



July 28, 2020

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 RIN 1810-AB59 / Docket ID ED-2020-OESE-0091

Dear Ms. Huber:

The Southern Education Foundation (SEF), a 152-year-old civil rights and education equity organization, writes in response to the opportunity to provide public comments regarding the United States Department of Education's (ED) Interim Final Rule regarding "Equitable Services to Students and Teachers in Non-Public Schools." SEF has serious concerns with ED's latest rule because it violates the equitable services provisions written into the Coronavirus Aid, Relief, and Economic Security (CARES) Act and forces school districts to share a disproportionate amount of CARES Act funds with private schools, which we believe circumvents congressional intent.

Specifically, ED's Interim Final Rule states that school districts receiving CARES Act Elementary and Secondary School Emergency Relief (ESSER) funds will have two options to distribute K-12 funds for equitable services. Either school districts can (1) follow the equitable services guidance set out by the secretary on April 30th, which requires school districts to distribute funds for equitable services based on *all* private school students, rather than the number of low-income private school students, or (2) apportion funds for equitable services based on the number of low-income private school students, consistent with the Elementary and Secondary Education Act (ESEA), but the school district then must limit these funds only to public school students in Title I schools. Both options are inconsistent with the CARES Act and longstanding federal law. As a result, either wealthy students in private schools will receive more federal resources or low-income students in non-Title I schools will not receive additional resources from the CARES Act.

ED's altered equitable services rule is a misinterpretation of existing statutory language in a way that will unfairly benefit private schools and hamper the ability of school districts to serve high-need populations. A number of school districts in the South will face challenges if districts opt to serve non-Title I schools, the first option listed above, under the ED's drafted equitable services interim rule. For example,

- **Louisiana** - In Louisiana, East Baton Rouge Parish, which is slated to receive over \$18 million in ESSER funds, could give over \$3.7 million *more* to private schools under ED’s new interim rule – a **425 percent increase** over what they would normally be required to provide.ⁱ Caddo Parish and Lafayette Parish, the 5th and 6th most populated school districts in Louisiana, could increase their respective equitable service allocations to private schools by 512 percent and 710 percent. In total, ED’s equitable services guidance would force school districts throughout Louisiana to send up to an additional \$23 million to private schools – an increase of 267 percentⁱⁱ – during a period when Louisiana is projected to lose nearly \$4 billion in state revenue and experience over \$500 million in increased education costs related to COVID-19.ⁱⁱⁱ
- **Texas** - School districts in Texas will also be forced to provide up to \$44 million to private schools rather than the \$5.4 million that would be required with the existing equitable services policy outlined in the CARES Act.^{iv}
- **Virginia** - According to the Virginia Association of Superintendents, school districts in Virginia could allocate up to \$16 million to private schools rather than the \$3.4 million under existing equitable services guidelines.
- **South Carolina** - Greenville County School District (GCSD), South Carolina’s largest school district, educates 76,000 students across 101 schools and will receive \$19.3 million in ESSER funding from the CARES Act.^v Under ED’s equitable services interim rule, GCSD would be required to award up to \$1.7 million of its total ESSER allocation to private schools – over four times as much as what the district would typically allocate toward equitable services for students from low-income families attending private schools.^{vi}

States have a constitutional responsibility to provide all students with a public education. The combination of expected budget shortfalls due to COVID-19 and sending more public resources to private schools due to ED’s new rule hinder states’ constitutional responsibility to support public schools. In accordance with and in addition to the district-level data displayed above, we believe that ED’s equitable services rule should be reversed for the following reasons:

1. Section 18005(a) of the CARES Act states that a LEA receiving ESSER funds “shall provide equitable services in the same manner as provided under Section 1117 of Title I, Part A of the ESEA of 1965 to students and teachers in non-public schools.” ESEA explicitly provides that the proportion of federal funds allocated to serving private school students shall be equal to the proportion of students from low-income families who attend private schools. We urge ED to follow the directives outlined in both the CARES Act and ESEA to allocate equitable services funding based only on a LEA’s percentage of students from low-income families.
2. Many private schools have already successfully accessed funds through the CARES Act’s federal Paycheck Protection Program (PPP), which is designed to support small businesses and private entities in their COVID-19 financial recovery efforts.^{vii} Unavailable to public schools, PPP funds will temporarily serve as a stopgap measure for private schools facing difficulty meeting their financial obligations. With ED’s new equitable services guidance, private schools will be eligible to access both ESSER and PPP funds – a privilege not afforded to public schools.
3. Guidance in the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, passed by the United States House of Representatives on May 15th, overtly clarifies that equitable services funds should be distributed in accordance with current law from both the CARES Act and

ESEA.^{viii} Congressional leaders, including Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN), have called for ED to revisit its equitable services policy.^{ix}

4. A number of states, such as Maine^x, Washington, Pennsylvania, New Mexico, and Wisconsin have publicly stated that they will not follow ED's guidance and instead abide by the letter of the law. Three Republican-led states – Indiana^{xi}, Oklahoma, and Mississippi – have also notably rejected ED's equitable services guidance from April out of concern for the financial solvency of their public school districts.

ED's rule related to equitable services will result in hundreds of millions of dollars flowing from public schools to private schools, decimating the share of resources available for public schools to educate and care for their most vulnerable students. Therefore, we urge ED to reconsider the equitable services rule related and realign it with what is already explicitly stipulated in federal law. Our nation's public schools and the students who attend them depend on every publicly-available resource to address their academic and social needs stemming from this devastating pandemic.

We thank you for the opportunity to provide comments on this important matter, and we hope ED will do what is best for our nation's public schools and reverse its equitable services guidance.

Sincerely,



Raymond C. Pierce
President and CEO
Southern Education Foundation

Endnotes

- ⁱ “Louisiana CARES Act Equitable Share Estimates.” Education Week, 2020. <https://blogs.edweek.org/edweek/campaign-k-12/Louisiana%20ESSER%20Nonpublic%20Equitable%20Share%20Based%20on%20ED%20Guidance.pdf>.
- ⁱⁱ Ibid.
- ⁱⁱⁱ Griffith, Michael. “What Will It Take to Stabilize Schools in the Time of COVID-19?” Learning Policy Institute, May 7, 2020. <https://learningpolicyinstitute.org/blog/what-will-it-take-stabilize-schools-time-covid-19>.
- ^{iv} Craven, Morgan, and Roy L. Johnson. “Cutting Public School Relief Funds to Subsidize Private Schools – Issue Brief.” IDRA. Intercultural Development Research Association, July 16, 2020. https://www.idra.org/education_policy/cutting-public-school-relief-funds-to-subsidize-private-schools-issue-brief/.
- ^v Gilreath, Ariel. “Greenville Public Schools Could Spend \$1.7 Million in COVID-19 Relief on Private Schools.” The Greenville News. Greenville News, May 23, 2020. <https://www.greenvilleonline.com/story/news/2020/05/22/public-schools-share-coronavirus-relief-money-private-schools/5220339002/>.
- ^{vi} Ibid.
- ^{vii} “Private Schools Are Eligible for Federal Paycheck Protection Program (PPP).” American Federation for Children, April 27, 2020. <https://www.federationforchildren.org/private-schools-are-eligible-for-federal-paycheck-protection-program-ppp-details/>.
- ^{viii} The Heroes Act. Bill (2020). <https://www.congress.gov/bill/116th-congress/house-bill/6800/text>
- ^{ix} Ujifusa, Andrew. “Sen. Alexander Splits From Betsy DeVos on COVID-19 Aid to Help Private Schools.” Education Week - Politics K-12, May 21, 2020. <https://blogs.edweek.org/edweek/campaign-k-12/2020/05/alexander-devos-COVID-aid-private-schools-CDC-reopening.html>.
- ^x Ohm, Rachel. “Maine Rejects Federal Guidance That Would Give Private Schools More Relief Funds.” Press Herald, May 20, 2020. <https://www.pressherald.com/2020/05/20/maine-rejects-federal-guidance-shifting-more-cares-funds-to-private-schools/>.
- ^{xi} Fittes, Emma Kate. “Indiana Rejects Guidance from DeVos to Reroute More Coronavirus Relief to Private Schools.” Chalkbeat Indiana. Chalkbeat Indiana, May 12, 2020. <https://in.chalkbeat.org/2020/5/12/21256499/indiana-rejects-guidance-from-devos-to-reroute-more-coronavirus-relief-to-private-schools>.