MEMORANDUM

TO: Superintendents, Business Managers, Independent School Heads
FROM: Dan French, Secretary of Education
SUBJECT: CARES Act (ESSER) Application for SU/SDs – Equitable Services
DATE: October 6, 2020

Background

On September 25, 2020, the United States Department of Education announced that it will not pursue an appeal of the most recent lawsuit that vacated the Department's Interim Final Rule on equitable services under ESSER. This means that the former rule and former Vermont Agency of Education guidance on compliance with that former rule are now inapplicable to SU/SD's ESSER applications. This guidance will assist SU/SDs to follow the applicable law with regard to equitable services. It supersedes all previous AOE guidance on calculating ESSER equitable share.

With the conclusion of the litigation, we now have clarity and finality on how to administer equitable shares provisions with regard to ESSER funds. Vermont's LEAs must determine equitable share amounts in accordance with the original language of the CARES Act. Section 18005 of this law requires LEAs to provide equitable services "in the same manner as provided under section 1117 of the ESEA," a reference to the methodology for calculating equitable share under Title I Part A.

Determining equitable share under ESSER using the Title I Part A methodology is a deviation from the approaches employed previously by Vermont's LEAs under the U.S. Department of Education's Interim Final Rule. However, adopting this approach enjoys broad support among Federal education policy experts as now being the correct course of action. The AOE will shortly update the Equitable Services page within the GMS to reflect this new methodology for calculating equitable share.

Calculating Equitable Share

Calculation of equitable share under ESSER is based upon ESEA Section 1117. Under this section, the amount of funds made available for equitable share to an approved or recognized, non-profit independent school "shall be equal to the proportion of funds allocated to participating [public] school attendance areas based on the number of low-income families who attend private schools."

In practice, this means that ESSER funds available for equitable share are calculated based on the number of students from low-income families who reside in attendance areas served by an LEA's Title I schools but are enrolled in non-profit, approved or recognized independent schools. In this way, the amount of funds made available for equitable share is proportional to the amount available to the LEA, which is based on the number of students from low-income families enrolled in the LEA’s Title I-served public schools.

Only those independent schools that enroll students from low-income families who reside in a public attendance area served by a Title I school may take part in equitable share under ESSER.

LEAs are responsible for robust consultation with, and services to, eligible independent schools both within and outside the physical boundaries of the LEAs, so long as they are attended by students from low-income families who would otherwise attend a Title I-served public school in the LEA. This may mean that multiple LEAs have an obligation to provide equitable services under ESSER to the same eligible independent school. LEAs are responsible for identifying and conducting outreach to all eligible independent schools.

As a reminder, LEAs must remain in control of all equitable share funds.

Who May Be Served

While ESSER borrows its methodology for determining equitable share amounts from Title I Part A, it does not share Title I Part A’s limitation on who can be served when funds are available. Title I Part A stipulates that equitable services may only benefit those students most at-risk to not meet challenging academic standards and the staff that serve them directly. This is not true of the CARES Act, which describes all students and staff benefitting from allowable fund uses. Therefore, all students and staff within eligible independent schools may be served with investments funded by these schools’ equitable share allocations.