

## GUIDANCE

### 2020 CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT: ADMINISTRATION OF GOVERNOR'S EMERGENCY EDUCATION RELIEF (GEER) FUNDS AND ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) FUNDS



New York State Education Department

Office of ESSA-Funded Programs

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## **BACKGROUND**

On March 27, 2020, Congress passed, and the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act provides funding to prevent, prepare for and respond to the coronavirus, and consists of the following:

- The Governor’s Emergency Education Relief Fund (GEER) as outlined in Section 18002 of the CARES Act, provides grants to Governors for the purpose of providing educational agencies with emergency assistance to address the impact of Novel Coronavirus Disease 2019 (COVID-19); and
- The Elementary and Secondary School Emergency Relief Fund (ESSER) as outlined in Section 18003 of the CARES Act, provides grants to State Educational Agencies (SEAs) for the purpose of supporting local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools.

### **Governor’s Emergency Education Relief Fund (GEER)**

New York State has been allocated \$164.2 million under the Governor’s Emergency Education Relief Fund (GEER). The entirety of New York State’s GEER funds were programmed in the 2020-21 enacted New York State budget through the application of a “pandemic adjustment” to partially offset the state share of state aid to school districts.

Pursuant to the direction of the Governor’s Office and the Division of the Budget, GEER funding is being allocated to the State’s 673 major school districts. GEER funds are not being allocated to LEAs that are charter schools, Special Act School Districts, or school districts employing fewer than eight teachers. These funds will be allocated to eligible school districts using the relative shares of grants awarded under Title I, Part A of the ESEA for the most recent fiscal year (2019-20).

### **Elementary and Secondary School Emergency Relief Fund (ESSER)**

New York State has been allocated \$1.037 billion under the Elementary and Secondary School Emergency Relief Fund (ESSER). ESSER funds to school districts were programmed in the 2020-21 enacted New York State budget through the application of a “pandemic adjustment” to partially offset the state share of state aid to school districts.

ESSER funding is being allocated to all LEAs, including charter schools and Special Act School Districts, that received 2019-20 Title I, Part A subgrants. Pursuant to the terms of the CARES Act, LEA allocations were calculated using the relative shares of grants awarded under Title I, Part A of the Elementary and Secondary Education Act (ESEA) for the most recent fiscal year (2019-20).

## CARES Act Equitable Services Update

On September 4, 2020, in *NAACP v. DeVos*, the U.S. District Court for the District of Columbia issued an opinion and an order vacating the Interim Final Rule (IFR) previously issued by the U.S. Department of Education (USDE) on July 1, 2020 which directed how Local Educational Agencies (LEAs) were to calculate the amount of Elementary and Secondary School Emergency Relief (ESSER) and Governor's Emergency Education Relief (GEER) funds available for providing equitable services to students and teachers in non-public schools. On September 9, 2020, USDE published a statement on its [website](#) that the IFR is no longer in effect. On September 25, 2020, USDE Secretary Betsy DeVos sent a letter to Chief State School Officers stating that USDE will not appeal the court ruling, and directing state educational agencies to calculate the minimal proportional share for CARES Act equitable services according to the formula provided in Section 1117(a)(4)(A) of the ESEA of 1965. On October 9, 2020, USDE issued non-binding guidance affirming the requirement that an LEA must calculate the proportional share in accordance with section 1117(a)(4)(A) of the ESEA.

**\*\* Please note that the court ruling does not eliminate the equitable services requirement. \*\***

The court ruling, and USDE's subsequent direction, make clear that section 18005 means a local educational agency receiving funds under sections 18002 or 18003 of the CARES Act shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools. Therefore, in accordance with Section 1117 of the ESEA, NYSED will require that the equitable share calculation be based on the number of students from low-income families who reside in Title I attendance areas and who attend participating non-public schools regardless of the non-public school's location. LEAs must consult with each non-public school serving resident students to determine the total number of low-income students served by each non-public school. This includes non-public schools located inside the district's boundaries AND non-public schools located in other districts.

**Governor's Emergency Education Relief Fund (GEER)  
FREQUENTLY ASKED QUESTIONS**

**1. What is the Governor's Emergency Education Relief (GEER) Fund?**

On April 14, 2020, the U.S. Department of Education announced that nearly \$3 billion would be made available to Governors to ensure education continues for students of all ages impacted by the ongoing COVID-19 pandemic. The Governor's Emergency Education Relief (GEER) Fund, authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, is a flexible emergency block grant designed to allow Governors to decide how best to meet the needs of students, schools, postsecondary institutions and other education-related organizations in their states.

In New York State, the Governor decided to make the entirety of the State's \$164.2 million GEER allocation available to the 673 major school districts to help ensure continued educational services for students amid the unprecedented public health emergency.

**2. Which LEAs are eligible for GEER funding?**

Pursuant to the direction of the Governor's Office and the Division of the Budget, New York State is allocating GEER funding to the State's 673 major school districts. School districts that employ fewer than eight teachers, charter schools, and Special Act School Districts are not eligible for GEER funding.

**3. How is an LEA's allocation determined?**

Pursuant to the direction of the Governor's Office and the Division of the Budget, each major school district's GEER allocation was calculated using the relative shares of grants awarded under Title I, Part A of the Elementary and Secondary Education Act (ESEA) for the most recent fiscal year (2019-20).

**4. If an LEA previously submitted an application for GEER funds to NYSED, does the LEA need to submit a new application?**

Yes. The application form has been changed to reflect the invalidation of USED's Interim Final Rule governing the methodology to be used in calculating the amount of funding for equitable services to students and teachers in non-public schools. The application form has also been revised to include data USDE has indicated it will be requiring.

**5. What is the funding period for GEER Funds?**

The funding period for GEER funds is from March 13, 2020 to September 30, 2022. LEAs must obligate GEER funds by September 30, 2022 and must liquidate GEER funds by October 30, 2022.

**6. If an LEA did not receive an FY 2019 Title I, Part A subgrant for school year 2019-2020, is it eligible to receive GEER formula funds?**

No, an LEA is not eligible to receive GEER formula funds if they did not receive a FY 2019 Title I, Part A subgrant. This applies to LEAs that did not generate a Title I, Part A allocation or declined their allocation in 2019-20.

**7. What are the allowable uses of GEER funds by LEAs?**

Unless otherwise restricted by the Governor at the time of award, the LEA has considerable flexibility in determining how best to use GEER funds to prevent, prepare for, or respond to COVID-19. Grant funds awarded under subsection may be used to—

- (1) Implement 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.) (Section 18002(c)(3)).
- (2) provide child care and early childhood education, social and emotional support, and the protection of education-related jobs.
- (3) support the ability of local educational agencies to continue to provide educational services to their students and to support the ongoing functionality of the local educational agency.

The United States Department of Education has encouraged States and LEAs to invest GEER funds in technology infrastructure and professional development that will improve capacity to provide high quality, accessible, distance education, or remote learning. This may include:

- Providing access to reliable, high-speed internet for students and teachers through the purchase of internet-connected devices/equipment, mobile hotspots, wireless service plans, or installation of Community Wi-Fi Hotspots, especially in underserved communities;
- Purchasing hardware and software applications for students and teachers;
- Providing access to high-quality digital learning content, apps, and tools that can deliver engaging and relevant learning experiences that are accessible to all students;
- Covering costs associated with making materials accessible for students with disabilities or English learners; and
- Providing professional development and training for teachers on effective strategies for the delivery of remote and digital instruction.

**8. Are nonpublic schools eligible to receive equitable services for GEER funds?**

While non-public schools are not eligible to apply to the New York State Education Department (NYSED or “the Department”) for GEER funds, LEAs are required to provide equitable services to students and teachers in non-public schools serving district-resident students, even if the non-public school has not previously participated under Title I, Part A or Title VIII of the ESEA. In general, the activities described above in Question #6 are allowable for participating non-public schools.

**9. Can GEER funds be used to support services for students attending a facility designated as neglected?**

Yes, GEER funds can be used to support services for district-resident students attending a facility designated as neglected.

**10. What is a “non-public school” under the CARES Act programs?**

For both GEER and ESSER, a “non-public school” means a non-public elementary or secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for the CARES Act programs. For purposes of this definition, the date of the qualifying emergency is March 13, 2020. A for-profit non-public school is not eligible to receive equitable services for its students and teachers under the CARES Act programs.

**11. Must an LEA or another public agency maintain control of GEER funds used to provide equitable services?**

Yes. Control of funds for services and assistance provided to non-public school students and teachers under the CARES Act programs, and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. No funds may go directly to a non-public school, even for reimbursement purposes (see Question #9 above for a definition of non-public school). In addition, services for non-public school students and teachers must be provided by a public agency directly or through contract with another public or private entity. All services and benefits an LEA provides with GEER funds must be secular, neutral, and nonideological.

**12. Section 1117 of the ESEA requires equitable services be targeted to non-public students academically at risk. Do CARES Act GEER funds have the same requirement?**

No. Eligibility to participate in or benefit from CARES Act activities are more broad than Title I, Part A. GEER funds may be used to benefit all teachers and students, subject to consultation and the allowable CARES Act uses.



**13. How can an LEA determine the amount of GEER funds for equitable services to non-public elementary and secondary schools?**

To determine the amount of GEER funds available for equitable services in a manner consistent with Section 1117 of the Elementary and Secondary Education Act (ESEA), the LEA must determine the overall number of children from low-income families who reside in participating Title I public school attendance areas and who attend public schools and non-public schools. Using the proportion of children from low-income families who attend non-public schools (located within and outside of the district’s geographic boundaries), the LEA would determine the amount of funds available for equitable services based on that proportional share of the LEA’s total GEER allocation. For example, an LEA with four Title I public school attendance areas and a total GEER allocation of \$1,000,000 would determine the proportional share as follows:

<b>EXAMPLE – DETERMINING THE PROPORTIONAL SHARE</b>			
<b>Public School Attendance Area</b>	<b># of Public School Low-Income Children</b>	<b># of Private School Low-Income Children</b>	<b>Total # of Low-Income Children</b>
A	500	120	620
B	300	9	309
C	200	6	206
D	350	15	365
<b>TOTAL</b>	<b>1,350</b>	<b>150</b>	<b>1,500</b>
PROPORTIONAL SHARE	90%	10%	
	\$900,000	\$100,000	

**14. Must an LEA engage in consultation with non-public schools if it already engaged them for the original application?**

Yes, an LEA must engage in timely and meaningful consultation with all non-public schools serving district resident low-income students who reside in participating Title I public school attendance areas. This includes non-public schools located inside and outside of the district’s geographic catchment area. Please note that consultation obligations may include additional non-public schools than were consulted as part of the original application issued by NYSED.

**15. Since an LEA’s GEER grant allocation is based on the formula used to determine Title I, Part A allocations, is an LEA required to meet Title I, Part A requirements in spending the GEER funds?**

No. Although an LEA receives GEER formula funds via the Title I, Part A formula, GEER formula funds are not Title I, Part A funds and generally are not subject to Title I, Part A requirements.

**16. May an LEA use its GEER funds to support any school in the district, regardless of a school's Title I, Part A status?**

Yes, an LEA may charge direct costs that are reasonable and necessary to support any school in the district. Please note that all salaries paid for with GEER funds must be supported by time and effort documentation required by the Federal Uniform Grant Guidance (2 CFR 200.430).

**17. Are GEER funds subject to a supplanting prohibition?**

The CARES Act does not contain a supplement not supplant provision for GEER funds.

**18. May an LEA reserve funds for administrative costs?**

Yes, an LEA may reserve funds for reasonable and necessary administrative costs after the equitable services share amount has been determined. An LEA may charge direct costs that are reasonable and necessary for the administration of the GEER funds. Keep in mind that all salaries paid for with GEER funds must be supported by time and effort documentation required by the Federal Uniform Grant Guidance (2 CFR 200.430).

**19. Is there any difference in the amount of GEER funds, or allowable uses of GEER funds, for a school that implements a schoolwide program under Title I, Part A as compared to a school that provides targeted support under Title I, Part A?**

No. The Title I, Part A requirements related to Schoolwide Programs and Targeted Assistance programs do not apply to GEER funds.

**20. Is an LEA that receives GEER funds required to set-aside funds for any reason?**

No. Unlike Title I, Part A requirements to set-aside funds for students experiencing homelessness, neglected youth, and parent and family engagement, there are no required set-asides required of GEER funds. However, LEAs are required to provide equitable services to students and teachers in participating non-public schools.

**21. Should LEAs anticipate monitoring or auditing of GEER funds?**

Yes. NYSED will monitor the use of GEER funds. In addition, GEER funds are subject to audit requirements under the Single Audit Act.

**Elementary and Secondary School Emergency Relief Fund (ESSER)  
FREQUENTLY ASKED QUESTIONS**

**22. What is the Elementary and Secondary School Emergency Relief Fund?**

Under the Elementary and Secondary School Emergency Relief Fund (ESSER Fund), the United States Education Department (USDE) awards grants to State educational agencies (SEAs) for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, with emergency relief funds to address the impact of Novel Coronavirus Disease 2019 (COVID-19) on elementary and secondary schools across the nation. LEAs must provide equitable services to students and teachers in non-public schools as required under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

**23. Which LEAs are eligible for ESSER funding?**

All LEAs, including charter schools and Special Act School Districts, that received 2019-20 Title I, Part A subgrants are eligible to receive ESSER Funding.

**24. How is an LEA's allocation determined?**

As required by the CARES Act, an LEA's ESSER allocation was determined as a proportionate share based on the 19-20 Title I, Part A funds.

**25. What is the funding period for ESSER Funds?**

The funding period for ESSER funds is from March 13, 2020 to September 30, 2022. LEAs must obligate ESSER funds by September 30, 2022 and must liquidate ESSER funds by October 30, 2022.

**26. If an LEA previously submitted an application for ESSER funds to NYSED, does the LEA need to submit a new application?**

Yes. The application form has been changed to reflect the invalidation of USED's Interim Final Rule governing the methodology to be used in calculating the amount of funding for equitable services to students and teachers in non-public schools. The application form has also been revised to include data USDE has indicated it will be requiring.

**27. If an LEA did not receive an FY 2019 Title I, Part A subgrant for school year 2019-2020, is it eligible to receive ESSER formula funds?**

No, pursuant to guidance issued by the U.S. Department of Education, in general, an LEA is not eligible to receive ESSER formula funds if they did not receive a FY 2019 Title I, Part A subgrant. This applies to LEAs that did not generate a Title I, Part A allocation or declined their allocation in 2019-20. There are two exceptions: 1) If the LEA is a new charter school

that did not exist in the 2019-2020 school year; or 2) if a charter school LEA that was previously established significantly expanded during the 19-20 school year and therefore its larger student population makes it eligible for Title I, Part A funds in the 2020-2021 school year.

## **28. What are the allowable uses of ESSER funds by LEAs?**

An LEA may use ESSER funds for any of the following activities:

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.

**29. Are non-public schools eligible to receive equitable services with ESSER funds?**

While non-public schools are not eligible to apply to the New York State Education Department (NYSED or “the Department”) for ESSER funds, LEAs are required to provide equitable services to students and teachers in non-public schools serving district-resident students, even if the non-public school has not previously participated under Title I, Part A or Title VIII of the ESEA. In general, the activities described above in Question #25 are allowable for participating non-public schools.

**30. Can ESSER funds be used to support services for students attending a facility designated as neglected?**

Yes, ESSER funds can be used to support services for district-resident students attending a facility designated as neglected.

**31. Must an LEA or another public agency maintain control of ESSER funds used to provide equitable services?**

Yes. Control of funds for services and assistance provided to non-public school students and teachers under the CARES Act programs, and title to materials, equipment and property purchased with such funds, must be in a public agency, and a public agency must administer such funds, materials, equipment, and property. No funds may go directly to a non-public school, even for reimbursement purposes (see Question #9 above for a definition of non-public school). In addition, services for non-public school students and teachers must be provided by a public agency directly or through contract with another public or private entity. All services and benefits an LEA provides with ESSER funds must be secular, neutral, and nonideological.

**32. Section 1117 of the ESEA requires equitable services be targeted to students academically at risk. Do CARES Act ESSER funds have the same requirement for ESSER?**

No. Eligibility to participate in or benefit from CARES Act activities are more broad than Title I, Part A. ESSER funds may be used to benefit all teachers and students, subject to consultation and the allowable CARES Act uses.

**33. How can an LEA determine the proportional share of ESSER funds for equitable services to non-public elementary and secondary schools?**

To determine the amount of ESSER funds available for equitable services in a manner consistent with Section 1117 of the Elementary and Secondary Education Act (ESEA), the LEA must determine the overall number of children from low-income families who reside in participating Title I public school attendance areas and who attend public schools and non-public schools. Using the proportion of children from low-income families who attend non-public schools (located within and outside of the districts geographic boundaries), the LEA would determine the amount of funds available for equitable services based on that proportional share of the LEA’s total ESSER allocation. For example, an LEA with four Title I public school attendance areas and a total ESSER allocation of \$1,000,000 would determine the proportional share as follows:

<b>EXAMPLE – DETERMINING THE PROPORTIONAL SHARE</b>			
<b>Public School Attendance Area</b>	<b># of Public School Low-Income Children</b>	<b># of Private School Low-Income Children</b>	<b>Total # of Low-Income Children</b>
A	500	120	620
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<b>TOTAL</b>	<b>1,350</b>	<b>150</b>	<b>1,500</b>
PROPORTIONAL SHARE	90%	10%	
	\$900,000	\$100,000	

**34. Must an LEA engage in consultation with non-public schools if it already engaged them for the original application?**

Yes, an LEA must engage in timely meaningful consultation with all non-public schools serving district resident low-income students who reside in participating Title I public school attendance areas. This includes non-public schools located inside and outside of the district’s geographic catchment area. Please note that consultation obligations may include additional non-public schools than were consulted as part of the original application issued by NYSED.

**35. Since an LEA’s ESSER grant allocation is based on the formula used to determine Title I, Part A allocations, is an LEA required to meet Title I, Part A requirements in spending the ESSER funds?**

No. Although an LEA receives ESSER formula funds via the Title I, Part A formula, ESSER funds are not Title I, Part A funds and generally are not subject to Title I, Part A requirements.

**36. May an LEA use its ESSER funds to support any school in the district, regardless of a school's Title I, Part A status?**

Yes, an LEA may charge direct costs that are reasonable and necessary to support any school in the district. Please note that all salaries paid for with ESSER funds must be supported by time and effort documentation required by the Federal Uniform Grant Guidance (2 CFR 200.430).

**37. Are ESSER funds subject to a supplanting prohibition?**

The CARES Act does not contain a supplement not supplant provision for ESSER funds.

**38. May an LEA reserve funds for administrative costs?**

Yes. An LEA may charge direct costs that are reasonable and necessary for the administration of the ESSER funds. Keep in mind that all salaries paid for with ESSER funds must be supported by time and effort documentation required by the Federal Uniform Grant Guidance (2 CFR 200.430).

**39. Is there any difference in the amount of ESSER funds, or allowable uses of ESSER funds, for a school that implements a schoolwide program under Title I, Part A as compared to a school that provides targeted support under Title I, Part A?**

No. The Title I, Part A requirements related to Schoolwide Programs and Targeted Assistance programs do not apply to ESSER funds.

**40. Is an LEA that receives ESSER funds required to set-aside funds for any reason?**

No. Unlike Title I, Part A requirements to set-aside funds for students experiencing homelessness, neglected youth and parent and family engagement, there are no required set-asides required of ESSER funds. However, LEAs are required to provide equitable services to students and teachers in participating non-public schools.

**41. Should LEAs anticipate monitoring or auditing of ESSER funds?**

Yes. NYSED will monitor the use of ESSER funds. In addition, ESSER funds are subject to audit requirements under the Single Audit Act.