



July 27, 2020

Secretary Betsy DeVos
U.S. Education Department
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

We are writing on behalf of the Association of California School Administrators and the California School Boards Association (ACSA-CSBA Federal Partnership) to voice our opposition to the Department's interim final rule, *Equitable Services to Students and Teachers in Non-Public Schools*, under the CARES Act.

The CARES Act directs local educational agencies (LEAs) that receive education stabilization funds to provide equitable services to non-public schools in the same manner as provided under Title I of the Elementary and Secondary Education Act (ESEA). Title I has always been premised on supporting schools with high concentrations of students from low-income families in order to direct federal resources to students in need. Title I's equitable services provision is no different; LEAs determine how much Title I money to spend on services for private school students based on poverty levels.

However, the Department's rule provides LEAs with two untenable choices, each of which are deeply problematic:

USED's requirements about allocating funding to all schools within a district violate the letter and spirit of ESSA

The first option presented by the Department requires that LEAs that choose to allocate CARES Act funds across all the schools in the district must determine how much CARES Act money to spend on services for private school students based on total enrollments. This is not the same as Title I and overlooks that CARES Act funds, specifically Elementary and Secondary School Emergency Relief (ESSER) funds, are allocated to states and LEAs based on their respective share of FY19 Title I dollars. That is, allocation of ESSER funding to both the state and local levels is driven by the concentration of low-income students, and the calculation of the allocation depends on how many low-income students reside in each state and district in accordance with section 1117 of ESEA Title I.

The rule is inconsistent with this precedent. To be consistent with both the historical application of equitable services, and to treat public and private schools equitably under the CARES Act, this rule must be revised to ensure that the equitable services share for private schools is determined by poverty rates rather than overall enrollment.

USED's alternative about allocating funding only to Title I schools neglects many low income students and creates impossible budgetary and administrative standards

The second option presented by the Department requires that districts spend their CARES Act funds only on schools that have been designated as Title I, and that under those circumstances the districts should then determine equitable service allocations for private schools using the proportion of low income students at those schools rather than total enrollments.

This proposal is totally unworkable. Not only it is an entirely original notion developed by the Department that is not supported by either of the underlying laws – ESSA or the CARES Act – but it also creates a significant administrative burden on LEAs that are being directed by Congress to spend their relief funds as quickly as possible.

In addition, the requirements of this second option have strong supplement not supplant language, which is totally in contravention of the point of the CARES Act funding in the first place, which is to provide emergency relief to LEAs facing declining budgets due to the economic crisis created by the COVID-19 pandemic.

Finally, this option neglects low income students who are enrolled at non-Title I schools, who would receive no funding support as a result of the Department's arbitrary proposal designed to force LEAs to select its preferred option – to siphon significant funding away from low income public school students towards wealthy private schools.

The Department must rescind this rule and allow precedence, existing statute, and congressional intent to guide how CARES Act funds are distributed to LEAs

The Department's interim final rule is inequitable and creates an environment where all children in private schools are counted and used to generate the equitable services share of ESSER for their private schools at the direct expense of low-income children remaining in public schools. The rule should be rescinded, to allow each school district to calculate what proportion of their FY19 Title I allocation was used for equitable services and would make that same share of CARES funding available for private school equitable services.

COVID-19 has disrupted education services for all students, educators, and school district communities. As states and school districts work towards providing appropriate education programs and re-opening schools, we must ensure that CARES Act resources are utilized to meet the needs of public school students and educators, while providing equitable services to eligible students enrolled in private schools.

Sincerely,



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