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July 30, 2020

Submitted via [www.regulations.gov](http://www.regulations.gov)

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

**Re: Docket ID ED-2020-OESE-0091, Comments in Response to Interim Final Rule on CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools**

Dear Secretary DeVos:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 53 undersigned organizations, we are submitting this comment letter in response to the U.S. Department of Education's (Department) interim final rule on *CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools* (Docket ID ED-2020-OESE-0091), published in the Federal Register on July 1, 2020. **We write to express our opposition to this rule and particularly to the scenario provided that would require school districts to divert more funds to private school students in the name of the CARES Act's "equitable services" provision than is required under the law.** It is vitally important that the students who were most marginalized before this public health crisis and are currently bearing the brunt of the crisis itself are at the center of any and all responses – especially with regard to the distribution of education stabilization funds received through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and any further federal aid for education. This interim final rule would, instead, divert needed funds from low-income students and run afoul of the law.

Without a doubt, COVID-19 will have lasting effects for many decades to come. There is an opportunity and a responsibility to minimize the harm to the next generation. Long term closures of early childhood settings, K12 schools, and college campuses – all necessary to protect the safety and health of communities – have significantly exacerbated long-standing inequities in our educational system. Low-income children, children of color, children with disabilities, English learners, and Native children have been left behind for far too long and deserve no less than robust and thorough federal policy to ensure an excellent and equitable education for all students. Leadership and action from federal leaders can, and must, minimize the harm to marginalized students as long as COVID-19 continues to threaten the public health and economic well-being of families. With that in mind, we believe the rule should be withdrawn immediately for the following reasons:

**The interim final rule reflects the errant guidance<sup>1</sup> that the Department issued on April 30, 2020 regarding the distribution of CARES Act funding for services for private school students.**

The CARES Act clearly states that so-called “equitable services” funds should be spent on non-public school students in the same manner as the normal distribution of Title I funds that takes into account the household income of children in private schools. In accordance with section 1117 of the Elementary and Secondary Education Act (ESEA), school districts need to provide “equitable services” based on the percentage of low-income students in private schools in order to ensure that funds are not taken from lower income communities to subsidize wealthier communities. The CARES Act provided funding for equitable services to be allocated in this same manner, but the non-binding guidance and interim final rule inverts this principle.

While all schools are facing challenges as a result of the COVID-19 public health crisis, lower income communities and schools are facing greater challenges. On average, private school students are more likely to be White and to be wealthier than their peers in public schools.<sup>2</sup> Funds provided through Title I equitable services, however, have always been targeted based on the number of lower income private school students. The Department wrongly issued misleading guidance on April 30 arguing that CARES Act funds should be provided based on the enrollment of all students in non-public schools regardless of household income, as opposed to the number of low-income students (as is required under section 1117 of ESEA).<sup>3</sup> This misinterpretation of what equitable services requires was repeated in this interim final rule. The scenario provided in the interim final rule – which requires districts to set aside more money for private school students – circumvents what Congress required in the law.

States and districts that distribute CARES Act funding counter to federal law would be shortchanging millions of low-income students who attend public schools. If all states were to follow the unlawful guidance – which is included as the second scenario in the interim final rule – analysis released by The Learning Policy Institute found that school districts would provide an additional \$1.35 billion to private schools beyond what is required in law (approximately 10 percent of CARES Act K12 funding under these provisions).<sup>4</sup>

**The interim final rule seeks to subsidize private schools that engage in religiously motivated discrimination against LGBTQ students.**

Multiple investigations have shown that, even among private schools participating in state-funded voucher schemes, many have explicitly anti-LGBTQ policies and practices.<sup>5</sup> In 2017, a *Huffington Post* investigation found that 14 percent of religious schools in voucher programs advertised anti-gay policies or took an active stance against LGBTQ staff and students. Furthermore, the *Huffington Post* recently found that some of these same private schools teach hateful curriculum and oversee “conversion therapy,” dangerous and discredited practices that falsely claim to change a person’s sexual orientation or gender identity or expression. Federal funds should not be used to support discriminatory education.

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<sup>1</sup> Ujifusa, Andrew. “[Fight Over COVID Aid Between Private Schools and States Heats Up.](#)” *Education Week*. June 8, 2020.

<sup>2</sup> “[Public and private school comparison.](#)” *National Center for Education Statistics*.

<sup>3</sup> “[Providing Equitable Services to Students and Teachers in non-public schools under the CARES Act Programs.](#)” *U.S. Department of Education*. April 30, 2020.

<sup>4</sup> Griffith, Michael. “[What Will It Take to Stabilize Schools in the Time of COVID-19?](#)” *Learning Policy Institute*. May 7, 2020.

<sup>5</sup> Fritzsmon, Chris. “[More taxpayer funding for voucher schools that openly discriminate against LGBT students and parents.](#)” *NC Policy Watch*. July 27, 2016. and Martin, Annie & Postal, Leslie. “[Anti-LGBT Florida schools getting school vouchers.](#)” *Orlando Sentinel*. January 23, 2020.

**The interim final rule does not prioritize students facing the greatest barriers to educational success — students who were most marginalized before this current public health crisis.**

As decisions are made about how to distribute much needed supplemental funds to communities, the Department should encourage state, district, and school leaders to prioritize children and families facing the greatest barriers to educational success – not prioritize those who attend wealthy private schools. Historically, non-White school districts have received \$23 billion less than White school districts with similar numbers of children enrolled<sup>6</sup>, and that financial disparity may be exacerbated with the current impact of COVID-19. We also know students from low-income families are more likely to be identified for special education than their non-low-income peers.

School closures due to coronavirus have impacted at least 124,000 U.S. public and private schools and affected at least 55.1 million students.<sup>7</sup> The COVID-19 public health crisis is happening in the context of gross racial inequities in access to the Internet and connected devices. According to a 2015 study, while 81 percent of White Americans and 83 percent of Asian Americans have home Internet, only 72 percent of American Indian/Alaska Natives, 70 percent of Latinos, 68 percent of African Americans, and 68 percent of Native Hawaiian/Pacific Islanders are connected at home.<sup>8</sup>

Prior to the COVID-19 public health crisis, public schools in the United States were among the most inequitably funded of any in the industrialized world<sup>9</sup>, and state and local education funds were routinely used in a way that provided greater funding to school districts with a higher concentration of White children than of children of color.<sup>10</sup> The COVID-19 pandemic will financially impact the 13,000 school districts across the nation and will disproportionately affect low-income communities – including disproportionately communities of color. Districts serving a greater share of low-income students and students of color will most likely – without strong leadership in support for educational equity – be forced to cut critical programs and lay off essential staff members, and in the process, widen the disparities between rich and low-income schools.<sup>11</sup> That is why Congress chose to direct the most federal funding to higher-poverty school districts, even as they recognized that the COVID-19 pandemic has caused disruptions for all students across the country.

For the reasons provided above, the Department should promptly withdraw this interim final rule. The Department is disregarding congressional intent in the CARES Act and willingly directing additional services to students in private schools based on the number of non-low-income students they serve, taking that funding away from public school districts with a high percentage of low-income students. Low-income students in public schools must be able to receive emergency aid from their local school districts during this emergency as Congress intended. We condemn, in the strongest terms, the secretary's effort to advance her own agenda at the expense of low-income students in the middle of a national crisis.<sup>12</sup>

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<sup>6</sup> “\$23 Billion.” *EdBuild*. 2019.

<sup>7</sup> “[Map: Coronavirus and School Closures](#).” *Education Week*. May 15, 2020.

<sup>8</sup> Turner, Derek. “[Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption](#).” *Freepress*. December 2016.

<sup>9</sup> Darling-Hammond, Linda. “[Investing for Student Success: Lessons From State School Finance Reforms](#).” *Learning Policy Institute*. August 2019.

<sup>10</sup> Morgan, Ivy & Amerikaner, Ary. “[Funding Gaps 2018](#).” *Education Trust*. February 27, 2018.

<sup>11</sup> Burnette II, Daarel. “[Devastated Budgets and Widening Inequities: How the Coronavirus Collapse Will Impact Schools](#).” *Education Week*. May 8, 2020.

<sup>12</sup> Barnum, Matt. “[Asked whether she is using crisis to support private school choice, DeVos says ‘yes, absolutely’](#).” *Chalkbeat*. May 20, 2020.

If you have any questions or need additional information, please contact Steven Almazan, K12 Education Program Analyst at The Leadership Conference, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
Advocates for Children of New York  
Agency for Humanity  
Alliance for Excellent Education  
American Association of Colleges for Teacher Education  
American Association of University Women (AAUW)  
American Atheists  
American Federation of Teachers  
Association of University Centers on Disabilities  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
California Down Syndrome Advocacy Coalition  
Center for Pan Asian Community Services, Inc.  
Children's Defense Fund  
Clearinghouse on Women's Issues  
Clemmons Elementary PTA  
Council of Parent Attorneys and Advocates  
Disability Rights Education & Defense Fund (DREDF)  
Down Syndrome Association of Connecticut  
Farmington Area PTA Council  
Feminist Majority Foundation  
Friends of Goody Bassett  
Georgia Coalition for the People's Agenda  
GLSEN  
GO-HIGH CORP  
IDRA (Intercultural Development Research Association)  
Lake Ridge Elementary PTA  
NAACP Legal Defense and Educational Fund, Inc.  
National Alliance for Partnerships in Equity (NAPE)  
National Center for Learning Disabilities  
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)  
National Center for Special Education in Charter Schools  
National Center for Youth Law  
National Disability Rights Network  
National Education Association  
National Indian Education Association  
National Urban League  
New Orleans Youth Alliance  
North Carolina Justice Center  
Prairie Trail PTO  
Project Butterfly New Orleans  
Southeast Asia Resource Action Center (SEARAC)



Teach For America  
The Advocacy Institute  
The Arc of the United States  
The Education Trust  
TNTP  
Trauma Informed Education Coalition (TIEC)  
UCAN, Inc  
Union for Reform Judaism  
Virginia Teachers of English to Speakers of Other Languages (VATESOL)  
WCJC Digital Broadcasting Company  
Weldon E. Howitt Middle School PTA  
West Boca Raton High School PTSA