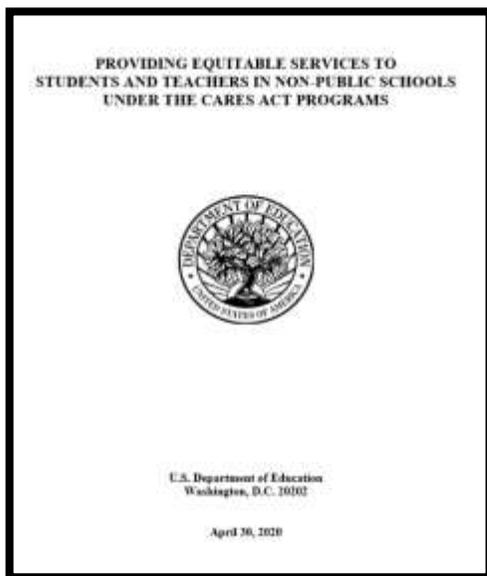


# CARES Act: ESSER Equitable Services Consultation Guide

## Equitable Services and Consultation

The provision of equitable services is a requirement of Section 18005 of the CARES Act. The statute references providing equitable services in the same manner as provided under section 1117 of the Elementary and Secondary Education Act of 1965 (ESEA). The [04.30.2020 FAQ's](#) published by the United States Department of Education details how 1117 is used to inform consultation and the provision of equitable services. This guide is intended to further demonstrate how these requirements apply in Georgia. The purpose of this document is to provide service and support to Georgia Local Education Agencies (LEAs) and private schools during the consultation process. Any questions can be addressed to the State Ombudsman [ombudsman@doe.k12.ga.us](mailto:ombudsman@doe.k12.ga.us).



## Affirmation of Notification and Initial Consultation for Equitable Services Under the CARES Act: ESSER

The CARES Act Equitable Services FAQs establishes the following requirement: “An LEA must maintain and provide to the SEA written affirmation signed by non-public school officials that timely and meaningful consultation has occurred and, if nonpublic school officials do not provide such affirmation, the LEA must forward to the SEA the documentation that such consultation has, or attempts at such consultation have, taken place.”

Both the Affirmation of Notification and Initial Consultation Form and the Unsuccessful Attempts Form can be found on the [State Ombudsman](#) webpage of the Georgia Department of Education Website. These forms are due via online JotForm submission prior to **June 30, 2020**.

**Affirmation of Notification and Initial Consultation for Equitable Services under the CARES Act**  
Due June 30, 2020

Local Education Agency (LEA): \_\_\_\_\_  
Private School: \_\_\_\_\_

**Directions:**

- The LEA must check the box next to each topic to indicate it was addressed in consultation.
- Both School Officials (private and public) must sign and date this document. Electronic Signatures accepted.
- Submit the form via JotForm by June 30, 2020. <https://form.jotform.com/281254589606948>

Check	Consultation Topics (ESSER Equitable Services FAFSA & ESSA 3112)
<input type="checkbox"/>	<b>Eligibility:</b> Participating non-public schools must be nonpublic K-12 elementary and/or secondary schools in existence before the enactment of the CARES Act. This is verified through 2019-2020 DC1113 submission and Secretary of State Business Week.
<input type="checkbox"/>	<b>Beneficiaries:</b> The LEA may provide equitable services with CARES Act funds to any students and teachers in non-public schools.
<input type="checkbox"/>	<b>Teacher:</b> The LEA must provide equitable services and other benefits, including materials and assignment, that are secular, neutral, and non-ideological.
<input type="checkbox"/>	<b>Equitable:</b> The LEA must provide services and other benefits for non-public school students and teachers in a timely manner that are equitable in comparison to the services and benefits provided for public school students and teachers.
<input type="checkbox"/>	<b>Proportionate:</b> The LEA calculates the proportional share based on the number of students enrolled in each non-public school whose students or teachers participate in the CARES Act program, compared to the number of students enrolled in public schools in the LEA. In Georgia this is provided by the GA2019 Using K-12 public and non-public enrollment as of August 31, 2020.
<input type="checkbox"/>	<b>Administrative Costs:</b> The LEA must communicate with the private school the reservation funds that are reasonable and necessary for administering equitable services under the CARES Act programs.
<input type="checkbox"/>	<b>Availability:</b> An LEA must obligate CARES Act funds for equitable services in the fiscal year for which those funds are intended for services to address the impact of COVID-19.
<input type="checkbox"/>	<b>Design and Development:</b> An LEA must consult with appropriate non-public school officials during the design and development of the LEA's activities on relevant issues. The LEA and non-public school officials shall both have the goal of reaching agreement on how to provide equitable and effective services. The LEA must transmit the results of that agreement to the ombudsman (in Georgia completed through the Private School Consent to Participate Form, Affirmation of Satisfaction and Initial Consultation Form and Budget Information).
<input type="checkbox"/>	<b>Timely:</b> Consultation occurs before an LEA makes any decision that affects the opportunities of nonpublic students and teachers to receive equitable services.
<input type="checkbox"/>	<b>Delivery Mechanisms:</b> Consultation included discussion of service delivery mechanisms an LEA may use to provide equitable services.
<input type="checkbox"/>	<b>Control of Funds:</b> Control of funds and title to materials, equipment, and property must be in public agency custody.

## Eligibility

**CARES Act Equitable Services Non-Regulatory Guidance: Q1, Q2, Q3, Q8, Q9**

### Talking Points and Considerations:

- **Non-Public:** A non-profit K-12 elementary and/or secondary school that operates within State Law.
- **Georgia Law:** The private school must have submitted annual attendance to a Georgia LEA. (O.C.G.A. § 20-2-690)
- **Established:** The school must have been in existence prior to the date of the qualifying emergency for the CARES Act programs – March 13, 2020.
- **Non-Profit:** Non-profit status is verified through the Georgia Secretary of State Business Search. If a school has non-profit status under the auspices of another organization, additional documentation must be provided.
- **ESEA Participation:** Private schools that have previously declined ESEA funds are eligible to receive funds under the CARES Act ESSER.
- **Payroll Protection Program:** Participation in the CARES Act Payroll Protection Program does not preclude a private school from participation in CARES Act: ESSER.
- **Religious Affiliation:** Religiously affiliated private schools located in the LEA are eligible to receive services.

### Resources:

- GaDOE Data Collections
  - [GaDOE DE1111 Form](#)
  - [GaDOE List of Private Schools](#)
- GaDOE [Quick Guide on Non-Profit Status](#)
- [Georgia Secretary of State Business Search](#)

## Beneficiaries

**CARES Act Equitable Services Non-Regulatory Guidance: Q9**

### Talking Points and Considerations:

- **All Students and Teachers:** All students and teachers in a non-public school are eligible to receive equitable services under the CARES Act programs.
- **Residence and Achievement:** 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.

## Secular

### CARES Act Equitable Services Non-Regulatory Guidance: Q7

#### Talking Points and Considerations:

- **Secular, Neutral, and Nonideological:** An LEA must provide equitable services and other benefits, including materials and equipment, that are secular, neutral, and nonideological.
- **Selecting Secular Services:** Generally, even though many private schools have religious affiliation, core instructional supports and curriculum provided tend to be secular, neutral, and nonideological. Because most schools have a number of needs, GaDOE recommends using federal funds to address the needs for which equitable services may remain secular, neutral, and nonideological.
- **Public School Employees:** Public school officials and employees may not introduce any religious matter into teaching or become involved in the religious activities of the private school.
- **Religious Symbols:** Equitable services may be provided in the private school without requiring the removal or alteration of religious icons, scriptures, or other symbols.

## Equitable

### CARES Act Equitable Services Non-Regulatory Guidance: Q7, Q10

#### Talking Points and Considerations:

- **Equity in Availability:** CARES Act programs are available to all public school students and teachers, not only low-achieving students and their teachers as under Title I, Part A. Similarly, there is no limitation on residence in a participating Title I public school attendance area for services provided in public schools under the CARES Act programs.
- **Equity in Nature and Timing of Services:** An LEA must provide services and other benefits for non-public school students and teachers in a timely manner that are equitable in comparison to the services and benefits provided for public school students and teachers.

## Proportional

### CARES Act Equitable Services Non-Regulatory Guidance: Q7, Q10

#### Talking Points and Considerations:

- **Enrollment:** An LEA uses enrollment data in non-public schools whose students and teachers will participate under the CARES Act programs compared to enrollment in public schools in the LEA to determine the proportional share.
- **Reducing Duplication to Safeguard Funds:** To reduce the likelihood of counting students transitioning between schools, GaDOE will be using the most recent official FTE count date to calculate proportionate share, March 5, 2020. Participating private schools must also provide enrollment as of this date.
- **Verification:** While LEAs are not required to keep a copy of enrollment documentation on file, LEAs are required to verify K-12 enrollment as of March 5, 2020 with private school officials.
- **Posting Proportionate Share:** GaDOE will use the data provided through the Intent to Participate Form (Due May 20, 2020) and any subsequent data provided by private schools or LEAs to establish proportionate share that applies to public and nonpublic enrollment at large. This calculation will be emailed to school districts and participating private schools and posted on the State Ombudsman webpage.
- **Transparent:** LEAs must make calculations available to private schools.

#### Resources

- GaDOE [State Ombudsman webpage](#) on [GaDOE website](#)

## Administrative Costs

### CARES Act Equitable Services Non-Regulatory Guidance: Q10, Q11

#### Talking Points and Considerations:

- **Administrative Cap:** There is not a statutory limitation on administrative costs. The Non-Regulatory Guidance says that LEAs should reserve funds that are reasonable and necessary for administering equitable services under the CARES Act programs. Most federal funding sources that set administrative caps do so between 2% and 5%.
- **Factors in Determining a Reasonable and Necessary Administrative Cap:**
  - **Number of participating private schools-** the more schools served, the more time it will take to consult and provide services

- **Familiarity of participating private schools with LEA procedures** – private schools who are new to equitable services may require more support in determining allowable activities and in becoming familiar with the procedures that must be followed in the LEA for providing services (like processing stipends, procurement requirements and vendor selection)
- **Hourly cost of employees providing consultation and equitable services** – there is always a cost associated for employees providing services. Which employees will be involved in the provision of equitable services – Federal Programs Staff, Finance and Budget Staff, and IT Staff
- **The time and effort of staff providing requested services** – the time it will take to purchase a one-time order of cleaning supplies and curriculum is different than the time it will take to process stipends or to order electronic devices that need to be set up and added to inventory.
- **Calculating Proportionate Share After Reserving Administrative Costs:** The Excel document sent to LEAs and posted on the State Ombudsman webpage will not reflect local reservations of administrative costs. The document emailed to LEAs will be in Excel and will need to be completed and uploaded in **2019-2020 ConApp Attachments by June 30, 2020**. These final calculations should be made available to private schools.

## Availability

### CARES Act Equitable Services Non-Regulatory Guidance: Q7

#### Talking Points and Considerations:

- **Period of Performance:** An LEA must obligate CARES Act funds for equitable services in the fiscal years for which those funds are intended for services to address the impact of COVID-19. The initial period of availability is April 30, 2020 through September 30, 2021. Access to any unobligated funds is extended an additional 12 months by the Tydings Amendment from October 1, 2021 to September 30, 2022.
- **Establishing Deadlines:** Prior to the end of the original grant period and prior to the end of the carryover period, LEAs may set reasonable deadlines for processing requests to ensure LEA staff can process all public and private school grant administration prior to required reporting to the Georgia Department of Education and the United States Department of Education.

## Design and Development

### CARES Act Equitable Services Non-Regulatory Guidance: Q7

#### Talking Points and Considerations:

- **Establishing Needs:** Private schools are best positioned to know the needs of students and staff relative to the 12 allowable uses of CARES Act: ESSER funds. However, these needs should be discussed relative to the amount of funds that will be set-aside to support the schools and the equitable services that can be provided.
- **Coming to Agreement on Equitable Services:** Consultation is critical in determining the best course of action for equitable services. Consultation should prioritize needs and interventions to maximize the services provided. This includes discussing:
  - **Timing:** How long will it take to provide the service, including ordering, implementation, and payment, etc.? Both parties should discuss when the services are scheduled to occur.
  - **Vendors:** Private schools and public schools operate differently and may use different vendors. Is the private school willing to use a public school vendors? If not, is the public school able to add the private school's vendor? If yes, what would that take?
  - **Allowability:** LEAs must retain control of the funds. Funds may only be used for authorized uses. Any changes to the agreed upon plan will have to be discussed in consultation. Any variation without prior approval runs the risk of not being eligible for payment. *See also Use of Funds.*
  - **Documentation:** What documentation will LEAs need to keep for their records? Discuss what documentation the private school might need to provide to the LEA.
  - **Design:** While private school needs and services may mirror those of the LEA, the private school is not required to implement the same or comparable services. The services should meet the needs of the private school students and staff.
  - **Supplement Not Supplant:** 'Supplement, not supplant' does not apply to CARES Act funds and may be used to support the continuity of instructional programs and allowable operations as specified in CARES Act Section 18003.

## Timely

### CARES Act Equitable Services Non-Regulatory Guidance: Q6, Q7

#### Talking Points and Considerations:

- **Initiating Consultation:** The public school is responsible for initiating consultation; however, a private school that has not heard from a school district should reach out. Consultation must occur before an LEA makes any decision that affects the opportunities of nonpublic students and teachers to receive equitable services.
- **Ongoing Consultation:** At a minimum, consultation must occur:
  1. **Prior to implementation** – plans must be put in place
  2. **During implementation** – communication to verify plans are being executed as discussed
  3. **After implementation** – to verify that services occurred as planned and were equitable in nature.
- **Format of Consultation:**
  1. **Timing:** Public and private schools should talk about school calendars and school hours. They should customize the timing of consultation so that it suits both parties.
  2. **Method:** Meetings between the LEA and non-public school officials need not occur in person. Phone, email and video conferencing are all allowable methods for consultation. Both parties should be mindful of what is available for communication and what is preferred.
  3. **Backup Plans:** It is a best practice to establish a secondary method of communication if the primary method (like office phone line) becomes inaccessible. Further, it is a best practice to identify an additional staff member who could provide assistance in the event that the primary contact is unavailable due to unforeseen circumstances and after several attempts have been made to reach out through multiple methods.
- **Establishing Deadlines:** It may be necessary to set deadlines to reasonably implement equitable services. This should be discussed by both parties. Failure to meet deadlines without communication by either party may be seen as declining funds (private schools) or noncompliance with the provision of equitable services (LEAs). Prior to the end of the original grant period and prior to the end of the carryover period, LEAs may set reasonable deadlines for processing requests to ensure LEA staff can process all public and private school grant administration prior to required reporting to the Georgia Department of Education and the United States Department of Education.

- **Partnership:** Both parties are responsible for ongoing communication. Both parties are strongly encouraged to make a good-faith effort to maintain necessary communications in a way that is respectful and proactive.

## Delivery Mechanisms

**CARES Act Equitable Services Non-Regulatory Guidance: Q5, Q7**

### Talking Points and Considerations:

- **Provision of Services:**
  1. **Provider:** While delivery mechanisms other than direct delivery are not currently used in Georgia, the LEA should discuss whether the agency will provide services directly or through a separate government agency, consortium, entity, or third-party contractor.
  2. **Within-LEA Pooling:** In addition, private schools may request to pool funds across private schools within a district.
  3. **Cross-LEA Pooling:** At this time, Georgia does not have a mechanism that would support pooling across districts that would also allow for the quarterly reporting required by the CARES Act.

## Control of Funds

**CARES Act Equitable Services Non-Regulatory Guidance: Q5, Q7, Q13, Q14**

### Talking Points and Considerations:

- **Control of Funds:** Control of funds and title to materials, equipment, and property must remain with the LEA or public agency. No funds may go directly to a non-public school. An LEA or public agency must administer those funds, materials, equipment, and property.
- **Reimbursement:** Current federal regulations and non-regulatory guidance clearly state that private school officials have no authority to obligate or receive federal funds because the LEA must maintain control of the funds.
- **Purchase of Devices:** In the event that devices or property are purchased (like electronic devices) at the end of the grant, they must be reclaimed by the LEA unless the private school is involved in ESSA programs.
- **Recommendation:** Unless the private school feels that the need for devices outweighs the possibility of returning the devices within two years, GaDOE recommends prioritizing funds towards the purchase of consumable items and

services that will not revert back the ownership of the LEA at the end of the grant. Private schools will have a number of needs and obligations and consultation should help prioritize those needs in a way that best leverages the use of funds to the advantage of the private school. This recommendation applies both to ownership and allowability.

## Use of Funds

### CARES Act Equitable Services Non-Regulatory Guidance: Q4, Q7, Q10, Q14

#### Talking Points and Considerations:

- **The CARES Act:** Under the CARES Act there are 12 allowable uses of funds that cover a broad range of services and opportunities. For the purposes of applicability, sections that refer to LEAs are also applicable to private schools.
  - 1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (“IDEA”), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (“the Perkins Act”), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).
  - 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. 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.
  - 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.
- **ESEA, IDEA, Perkins, McKinney-Vento, The Adult Education and Family Literacy Act:** These acts focus on the instructional supports for students, in most cases, at risk subgroups of students. LEAs and Private Schools can access resources on allowable uses of funds through the [Federal Programs](#) webpage on the GaDOE website or through guidance on the United States Department of Education website.
  - **Restrictions:** Some of the uses listed may be restricted for private schools by the requirement that control of funds remain under the auspices of the LEA.

## Procedures

### CARES Act Equitable Services Non-Regulatory Guidance: Q7

#### Talking Points and Considerations:

- **Procurement:** Each LEA has a unique, often board-approved, policy that they must follow for purchases for both private and public schools. This extends to cost, levels of approval, contracts and supporting documentation (like quotes), etc. There are practices relative to allowable vendors and adding vendors.
- **Compensation:** Any compensation allowable under the CARES Act, must be paid directly to the individual. This requires the individual to be set up as a vendor in the LEA finance system.

## Resources

- GaDOE [Quick Guide: Use of W9/1099](#)

## Reporting

**CARES Act Equitable Services Non-Regulatory Guidance:** N/A

### Talking Points and Considerations:

- **Reporting:** What we know right now about reporting is limited to the information in the notice announcing the grant and assurances the GaDOE agreed to upon submission and approval of the ESSER application, including quarterly reporting. Most requirements should be able to be fulfilled by LEAs through the budget submission process and through information gathered during consultation.
  - **Methodology:** Report the methodology LEAs will use to provide services or assistance to students and staff in both public and non-public schools
  - **Use of Funds:** Report the uses of funds by the LEAs or other entities and demonstration of their compliance, such as any use of funds addressing the digital divide, including securing access to home-based connectivity and remote-use devices, related issues in supporting remote learning for all students, including disadvantaged populations. Also, the extent to which the LEA used ESSER Funds to promote remote learning. How the LEA assessed and addressed student learning gaps resulting from the disruption in educational services
  - **Identifying Needs:** Report how the LEA determined its most important educational needs as a result of COVID-19
  - **Timeline of Services:** Report the LEA's proposed timeline for the providing of services and assistance to students and staff in both public and non-public schools
  - **Monitoring and Audits:** Assure that every recipient and subrecipient of ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority

## Resources

- USDE [ESSER Fund Final Notice](#)
- USDE [ESSER Certification and Agreement](#)