

# The Federal Update for January 7, 2022

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Re: Federal Update

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[Legislation and Guidance 1](#_Toc92454231)

[ED Updates MOEquity Guidance, Draft Requirements 1](#_Toc92454232)

[New ESSER/GEER Fact Sheet Emphasizes Flexibility 2](#_Toc92454233)

[CDC Updates Quarantine Guidance for Students 3](#_Toc92454234)

[News 3](#_Toc92454235)

[ED, DOT Take Action to Address Bus Driver Shortage 3](#_Toc92454236)

[Biden Administration Urges Schools to Remain Open 4](#_Toc92454237)

[Reports 5](#_Toc92454238)

[OIG Report Examines Common Uses of GEER, Spending Issues 5](#_Toc92454239)

## Legislation and Guidance

### ED Updates MOEquity Guidance, Draft Requirements

In two documents issued over the holidays, the U.S. Department of Education (ED) provided additional information on the Maintenance of Equity requirement in the American Rescue Plan.

Updates to the Frequently Asked Questions document indicate that districts will now be able to claim an exemption from Maintenance of Equity (referred to by ED as “MOEQuity”) because the district is not facing overall budget reductions for the 2023 school year (2022-23) or for the current school year. Previously, ED had suggested this exemption would only apply for the current year. A local educational agency (LEA) which is not anticipating an overall budget reduction for either year must file a certification form – found in Appendix B of the guidance document – with its State. Small LEAs who wish to claim an exemption because they fall into one of the categories outlined in the statute (fewer than 1,000 students, single-school LEAs and those with one school per grade span) must communicate their plans to claim this exemption with their State. Districts wishing to apply for a waiver because of other “unforeseen circumstances” must apply for an exemption with ED.

[The updated MOEquity guidance is available here](https://oese.ed.gov/files/2021/12/Maintenance-of-Equity-updated-FAQs_12.29.21_Final.pdf).

In addition, ED issued an updated “proposed requirement” for Maintenance of Equity in the *Federal Register* on Monday. This proposal makes some revisions to reflect feedback from States and others who complained that the original proposed timeline for collecting and submitting information regarding MOEquity was impossible for States to meet given the amount of information needed and the importance of data verification.

ED did not change its baseline assumption that States will be the ones making compliance determinations regarding whether or not districts are in compliance with the requirement. However, in an effort to ease the administrative burden on State agency staff, it did spread out how information is reported. Under the new proposal, ED would have to report by March 31, 2022 a list of each LEA that has received or claimed an exemption from MOEquity, and for districts that do not have an exemption, a list of that district’s “high-poverty schools” as defined in the statute. By the same date, the State must also have a plan to “ensure that each LEA that is not excepted…is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding…such that the LEA can make any necessary adjustments in a timely manner.”

By December 31, 2022, the State must publish spending and staffing data for non-exempt LEAs, as well as a determination as to whether the district has maintained equity for its listed high-poverty schools. The deadline for publishing exemptions for the second year of MOEquity is November 1, 2022, with determinations made for the 2022-23 school year by December 31, 2023.

Notably, ED has not indicated what the consequences might be for districts that fail to meet this requirement. Nor does it suggest that districts that are not on track to meet the per-pupil staffing requirement would be expected to adjust those numbers given enough notice.

Comments on this updated proposal are due by February 2, 2022. The [full “proposed requirement” is here](https://www.govinfo.gov/content/pkg/FR-2022-01-03/pdf/2021-28376.pdf).

Author: JCM

### New ESSER/GEER Fact Sheet Emphasizes Flexibility

The U.S. Department of Education (ED) issued a new “frequently asked questions” document in late December emphasizing the ways in which funds under the Elementary and Secondary School Education Relief Fund (ESSER) and Governors’ Education Emergency Relief Fund (GEER) can be used flexibly to respond to the pandemic. The document emphasizes that the funds must be used to “prevent, prepare for, and respond to” the COVID-19 pandemic, but suggests that this can include “a wide range of activities” like supporting physical health and safety with public health protocols, meeting students social-emotional and mental health needs, and ensuring operational continuity. The document also provides a list of allowable activities the agency has approved or recommended.

In addition, the document notes that the needs may be “arising from or exacerbated by” the pandemic “or to emerge stronger post-pandemic.” However, the document does not indicate that merely “emerg[ing] stronger” and improving achievement is enough without an explicit tie to the impact of COVID-19, and all the suggested activities listed respond in some way to staffing, healthy facilities, support for children with disabilities, and student supports to respond to needs created or exacerbated by a year or more of virtual school and the stress of the pandemic. Additionally, this guidance does not overrule the Office of Management and Budget’s Compliance Supplement regarding ESSER and GEER, which emphasizes the need for a tie to the pandemic.

The [new FAQ is available here](https://oese.ed.gov/files/2021/12/Fact-Sheet_COVID_connection_12.29.21_Final.pdf).

Author: JCM

### CDC Updates Quarantine Guidance for Students

Following its updated guidance for adults, the Centers for Disease Control (CDC) has issued new guidance for quarantine and isolation of students in K-12 schools.

The updates to the guidance say that students who test positive for COVID-19 must only isolate for five days and may return to school after that point if they can wear a well-fitting mask around others.  Students who have been exposed to COVID-19 do not need to quarantine if they have completed both vaccinations, or if they have had COVID-19 within the last 90 days, if they can wear a well-fitting mask around others for 10 days.  In this case, the CDC recommends getting tested at least 5 days after that contact.  Teachers and others ages 18 and older should have a booster in order to take advantage of the same guidance, according to the CDC.

The guidance maintains that vaccination (for those eligible) and masking (for all students ages two and older, staff, teachers, and visitors) are priorities.  It also recommends maintaining a physical distance of three feet or more, and other layered mitigation measures like “screening testing, ventilation, handwashing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with quarantine and isolation, and cleaning and disinfection.”

The [updated quarantine guidance is here](https://www.cdc.gov/coronavirus/2019-ncov/your-health/isolation.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fyour-health%2Fquarantine-isolation.html).

Author: JCM

## News

### ED, DOT Take Action to Address Bus Driver Shortage

The U.S. Departments of Education (ED) and Transportation (DOT) made a joint announcement this week to help address a nationwide shortage of bus drivers. The federal agencies are waiving the requirement for commercial driver’s license (CDL) applicants to be able to identify engine components.

Individuals who obtain a CDL under the federal waiver are only permitted to operate school buses, not any other vehicles that require a CDL. In addition, all other components of the skills test for CDLs – including the driving test – remain in place, with only the “under the hood” engine component identification portion being waived. The waiver was effective beginning January 3, 2022 and will expire on March 30, 2022.

ED, in its press release, says that the federal waiver is intended to assist with labor shortages and therefore allow districts to keep schools open for full-time, in-person learning. “We’ve heard from educators and parents that labor shortages, particularly of bus drivers, are a roadblock to keeping kids in schools,” said Secretary of Education Miguel Cardona regarding the federal waiver. “Today’s announcement will give [S]tates the flexibility they need to help increase the pool of drivers, who are a key part of the school community, and get kids to school safely each day where students learn best.”

Resources:

U.S. Department of Education, “U.S. Department of Education Announces Joint Temporary Action with U.S. Department of Transportation to Help Address School Bus Driver Labor Shortage,” January 4, 2022.

Author: KSC

### Biden Administration Urges Schools to Remain Open

With an increase in COVID-19 infections happening across the country due to the Omicron variant, the Biden administration is urging schools to remain open for in-person learning. Secretary of Education Miguel Cardona early this week encouraged schools to take all action they can to avoid returns to virtual learning, noting that vaccination and testing are the two most important strategies in keeping schools open.

Although the administration is encouraging testing as a method to allow schools to remain open, access to COVID-19 testing is severely limited across the country, with shortages of at-home rapid tests and difficulty obtaining PCR tests first occurring prior to the December holidays and continuing into the New Year. While some districts have funding to purchase tests or set up systems for regular testing of students and staff, in many instances there are no tests available for purchase at this time, posing a significant challenge. On CBS’ Face the Nation this past Sunday, Secretary Cardona said that the U.S. Department of Education is “working with districts to set up systems that maybe were not set up when there was a dip in spread,” but he did not specify how those districts will gain access to COVID-19 tests amid the shortage.

Many schools across the country have been forced to temporarily close this week due to staffing shortages after individuals have tested positive for COVID-19.

Resources:

David Cohen, “Education secretary urges schools to remain open,” *Politico Pro*, January 2, 2022.

David Cohen, “More Covid testing programs on the way for schools, Education secretary says,” *Politico Pro*, January 2, 2022.

Author: KSC

## Reports

### OIG Report Examines Common Uses of GEER, Spending Issues

The U.S. Department of Education’s (ED’s) Office of Inspector General (OIG) issued a report in December on State plans for use of the Governor’s Emergency Education Relief Fund (GEER). As part of the report, OIG reviewed States’ initial 45-day GEER fund reports to determine how States planned to allocate funds to various categories of educational entities within their States. Under GEER, funds may be allocated to local educational agencies, institutions of higher education, and “education-related entities,” which is defined to include “a governmental, nonprofit, or for-profit entity within the State that provides services supporting preschool, elementary, secondary, or higher education.”

The report found that most States planned to split funds within all three categories, with five States providing funds only to school districts and two only to “education-related entities.” The most common uses of funds included increasing online capacity for remote learning, expanding broadband access and mobile hotspots, and providing professional development related to online learning.

One issue OIG identified as a concern was a discrepancy in reporting where States indicated that the full amount of the grant had been expended while the data on the ED spending portal indicated that was not the case. The response from ED staff was that these States were required to return unexpended funds due to ED’s targeted monitoring process, including one State which drew down its total award before it was ready to award funds to subgrantees in violation of cash management requirements.

The [full OIG report is available here](https://www.oversight.gov/sites/default/files/oig-reports/ED/Review-State-Plans-Use-Governor%E2%80%99s-Emergency-Education-Relief-Funds.pdf).

Author: JCM

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of Brustein & Manasevit’s upcoming virtual trainings. Topics cover a range of issues, including COVID-19 related issues, grants management, the Every Student Succeeds Act, special education, and more. To view all upcoming virtual training topics and to register, visit* [www.bruman.com/virtualtrainings/](http://www.bruman.com/virtualtrainings/).

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