

CARES Act – Nonpublic Questions & Answers

1. How long may equipment and supplies purchased with CARES Act funds and placed in a nonpublic school remain in that nonpublic school?

Equipment and supplies purchased with CARES Act funds for students and teachers in a nonpublic school may only be used for the authorized purposes of the CARES Act during the period of performance, or until the equipment and supplies are no longer needed for the purposes of a CARES Act program (See 34 C.F.R. § 76.661(b); 2 C.F.R. §§ 200.313(a)(1), (c)(1) and 200.314(a)). The period of performance is the time during which an LEA may incur new obligations to carry out the work authorized under the CARES Act award—i.e., through September 30, 2022. (2 C.F.R. § 200.77).

In general, once equipment or supplies are no longer needed for purposes of a CARES Act program, an LEA must remove them from the private school. (34 C.F.R. § 76.661(d)(1)). However, after equipment and supplies are no longer needed for the purposes of a CARES Act program, the LEA may continue to use the equipment or supplies in the nonpublic school to the extent they are needed for other allowable purposes under another federal education program, such as the ESEA or the Individuals with Disabilities Education Act (IDEA). The LEA retains title to, and must maintain administrative control over, the equipment and supplies.

2. May an LEA use CARES Act funds for the nonpublic proportionate share for allowable COVID-19 related expenses that the school incurred on or after March 13, 2020 but prior to the onset of equitable services by the LEA?

Under section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f), an LEA must control funds for services and assistance provided to nonpublic school students and teachers under a CARES Act program and keep title to materials, equipment, and property purchased with such funds, and the LEA must administer such funds, materials, equipment, and property. Thus, nonpublic proportionate share expenditures are only allowable for necessary expenditures the nonpublic school incurred in response to COVID-19 under limited circumstances where it can do so while also meeting these requirements. In doing so, the LEA must ensure those activities, materials, or equipment are allowable under the CARES Act and are secular, neutral, and non-ideological.

For example, an LEA may use CARES Act funds for the nonpublic proportionate share for costs related to cleaning and sanitizing a school facility that occurred on or after March 13, 2020, in response to the COVID-19 pandemic, but before the LEA and nonpublic school officials engaged in timely and meaningful consultation. To maintain control over the CARES Act funds, the LEA must ensure that the nonpublic school's expenditures represent allowable expenses, that there is sufficient documentation supporting such expenditures, and that the school actually received

the services or assistance related to those expenditures. The LEA must follow its written procurement procedures. The nonpublic and the LEA must agree to those expenses and the LEA may not reimburse the nonpublic directly.

In each case, such educational services or other benefits, including materials and equipment, must be secular, neutral, and nonideological.

3. May an LEA use CARES Act funds to facilitate remote learning for students and teachers in a nonpublic school?

Facilitating remote learning, such as purchasing laptops, increasing bandwidth, providing improved cyber security or purchasing virtual classroom platform licenses, as a result of COVID-19 for students in a nonpublic school may be an allowable expense under the CARES Act, provided that certain conditions are met. If increased bandwidth or improved cyber security requires the purchase of materials or equipment, such as IT equipment or security software, an LEA must maintain title to the materials, equipment, and property purchased with CARES Act funds and must administer such materials, equipment, and property. If such materials and equipment are provided through contract with a third-party provider, the LEA must contract with the third-party provider.

Consistent with ESEA section 1117(a)(2) and 34 C.F.R § 76.665(e), any services or other benefits, including materials and equipment, provided to nonpublic school students and teachers must be secular, neutral, and nonideological.

4. May an LEA use CARES Act funds for repairs, renovation, or remodeling in a nonpublic school?

No. An LEA must maintain title to any materials, equipment, and property purchased with CARES Act funds, and the LEA must administer and control the materials, equipment, and property. (Section 18005(b) of the CARES Act and 34 C.F.R. § 76.665(f)). In addition, under Department regulations applicable to equitable services under the CARES Act, equipment and supplies placed in a private school must be removable from the private school without remodeling (34 C.F.R. § 76.661(c)(2)), and program funds may not be used for construction (including renovation, remodeling, and repairs) of private school facilities (34 C.F.R. § 76.662).

An LEA may, however, provide equitable services in the form of non-permanent improvements in a nonpublic school, provided that these improvements are easily removable. For example, an LEA might set up a temporary screening area in a tent in front of a nonpublic school, rent and install temporary partitions to assist with social distancing, or provide hand sanitizing stations.

5. Must an LEA follow their LEA procurement process when purchasing for the nonpublic proportionate share?

Yes. The LEA must follow its written procurement procedures.

6. Does the nonpublic proportionate share expenditures need to be an allowable activity?

Yes. The purpose of the ESSER fund is to provide LEAs with emergency relief funds to address the impact COVID-19 has had, and continues to have, on elementary and secondary schools. This includes both continuing to provide educational services while schools are closed and developing plans for the return to normal operations. Below are the allowable activities for these funds.

Allowable activities include:

1. Any activity authorized by ESEA, IDEA, AEFLA, Perkins or McKinney Vento;
2. Coordination of preparedness and response efforts to COVID-19;
3. Providing principals and other school leaders with resources to address individual school needs;
4. Activities to address the unique needs of low-income children, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including outreach and service delivery;
5. Procedures and systems to improve LEA preparedness and response efforts;
6. Training and professional development for LEA staff on sanitation and minimizing the spread of infectious disease;
7. Purchasing supplies to sanitize and clean LEA facilities;
8. Planning for and coordinating during long-term closures, including how to provide the following: meals, technology for online learning, guidance for carrying out IDEA requirements, and educational services consistent with applicable requirements;
9. Purchasing educational technology (including hardware, software and connectivity) for the LEA's students;
10. Providing mental health services and supports;
11. Planning and implementing summer learning and supplemental afterschool programs; and,
12. Other activities necessary to maintain LEA operations and services and employ existing LEA staff. Nonpublic schools do not qualify as LEAs, therefore, the activity of maintaining LEA operations and services and employing existing LEA staff would not be considered an allowable activity for nonpublic schools.

Non-Allowable Uses of Funds

1. Bonuses, merit pay or similar expenditures, unless related to disruptions or closures related to COVID-19.
2. Executive salaries and benefits of individuals who are not LEA employees.
3. Expenditures related to state or local teacher or faculty unions or associations.
4. Activities and/or purchases religious in nature.