

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

Re: ED-2020-OESE-0091

July 30, 2020

Dear Ms. Huber:

As organizations that interact with schools in a variety of ways, we write to express our deep concern with the U.S. Department of Education's Interim Final Rule (IFR) on equitable services under the CARES Act. Specifically, the IFR is inconsistent with the CARES Act law and diverts essential support away from high-need school districts at a time of unprecedented crisis.

The CARES Act provides emergency relief funds to local educational agencies (LEAs) to support their COVID-19 response efforts. The bulk of these funds are allocated to LEAs impacted by poverty through the poverty-based funding formulas in Title I, Part A of the Elementary and Secondary Education Act (ESEA).

Recognizing that private schools impacted by poverty also need support, Congress directed LEAs to provide equitable services to private school students and teachers "in the same manner as provided under" Title I, Part A of the ESEA. Title I, Part A uses poverty to determine how much money LEAs must set aside and spend on equitable services.

In short, the CARES Act directs states to subgrant funds to LEAs based on poverty and likewise directs LEAs to calculate the amount of money available for private school services based on poverty.

Instead of following this simple directive, however, the IFR invents a convoluted new process for calculating the equitable services amount based on what kinds of activities an LEA supports with its CARES Act funds. This is wholly inconsistent with the CARES Act which includes no such provision. It is also inconsistent with how equitable services amounts are calculated in Title I, which is based on counts of *formula students*, that is, students who helped to generate Title I money for an LEA, not on *served students*, that is, students who ultimately receive equitable services. The IFR ignores the fact that Congress deliberately instructed LEAs to calculate equitable services based on Title I's poverty-based model not the alternative model in Title VIII of the ESEA.

In practice, the IFR puts LEAs in an untenable position. Either they choose to limit their COVID-19 response activities, or they choose to forgo substantial amounts of money in favor of private schools that have access to other relief programs like the Paycheck Protection Program. Neither of these choices is consistent with Congressional intent and is especially devastating at a time when the Administration is pressuring LEAs to reopen in the fall.

We respectfully request the Department withdraw the IFR.

Sincerely,

Signatories listed on next page

AASA, The School Superintendents Association
Alliance for Excellent Education
American Federation of Teachers
American School Counselor Association
ASCD
Association of Educational Service Agencies
Association of Latino Administrators and Superintendents
Association of School Business Officials International (ASBO)
Common Sense
Council for Exceptional Children
Council of Administrators of Special Education
Council of Great City Schools
EDGE Consulting Partners
National Association of Elementary School Principals
National Association of Federally Impacted Schools
National Association of School Psychologists
National Association of Secondary School Principals
National Association of State Directors of Special Education (NASDSE)
National Center for Learning Disabilities
National Disability Rights Network
National Education Association
National PTA
National Rural Education Association
National Rural Education Advocacy Consortium
National School Boards Association
National Superintendents Roundtable
New America, Education Policy Program
New Leaders
Next100
PDK International
Rural Schools Association of New York State
TNTF