

ACSI Legal Update on CODVID-19 Issues for Schools

Philip Scott – Introduction and Updates

**Tom Cathey – Updates on FFCRA Update and the
CARES Act**

**George Tryfiates – The CARES Act and Equitable
Services**

April 13, 2020



Disclaimer

This presentation is designed to provide accurate and authoritative information regarding the subject matter covered. It is distributed with the understanding ACSI is not engaged in rendering legal, financial or other professional services. The purpose of this presentation is educational. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

Legal and Legislative Coronavirus Resources

ACSI Legal Legislative team is actively looking at issues related to the Coronavirus COVID-19 outbreak that impact Christian education. This page is designed to give you current, relevant information and is updated as new information unfolds.

Submit your question to our Legal Legislative Team

- Thomas J. Cathey, Ed.D., Director for Legal/Legislative Issues
- Phillip Scott, Esq., In-House Counsel to ACSI
- George Tryfiates, Director of Government Affairs

CARES Act Guidance

- **NEW** 4/05/20 - Key Guidance - ACSI - [CARES Act Guidance for Faith Based Schools: Additional SBA Guidance on PPP and EIDL Programs](#)
- **NEW** 4/04/20 - Key Guidance - SBA - [FAQ Regarding Participation of Faith-Based Organizations in the PPP and EIDL Loan Programs](#)
- **NEW** 4/03/20 - CapinCrouse - [Summary of Paycheck Protection Program Loan Regulations](#)
- **NEW** 4/02/20 - ACSI - [SBA PPP and Christian Schools Guidance on Loan Application and Forgiveness](#)
- 3/31/20 - [US Treasury Guidance](#) includes SBA PPP Loan Application
- 3/30/20 - Sherman & Howard - [CARES Act: Key Provisions Regarding SBA Disaster Relief](#)
- 3/30/20 - Sherman & Howard - [CARES Act: Key Differences: PPP and EIDL](#)
- 3/30/20 - Natl. Council of Nonprofits - [Loans Available for Nonprofits in the CARES Act](#)
- 3/27/20 - Key Guidance - Batts Morrison - [CARES Act Approved by Senate Pending House Approval and President Signature](#)
- **UPDATED** 4/5/20 - ACSI - [The Coronavirus Aid, Relief, and Economic Security \(CARES\) Act Update](#)

ACSI Legal Resources

- **NEW** 4/03/20 - [School Data, Student Privacy, and Child Safety During COVID-19](#)
- **NEW** 4/03/20 - [Virtual Classroom School Policy Updates](#)
- 3/31/20 - [ACSI Updated Transcript of Legal Update on COVID-19 Issues for School](#)
- **UPDATED** 4/05/20 - Key Guidance - [ACSI Updated Guidance on COVID-19 Coronavirus Response Act](#)
- 3/27/20 - Early Ed & Child Care Waiver Release for

Third Party Legal Resources

- **NEW** 4/02/20 - Fisher Phillips - [CDC's Updated Return-To-Work Standards May Be Helpful To Businesses](#)
- **NEW** 4/02/20 - Fisher Phillips - [An Employer's Step-By-Step Guide To COVID-19-Related Tax Credits For Paid Leave](#)
- **NEW** 4/02/20 - Fisher Phillips - [Top 10 Things Employers Need To Know About DOL's New COVID-19 Rules](#)
- 3/26/20 - Sherman & Howard - [Where to Hang a](#)

Live on Mondays!

Join our **Legal Legislative Brief for Educational Leaders** focusing on

- Impacts new legislation have on Christian Schools
- Clarify laws that are already in place
- Discuss rapidly evolving issues

Submit your question

Future Webinars

IRS Extensions

- Most all tax reporting due April 1 – July 15 have been extended.
 - Form 990
 - Form 5500

Your Questions

- Title IX Exemption –
 - Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12.
 - <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>
 - How is “sex” defined?
- Seat hours or days of instruction requirements for states – should we follow suit?

Your Questions

- Can I sign the certification on the PPP loan application?
 - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

Families First Coronavirus Response Act (FFCRA)

The intent of the bill

- To provide those who are unable to work or telework due to various qualifying reasons to get EPSL and EFMLA

Your school is closed and some employees are not working

- Employees that have been laid off or furloughed and are not being paid on or before April 1 are **not** eligible for FFCRA.
- If school closed on or before April 1 and employees are not working and not being paid, they are **not** eligible for FFCRA.

Families First Coronavirus Response Act (FFCRA)

Unemployment Benefits

- **Church Employees Can Be Eligible for Unemployment Benefits Under PUA Program.** (Church-owned Christian Schools)
 - Because churches do not pay unemployment taxes, their employees normally are not eligible for unemployment benefits when employment is terminated.
 - But the **PUA** program exists precisely for those individuals church employees who are terminated appear to fit within the CARES Act category of those who do “not qualify for regular unemployment or extended benefits under State or Federal law.”
 - DOL’s [UIPL 16-20](#) adopts this interpretation. It says the CARES Act provides “coverage for individuals who are not eligible for regular [unemployment compensation]. These individuals may also include certain gig economy workers, *clergy and those working for religious organizations who are not covered by regular unemployment compensation.*”

Families First Coronavirus Response Act (FFCRA)

Unemployment Benefits

- **Relief is Available for Certain Nonprofit Employers to Fund Unemployment Benefits.**
 - Section 2103 of the CARES Act sets aside federal funds for states to reimburse 501(c)(3) nonprofits for **50 percent** of amounts they pay for unemployment benefits between March 13, 2020 and December 31, 2020. This benefit applies to nonprofits who have elected the **reimbursement method** for unemployment insurance coverage and who would otherwise have to make payments for terminated employees seeking unemployment benefits. (This provision does not apply to churches or organizations controlled by churches who have been exempt from paying unemployment taxes.)

CARES ACT

- Health Insurance Group Plans
 - *Diagnostic Testing For COVID-19.* The CARES Act clarified that your group health plan must cover all testing for COVID-19 without a co-pay requirement, including tests without an emergency use authorization.
 - *Vaccines.* Your group health plan must cover without a co-pay any COVID-19 vaccine that has in effect a rating of “A” or “B”.
 - *HSA Coverage for Telehealth Services.* High deductible health plans with health savings accounts may cover telehealth services without requiring that the minimum deductibles otherwise applicable be met.
 - *HSAs and FSAs to purchase Over-the-Counter Drugs and Menstrual Care Products.* HSAs and FSAs may be used to purchase over-the-counter drugs without a prescription and to purchase the whole range of menstrual care products.

CARES ACT

- Health Insurance Group Plans
 - *HSAs and FSAs to purchase Over-the-Counter Drugs and Menstrual Care Products.* HSAs and FSAs may be used to purchase over-the-counter drugs without a prescription and to purchase the whole range of menstrual care products.
 - Thousands of items, including pain relievers, cold and flu medications, antacids, acne remedies, and allergy medicines are now reimbursable.
 - Vitamins and supplements will continue to require a physician's "prescription" indicating that they are being taken to treat a diagnosed medical condition (e.g., anemia) rather than for general health and wellness.
 - No expiration date on this new law.

Main Street Lending Program

- Federal Reserve Board
- \$600 Billion program
- Non-profits are ineligible.

The CARES Act – K-12 Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 27, 2020

Creates Education Stabilization Fund with \$30.75 billion in three funds

- ❖ Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)
- ❖ Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)
- ❖ Sec. 18004 – Higher Education Emergency Relief Fund (46.3%)

The CARES Act – K-12 Relief

- ❖ Two Funds in the Education Stabilization Fund apply to elementary/secondary schools. Both require the local educational agency (LEA) to make equitable services available to non-public schools in the same manner as provided under section [1117 of the Elementary and Secondary Education Act \(ESEA\)](#).
- ❖ The local educational agency (LEA)/school district is required to consult non-public schools.
- ❖ The “control of funds” is maintained by the LEA/school district.
- ❖ The funds are available through September 30, 2021.

The CARES Act & Equitable Services

Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)

Allows the Governor “to provide support to any other institution of higher education, local educational agency, or education-related entity within the State that the Governor deems essential for carrying out emergency educational services to students...the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.” (Sec. 18002(c)(3)).

Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)

- The allocation of funds to the states is based on the same proportion each state received under Title IA in the most recent fiscal year.
- The law authorizes twelve uses for funds.

The CARES Act & Equitable Services

- Reach out to your LEA (local education agency) now about participating in either Emergency Relief Fund. Equitable services for both will flow through the LEA
- Equitable services requires consultation with non-public schools.
- We've advised the USDE that there may be far more interest in participating in emergency programs than under standard programs. The idea being to alert LEAs to this reality.

The CARES Act & Equitable Services

Things to think about:

- The CARES Act ESF is not a Title I program; that is simply the way funds are allocated.
- *Your previous non-participation should not be relevant. If you do not know the key personnel in your LEA, your neighboring schools may help.*
- Talk to your LEA about what you need *before* the LEA applies for the separate Governor's Emergency Education Relief Fund grant.
- *Make sure the LEA counts all of your children in their grant application. All children are eligible to participate in the program, not just Title I children. This is in dispute.*
- Tell LEA that you want to be consulted with prior to your applying.
- Use the list 12 items to craft what you need from it. Worth noting that what the public and private schools need may differ; the former may not be relevant to the latter.
- The services are determined by the consultation, not by being "consulted" by the LEA.

The CARES Act & Equitable Services

Things to think about:

- Remember your ombudsman as a possible resource in a difficult situation. It may be that the person will not want to be pulled into ESF questions even though the CARES Act refers to ESEA Section 1117 which includes the ombudsmen.
- However, if you're using the ESF's Elementary and Secondary School Emergency Relief Fund, the first of the 12 uses (#1) is "any activity authorized by the Elementary and Secondary Education Act of 1965". Those are the usual title services and the ombudsman is obligated to assist in those cases. (ESEA is now the Every Student Succeeds Act, ESSA).
- You can assume your LEA would not provide services under #1 if you had already declined to participate. But, if you *did* intend to participate, then #1 applies.
- Worth noting that items #2 through #12 likely include anything you would have sought through ESEA and potentially have fewer requirements.

Education Stabilization Fund (EFS)

New Website from US Department of Education

Education Stabilization Fund (EFS) webpage (as of 4/13/20):

<https://oese.ed.gov/offices/Education-Stabilization-Fund/>

The USDE has an ongoing Coronavirus webpage as well:

<https://www.ed.gov/coronavirus?>

The CARES Act's EFS & Equitable Services

ACSI's Memo to School Leaders

**[Memo to School Leaders on CARES Act
Education](#)**

[Stabilization Fund](#)

Sample Letter for your LEA

[Sample Letter Schools Can Adapt for Their LEA](#)

The CARES Act's EFS & Equitable Services

WHAT YOU NEED TO KNOW ABOUT NON-PUBLIC SCHOOL PARTICIPATION

- The law requires equitable services to be provided by the LEA to non-public schools under this program – and under both the Governor's fund and the Schools fund.
- The law also requires the LEA to consult with non-public school leaders in order to meet their needs through equitable services.
- The program is open to all non-public schools, even if they have not participated in federal education programs in the past.

The CARES Act's EFS & Equitable Services

WHAT YOU CAN DO NOW TO BE PREPARED

- 1) Begin drafting a needs assessment for your school, students and teachers.

The legislation lists twelve categories of permissible uses of the Schools funds found in Section 18003(d). State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) should not begin making plans for the dispersal of these funds until the US Department of Education releases guidance on implementation of the new law, which is expected in the coming days. While a needs assessment is not required, just getting your needs on paper to share is the goal. Also, as much as possible, tie any requests to specific student needs.

The CARES Act's EFS & Equitable Services

WHAT YOU CAN DO NOW TO BE PREPARED

(cont'd)

2) Proactively reach out to your LEAs letting them know you look forward to consultation on the Education Stabilization Fund.

LEAs are required to consult with non-public schools. If you are a school that has not participated in ESSA or IDEA in the past, it's even more important to reach out proactively. Introduce yourself, tell them about your school.

The CARES Act's EFS & Equitable Services

WHAT YOU CAN DO NOW TO BE PREPARED

(cont'd)

3) Bring the actual bill text of Sections 18002, 18003 and 18005 with you to consultation (and the USDE Guidance, once released).

(Text is in the memo at the link in the above slide and on the ACSI Legal Legislative Coronavirus webpage).

The CARES Act's EFS & Equitable Services

Secretary of Education Betsy DeVos Authorizes New Funding Flexibilities to Support Continued Learning During COVID-19 National Emergency

An April 6, 2020 USDE press release provides funding flexibility that may impact how you deal with your LEA:

Any state may complete a brief form available at oese.ed.gov, and it will receive an initial determination within one business day. Using the form, states can receive flexibility in the use of funds and other requirements covered under the Elementary and Secondary Education Act of 1965 (ESEA), including the Title I, Parts A-D, Title II, Title III, Part A, Title IV, Parts A-B, and Title V programs. Specifically, states may request a waiver of:

- *Section 1127(b) of Title I, Part A of the ESEA to waive the 15% carryover limitation for Title I, Part A funds;*
- *Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of prior fiscal year funds, for Title I, Parts A-D, Title II, Title III, Part A, Title IV, Parts A-B, and Title V, Part B programs, and the McKinney-Vento Homeless Children and Youth program;*
- *Section 4106(d) of Title IV, Part A of the ESEA to waive a needs assessment to justify the use of funds;*
- *Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA to waive content-specific spending requirements;*
- *Section 4109(b) of Title IV, Part A of the ESEA to waive spending restrictions on technology infrastructure; and*
- *Section 8101(42) of the ESEA to waive the definition of "professional development," which might otherwise limit the ability to quickly train school leaders and teachers on topics like effective distance learning techniques.*

Christ is Risen!

Χριστος Ανεστη!

He is Risen Indeed!

Αλιθος Ανεστη!



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