



CARES Act Equitable Services: Important Update

On July 1, 2020, the U.S. Department of Education published Interim Final Rule (IFR) 34 CFR 76.665 regarding equitable services under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. 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 IFR. Accordingly, the IFR is no longer in effect.

What does this mean for private and public schools in Kansas?

- Local Education Agencies (LEAs) should immediately cease using the ESSER and ESSER-SPED equitable share method described in 34 CFR 76.665, and disregard prior guidance from the Kansas State Department of Education on the use of this method.
- LEAs will use poverty data as the method outlined in section 1117 of the Elementary and Secondary Education Act (ESEA) to determine the private school proportional share of ESSER or ESSER-SPED funds to be used to provide equitable services to participating private schools.
- Neither public, nor private schools will be penalized for providing services in accordance with the now vacated US Department of Education regulations and guidance, while they were in effect. But all entities should retain documentation related to services, consultation, and any other activities provided during that period.
- Private schools may participate in equitable ESSER and ESSER-SPED services, even if they did not participate in Title I or other federal equitable services.
- Private schools that already received services, but no longer wish to participate, or that received more benefit than they were entitled to under ESEA 1117 will have services discontinued, and will remit public property back to the public school, as necessary.
- Private schools that are no longer participating, or that received more benefit than they were entitled to under ESEA 1117 do not need to reimburse the public schools.
- Public schools cannot reduce the amount of equitable services for a private school below what the private school is entitled to under the ESEA 1117 method, even if the public school provided an “excess” of services to other private schools during the time that the regulation 34 CFR 76.665 was in effect.

The Kansas State Department of Education will be providing updated guidance in the coming days, and will host an [interactive Zoom webinar](#) at 9:00am on Wednesday, September 16th. Additional details, updated guidance, and the recording of this webinar will continue to be posted to <https://www.ksde.org/Default.aspx?tabid=564#esser> as they become available.