.
(b) The number of those students who will participate in a project.
(c) The benefits that the subgrantee will provide under the program to those students.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.654 Benefits for private school students.
(a) Comparable benefits. The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.
(b) Same benefits. If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who:
   (1) Have the same needs as the public school students to be served; and
   (2) Are in that group, attendance area, or age or grade level.
(c) Different benefits. If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.655 Level of expenditures for students enrolled in private schools.
(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:
   (1) A student enrolled in a private school who receives benefits under the program; and
   (2) A student enrolled in a public school who receives benefits under the program.
(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.657 Separate classes prohibited.
A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:
(a) The classes are at the same site; and
(b) The classes include students enrolled in public schools and students enrolled in private schools.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.658 Funds not to benefit a private school.
(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:
   (1) The needs of a private school; or
The general needs of the students enrolled in a private school.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.659 Use of public school personnel.
A subgrantee may use program funds to make public personnel available in other than public facilities:
(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and
(b) If those benefits are not normally provided by the private school.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.660 Use of private school personnel.
A subgrantee may use program funds to pay for the services of an employee of a private school if:
(a) The employee performs the services outside of his or her regular hours of duty; and
(b) The employee performs the services under public supervision and control.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.661 Equipment and supplies.
(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.
(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.
(c) The subgrantee shall insure that the equipment or supplies placed in a private school:
   (1) Are used only for the purposes of the project; and
   (2) Can be removed from the private school without remodeling the private school facilities.
(d) The subgrantee shall remove equipment or supplies from a private school if:
   (1) The equipment or supplies are no longer needed for the purposes of the project; or
   (2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§76.662 Construction.
A subgrantee shall insure that program funds are not used for the construction of private school facilities.
(Authority: 20 U.S.C. 1221e-3 and 3474)

§§76.663-76.664 [Reserved]

Equitable Services Under the CARES Act

§76.665 Providing equitable services to students and teachers in non-public schools.
(a) In general.
   (1) A local educational agency (LEA) receiving funds under a CARES Act program must provide equitable services to students and teachers in non-public elementary and secondary schools in the LEA “in the same manner” as provided under section 1117 of the Elementary and Secondary Education Act of 1965 (ESEA), as determined in consultation with representatives of non-public schools.
   (2) For purposes of this section, the CARES Act programs are the Governor's Emergency Education Relief (GEER) Fund (Section 18002), formula grants to LEAs under the Elementary and Secondary School Emergency Relief (ESSER) Fund (Section 18003(c)), and ESSER SEA Reserve (Section 18003(e)).
(b) Consultation.
   (1) An LEA must promptly consult with representatives of non-public elementary and secondary schools during the design and development of the LEA's plans to spend funds from a CARES Act program and before the LEA makes any decision affecting the opportunities of students and teachers in non-public schools to benefit from those funds. As provided in section 1117(b)(1) of the ESEA, the LEA and non-public school officials shall both have the goal of reaching timely agreement on how to provide equitable and effective programs for non-public school students and teachers.
(2) Consultation must occur in accordance with section 1117(b) of the ESEA, except to the extent inconsistent with the CARES Act and this section, such as section 1117(b)(1)(E) and (J)(ii).

(c) Determining proportional share.

(1) To determine the proportional share of funds for equitable services to students and teachers in non-public elementary and secondary schools for each CARES Act program, an LEA must use one of the following measures. The LEA need not use the same measure for each CARES Act program.

(i) An LEA using all its funds under a CARES Act program to serve only students and teachers in public schools participating under Title I, Part A of the ESEA may calculate the proportional share in accordance with paragraph (c)(1)(ii) of this section or by using—

(A) The proportional share of Title I, Part A funds it calculated under section 1117(a)(4)(A) of the ESEA for the 2019-2020 school year; or

(B) The number of children, ages 5 through 17, who attend each non-public school in the LEA that will participate under a CARES Act program and are from low-income families compared to the total number of children, ages 5 through 17, who are from low-income families in both Title I schools and participating non-public elementary and secondary schools in the LEA.

(ii) Any other LEA must calculate the proportional share based on enrollment in participating non-public elementary and secondary schools in the LEA compared to the total enrollment in both public and participating non-public elementary and secondary schools in the LEA.

(2) An LEA must determine the proportional share of funds available for services for students and teachers in non-public elementary and secondary schools based on the total amount of CARES Act funds received by the LEA under a CARES Act program prior to any allowable expenditures or transfers by the LEA.

(3) An LEA using funds from a CARES Act program in Title I schools under paragraph (c)(1)(i) of this section 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.

(d) Equity.

(1) Educational services and other benefits for students and teachers in non-public elementary and secondary schools 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 measure an LEA uses to determine the proportional share under paragraph (c)(1) of this section does not limit the obligation of the LEA to provide the opportunity to receive services to students and teachers in any non-public elementary or secondary school in the LEA.

(e) Secular, neutral, and nonideological. Educational services and benefits, including materials and equipment, an LEA provides to students and teachers in non-public elementary and secondary schools under the CARES Act programs must be secular, neutral, and nonideological.

(f) Public control of funds. An LEA must—

(1) Maintain control of CARES Act funds;

(2) Keep title to and exercise continuing administrative control of all materials, equipment, and property purchased with CARES Act funds; and

(3) Provide services with CARES Act funds directly or through a contract with a public or private entity.

(Authority: 20 U.S.C. 6320, 6321(b); section 18005 of the CARES Act)

[85 FR 39488, July 1, 2020]
§200.403 Factors affecting allowability of costs.
Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:
(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
(g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

§200.404 Reasonable costs.
A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:
(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
(c) Market prices for comparable goods or services for the geographic area.
(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.


§200.33 Equipment.
Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

§200.407 Prior written approval (prior approval).
Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:
(a) §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
(b) §200.306 Cost sharing or matching;
(c) §200.307 Program income;
(d) §200.308 Revision of budget and program plans;
(e) §200.311 Real property;
(f) §200.313 Equipment;
(g) §200.332 Fixed amount subawards;
(h) §200.413 Direct costs, paragraph (c);
(i) §200.430 Compensation—personal services, paragraph (h);
(j) §200.431 Compensation—fringe benefits;
(k) §200.438 Entertainment costs;
(l) §200.439 Equipment and other capital expenditures;
(m) §200.440 Exchange rates;
(n) §200.441 Fines, penalties, damages and other settlements;
(o) §200.442 Fund raising and investment management costs;
(p) §200.445 Goods or services for personal use;
(q) §200.447 Insurance and indemnification;
(r) §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
(s) §200.455 Organization costs;
(t) §200.456 Participant support costs;
(u) §200.458 Pre-award costs;
(v) §200.462 Rearrangement and reconversion costs;
(w) §200.467 Selling and marketing costs;
(x) §200.470 Taxes (including Value Added Tax); and
(y) §200.474 Travel costs.


§200.439 Equipment and other capital expenditures.


(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the