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July 7, 2020

TO: BOCES District Superintendents
School District Superintendents
School District Business Officers
Charter School Leaders
Religious and Independent School Leaders

FROM: Phyllis D. Morris, Chief Financial Officer

RE: Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding –
Implementation of Requirement for Local Educational Agencies (LEAs) Receiving
Elementary and Secondary School Emergency Relief Funds (ESSERF) and
Governor's Emergency Education Relief Funds (GEER) to Provide Equitable
Services to Non-Public Schools

As a follow-up to my [April 30, 2020](#) and [June 9, 2020](#) memoranda providing information on the federal Education Stabilization Fund funding allocated to New York State under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, this memorandum provides additional information on the requirement that Local Educational Agencies (LEAs) provide equitable services to non-public schools with Governor's Emergency Education Relief Funds (GEER) and Elementary and Secondary School Emergency Relief Funds (ESSERF) funds.

Interim Final Rule: On July 1, 2020, the U.S. Department of Education (USDE) published in the Federal Register an Interim Final Rule (IFR) which outlines how LEAs are to calculate the amount of ESSERF and GEER funds available for providing equitable services to students and teachers in non-public schools. The IFR was effective immediately, and NYSED intends to comply with the IFR.

Options: The IFR provides two options for LEAs to choose from as they move forward with the implementation of CARES Act (ESSERF and GEER) funding. One option is a proportional allocation that applies to all students attending within the district (public and private); the other is based on the relative proportions of low-income students attending.

- 1) **Proportional:** Under the IFR, if an LEA chooses to use CARES Act funding for students in all its public schools, it must calculate the funds for equitable services based on the proportionate number of students enrolled in private schools in the district.
- 2) **Low-Income:** If an LEA chooses to use CARES Act funding only for students in its Title I schools, it has two options:
 - Calculate the funds for equitable services based on the total number of low-income students in Title I and participating private schools; **or**
 - Calculate the funds for equitable services using the LEA's Title I, Part A share from the 2019-2020 school year.

The IFR further states that, if an LEA uses one of the low-income student options, the LEA must not violate the Title I supplement-not-supplant requirement in section 1118(b)(2) of the Elementary and Secondary Education Act (ESEA). That is, an LEA cannot divert state or local funds from its Title I schools because it receives CARES Act funds.

As noted in my June 9, 2020 memorandum, Section 18005(b) of the CARES Act requires that “The control of funds for the services and assistance provided to a non-public school under subsection (a), 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).”

NYSED is currently working on finalizing the allocations and the application for the CARES Act funding and will notify LEAs when the application is available. Additional details on how LEAs are to implement the CARES Act equitable participation requirement, including the process for LEAs to follow to engage in timely and meaningful consultation with appropriate private school officials, will be provided when the allocations and application are finalized.

cc: Shannon Tahoe
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