

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

May 5, 2020

Dear Secretary DeVos,

The undersigned national organizations involved in providing elementary and secondary education to the nation's public school students are deeply concerned with your recently released non-binding guidance Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs. We strongly urge you to revise the guidance so it aligns with the underlying law.

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. This was confirmed by your agency a mere six months ago.¹

The Department's CARES Act equitable services guidance, however, directs LEAs to determine how much CARES Act money to spend on services for private school students based on total enrollments. This is not the same manner 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 guidance just released regarding providing equitable services under CARES Act programs is inconsistent with this well-established 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 guidance must be revised to ensure that the equitable services share for private schools is determined by poverty rates rather than overall enrollment.

Absent these edits, the CARES Act equitable services guidance is inequitable and creates an environment where wealthy 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.

To restore equity within the equitable services guidance you can revise it to allocate resources to private schools relying on a proportional calculation, much like how state and local education agencies receive their CARES share. Each LEA would 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.

As our nation and school districts work diligently towards COVID-19 recovery, our goal is to ensure that CARES Act resources are utilized to meet the needs of our public school students and educators, whose districts provide

¹ Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families Updated Non-Regulatory Guidance, October 2019

equitable services to eligible students enrolled in private schools. COVID-19 has disrupted education services among our students, educators, and school district communities and has taken thousands of lives. We are highlighting this misapplication within the Department's education stabilization fund guidance, and request clarification in the guidance that proportionate share determinations of ESSER funds must follow section 1117 of ESEA Title I. We look forward to your revision to ensure that the equitable share of CARES Act funding is calculated in a manner consistent with the CARES Act law.

Sincerely,

AASA, The School Superintendents Association
American Federation of Teachers
Council of Great City Schools
National Education Association
National Association of Elementary School Principals
National Association of Secondary School Principals
National School Boards Association

CC: U.S. Senate HELP Committee
U.S. House Education & Labor Committee
U.S. Senate LHHS Appropriations Subcommittee
U.S. House LHHS Appropriations Subcommittee