

May 14, 2020

The Honorable Benjamin L. Cardin
United States Senator
509 Hart Senate Office Building
Washington, DC 20510

The Honorable Christopher J. Van Hollen, Jr.
United States Senator
110 Hart Senate Office Building
Washington, DC 20510

Dear Senators Cardin and Van Hollen:

On behalf of the Maryland Association of Boards of Education (MABE), which represents all of Maryland's 24 local boards, thank you for your leadership and engagement as our State, the nation, and the globe develop responses to the COVID-19 coronavirus pandemic.

At this time, MABE is requesting your assistance in resolving our serious concerns raised by the nonregulatory guidance issued by the U.S. Department of Education outlining its interpretation of the requirements regarding equitable services for students in nonpublic schools under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020). This guidance was released on April 30, 2020 under the direction of U.S. Education Secretary Betsy DeVos, entitled "Providing Equitable Services to Students and Teachers in Non-Public Schools under the Cares Act Programs (April 30, 2020)."

MABE firmly believes the Department's guidance neither accurately nor appropriately reflects the governing federal statute. Significantly, the recent interpretation would require an inequitable allocation of funding to nonpublic schools, and thereby reduce the amount of funding available for school systems to provide equitable services to public school students.

To be clear, MABE supports the provision of equitable services for nonpublic schools and students in accordance with the CARES Act, which stipulates that all funds be distributed in accordance with Title I criteria. Title I dictates that funding for equitable services must be distributed by local school systems to nonpublic schools in proportion to the numbers of economically disadvantaged students enrolled at the nonpublic schools in their jurisdiction. Specifically Title I and the CARES Act ensure equity, while the Department's guidance does not. Instead, the Department's guidance promotes the use of total enrollment rather than proportionate enrollment of low-income students for calculating funding allocations to nonpublic schools. Again, this methodology is neither equitable nor in compliance with the controlling federal statute.

Therefore, MABE is requesting your support and advocacy for immediate action by the U.S. Department of Education to rescind and revise the guidance issued on April 30, 2020. In addition, in light of the May 22, 2020 deadline for local school systems to apply for CARES Act funding through our State Department of Education, MABE is requesting that your offices issue a statement to Governor Larry Hogan and State Superintendent Karen Salmon to reinforce the fact that the Department's nonregulatory guidance has no force and effect on state education agencies or local

school systems. This communication would be greatly appreciated to provide clear and unambiguous support for the statutory interpretations of local school systems in crafting CARES Act funding applications and consulting in good faith with our nonpublic schools.

Fortunately, the guidance itself is quite clear as to the limitations on the enforceability of nonregulatory guidance generally, and this guidance, in particular. However, in our view, the guidance not only fails to provide clarity, but also generates confusion regarding an otherwise unambiguous statute. The guidance includes the following statement:

“Other than statutory and regulatory requirements included in the document, such as those pursuant to the authorizing statute and other applicable laws and regulations, the contents of the guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. In addition, it does not create or confer any rights for or on any person.”

MABE notes that the Indiana Department of Education recently announced its decision to ignore the Department’s guidance, as contravening federal law, and to use the proportionate funding calculations required by Title I. MABE may be placed in the position of advocating similar action by MSDE, but would strongly prefer that the official guidance be rescinded and revised.

Again, Senators Cardin and Van Hollen, MABE appreciates the substantial federal assistance provided in response to this pandemic. In particular, we appreciate your ongoing efforts to secure the much-needed \$200 billion in education stabilization funding in the next round of relief for states and local governments.

MABE looks forward to your support for the actions requested above to ensure the ability of Maryland’s 24 local school systems to equitably and adequately meet the educational needs of our nearly 1 million public school students and the low-income nonpublic students intended to benefit from equitable services under the CARES Act.

Please do not hesitate to call on MABE for future engagement on public education issues.

Sincerely,



Martha James-Hassan
President, MABE

Cc:

- Local Board of Education Presidents/Chairs
- Local Superintendents/CEOs
- Dr. Karen B. Salmon, State Superintendent
- Brig. Gen. Warner Sumpter (Ret.), President, State Board of Education
- The Honorable Adrienne Jones, House Speaker
- The Honorable Bill Ferguson, Senate President
- Frances Hughes Glendening, Executive Director, MABE
- Mary Pat Fannon, Executive Director, PSSAM