

# CARES Act/ESSER Fund Non-Public School Consultation Agreement

*Agreements with non-public schools are due in ePlan by Nov. 1, 2020.*

Under the CARES Act, a local educational agency (LEA) that receives funds under the ESSER Fund (CARES Act § 18003) must provide equitable services to students and teachers in non-public schools in the same manner as provided under the Elementary and Secondary Education Act of 1965 (ESEA) § 1117 (CARES Act § 18005(a)). The Every Student Succeeds Act (ESSA) in §§ 1117 and 8501 requires that timely and meaningful consultation between the LEA and non-public school officials occur prior to any decision that affects the opportunities of eligible non-public school students, teachers, and other educational personnel for equitable services. This consultation must be ongoing, continuing throughout the implementation and assessment of these activities. To help ensure equitable services and other benefits are being provided for eligible non-public school students, teachers, and other educational personnel, the state must designate an ombudsman to monitor and enforce the requirements under both Title I and Title VIII. Tennessee has designated the department's equitable services coordinator as the ombudsman for ESSA equitable services requirements.

On Sept. 4, 2020, the U.S. District Court for the District of Columbia issued an opinion and an order vacating the [interim final rule](#) (IFR) on equitable services provisions for eligible non-public schools under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The U.S. Department of Education (ED) subsequently updated their CARES Act webpage to indicate that the IFR is no longer in effect. Based on recent legal developments, it is requested that LEAs put the difference between the amount generated by the proportional-student enrollment formula and the Title I, Part A formula into an escrow account. Note that each non-public school's proportionate share may be used to serve all of its students and teachers, not just those who would qualify under Title I, Part A

This sample form covers topics from the CARES Act/ESSER Fund "Affirmation of Meaningful Consultation" form that each LEA uploaded to ePlan as part of the ESSER Fund application as well as information regarding the most recent legal developments. This is not an exhaustive list and may not cover the entire agreement between the LEA and the non-public school as each school will have individual needs that could be addressed through the provision of equitable services. LEAs utilizing this form should modify and add topics to reflect the actual agreement between the LEA, and the non-public school. LEAs must upload consultation agreements for each participating non-public school to the Related Document section of the ESSER Fund application by **Nov. 1**. LEAs that have uploaded consultation agreements for each participating non-public school will have satisfied the requirement that consultation agreements be forwarded to the state ombudsman.

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Name of Local Educational Agency (LEA)

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Name of Non-Public School or Agency

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*Amount of Equitable Services set-aside when calculated using Total Student Enrollment*

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*Amount of Equitable Services set-aside when calculated using Title I, Part A eligibility*

This agreement is a reflection of consultations held on behalf of the ESSER Fund between the LEA and the Non-Public School or Agency. This agreement acknowledges that current legal implications of the ESSER Fund has adjusted the allocation amount available for equitable services. The non-public school agency/school official and LEA agree on the terms below.

**Describe the method used to calculate the proportion of funds allocated under the Title I formula for ESSER Fund equitable services and the data sources used to help determine that amount.**

**Describe how the needs of the students, teachers, or other educational personnel are identified.**

**Describe the size and scope of ESSER Fund equitable services to be provided to eligible non-public school students, teachers, and other educational personnel and the amount of funds available for those services. Example: “ \_\_\_ teachers and \_\_\_\_\_ students are being provided \$\_\_\_\_\_ in services/purchases.”**

*Based on Title I formula:*

**Describe what services will be provided, including how, when, where, and by whom:**

*Based on Title I formula:*

**Describe how decisions about the services will be made, how the services will be assessed, and how the results of the assessment will be used to improve those services. Include in your discussion how progress of the program will be monitored for effectiveness and how the LEA will ensure oversight (for issues including allowability, compliance with program requirements, inventories of equipment and materials, etc.):**



For the program described above, the non-public school agency/school official and the LEA affirms this agreement for the \_\_\_\_\_ school year.

\_\_\_\_\_  
Name of LEA

\_\_\_\_\_  
Name of Non-Public School or Agency

\_\_\_\_\_  
Signature of LEA Representative      Date

\_\_\_\_\_  
Signature of School Representative      Date