Ms. Amy Huber
U.S. Department of Education
400 Maryland Avenue SW
Room 3W219
Washington, DC 20202

RE: CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools
34 CFR Part 76 [Docket ID ED–2020–OESE–0091] RIN 1810–AB59

July 30, 2020

Dear Ms. Huber,

On behalf of the fifty state associations representing school superintendents, we write in response to the U.S. Department of Education's July 1, 2020, interim final rule (IFR) regarding the equitable services requirements applicable to Local Education Agencies (LEAs) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. We are deeply concerned the IFR, as proposed, conflicts with the purpose of the stabilization funding Congress provided school districts through the CARES Act; conflicts with the way Title I equitable services have always been handled; is premised on deep inequity; will redirect much-needed dollars from LEAs and communities dealing with significant COVID-19 impacts to less-needy LEAs and communities; and unnecessarily inhibits and delays the use of COVID funding in schools across our states. We urge you to rescind the IFR and to ensure CARES Act's equitable services allocations are calculated as Congress clearly intended, in "the same manner" as under Title I of ESEA, based of the number of low-income students enrolled in non-public schools.

As the professional associations representing public school superintendents in our respective states, our organizations serve school system leaders faced with the COVID pandemic and all that entails, from the pivot to remote/online learning this spring to the preparation and planning for the 2020-21 school year (whether online, in-person, or hybrid). Through it all, our members have focused on safely delivering educational opportunity for students and staff. The pandemic upended the public school system as we knew it, from mass closures of school buildings and increased academic, social and emotional, and health needs for students and staff to the prospect of historic state and local budget shortfalls for years to come. School system leaders are navigating a new reality, one where COVID complicates every decision they make about how to best use available local, state, and federal funds.

The CARES Act is a bipartisan response to the pandemic, designed to both bolster state and local capacity to respond to the continued pandemic as well as to stabilize state and local economies rattled by the halt associated with the economic shutdown in response to the pandemic. It included resources dedicated to school districts through the Governor's Emergency Education Relief Fund (GEER Fund) and Elementary and Secondary School Emergency Relief Fund (ESSER Fund), funds designed to help stabilize LEAs nationwide in their response to the pandemic and initial planning for the 2020-21 school year. CARES Act funding was purposefully designed to be flexible, allowing school districts to best leverage the available resources to meet the needs of their respective communities. USED's IFR on equitable services reduces resources available to LEAs and stifles the critical local flexibility. USED's interpretation is in conflict with the long-established interpretation and application of the equitable services provision, generates confusion in the field, and delays the use of the resources for public and private schools alike.

The IFR positions itself as a choice, when in reality the only choice it offers is a false choice, leaving superintendents to choose between placing significant restrictions on resources that Congress intended to be flexible or reallocating significant amounts of that funding to private schools that serve large numbers of already advantaged students.

The interim rule, as drafted, conflicts with the CARES Act and has the potential to shift $1.3 billion from public schools to private schools. The burden of this flawed policy will rest on the shoulders of the vulnerable students Congress intended to benefit.

The CARES Act law 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). Under Title I, LEAs use poverty counts to calculate the equitable services share. This is consistent with how LEAs themselves generate Title I funds, which is primarily based on the number of students from low-income families living in the LEA. Because LEAs receive the bulk of CARES Act funding based on Title I's poverty driven funding formulas, it is consistent that Congress directed LEAs to calculate the CARES Act equitable services share based on Title I's poverty driven equitable services rules.

Contrary to this approach, the interim rule effectively directs LEAs to calculate the CARES Act equitable services share based on the total number of students attending participating private schools in the LEA. This is not the "same manner as" equitable services are provided under Title I and therefore is inconsistent with the plain language of the CARES Act. Had Congress intended LEAs to calculate the CARES Act equitable services share based on total enrollments as suggested by the IFR, Congress would have directed LEAs to provide equitable services in the same manner as Section 8501 of the ESEA. Instead, Congress directed LEAs to provide services in the same manner as Section 1117, meaning Congress chose Title I's poverty-based method to generate the share over Title VIII's enrollment-based method.

This inconsistency has real effects for districts across our states and the nation. If schools were to set aside education stabilization funds for equitable services based on enrollment under the interim rule it could amount to up to $1.3 billion of public schools CARES Act funding instead being directed to private schools.

The interim rule purports to offer LEAs a choice to calculate the equitable services share based on poverty, but only if they limit CARES Act services to public school students in Title I schools while imposing no such limitation on services for private school students. Limiting services in public schools is inconsistent with the language and purpose of the CARES Act.

The interim rule falsely conflates the education stabilization fund's broad purpose with how the equitable services share should be calculated. The equitable services share is not based on *how* funds can be spent once the share is generated, but rather on the proportion of students who generate funds for the LEA in public versus private schools. In other words, funds for both LEA and private school services are *generated* based on poverty and then can be *used* for any allowable CARES Act activity. How an LEA spends funds for public or private school services has no role in how the equitable share is calculated.

It is neither fair nor responsible to issue an interim rule so late in the process, especially in the context of emergency federal appropriations. When the CARES Act was enacted, many LEAs acted swiftly to develop budgets based on the law's plain language and consistent with the urgent need for immediate support. Releasing an interim final rule now, with its profound effects both on the services LEAs can support with CARES Act funds and the amount they must spend for equitable services, significantly and unnecessarily complicates the process.

This interim rule injects unnecessary confusion into the field at the exact time that school systems across the nation—and private schools, as well—are working diligently to reopen in the fall. CARES Act funding is a critical source of support for schools reopening in the fall and the interim rule, as proposed, adds additional workload and headache to a process whose intent, history, and text are clear.

The interim final rule significantly expands the reporting burden on public schools. Earlier this month, USED revised its total estimated number of annual burden hours for the ESSER fund, from 260 hours up to 76,653 hours, and attributed the 294-fold increase in reporting burden to the equitable services interim final rule alone. That is, under the IFR, the nation's public schools will spend more than 9,500 8-hour school days (more than 53 full school years, with 180 8-hour school days) on reporting alone related to the equitable services IFR, given the requirement to collect enrollment and poverty data from all private schools regardless of what equitable services methodology the district is using.

We respectfully request the Department withdraw the IFR.

Sincerely,

See next page for signatories.

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