



The Education Trust

Closing the gaps in opportunity and achievement, pre-K through college

July 30, 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 (Docket ID ED-2020-OESE-0091)

Dear Ms. Huber,

On behalf of The Education Trust, an organization dedicated to closing long-standing gaps in opportunity and achievement that separate students from low-income backgrounds and students of color from their peers, we appreciate the opportunity to submit comments regarding the administration's interim final rule as it pertains to equitable services for students and teachers in non-public schools under the Governor's Emergency Education Relief Fund (GEER Fund) and the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) as included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

As COVID-19 continues to cripple our nation, the reality is clear: Schools and districts face a multi-pronged challenge in providing the instruction and supports necessary to ensure that students can learn and grow despite the immense pressures surrounding them and their families, as well as trying to keep those who enter their buildings safe from an aggressive and highly transmittable virus. Recognizing this unparalleled challenge, Congress provided funds to governors, state education agencies, and public school districts via an education stabilization fund in the CARES Act.

This fund is a lifeline for states and public schools as they face significant budget shortfalls due to decreases in revenue and increased costs in operating. These critical dollars, intended to help districts and schools most impacted by the pandemic, however, have been [redirected](#) by the Trump administration away from public schools and students through an incorrect and inequitable interpretation of section 18005(a) of the CARES Act. This misinterpretation would steer over [\\$1.35 billion in CARES Act](#) financial assistance — nearly 10% of the total CARES funding — away from public Title I schools that serve more [Black and Latino students](#) and students from low-income backgrounds to private schools that [primarily serve White students](#), regardless of whether those schools are serving students from low-income backgrounds.

Given the far-reaching equity impact that this interim final rule will have on students from low-income backgrounds and students of color across the country at a time when more federal funds are needed to facilitate safe, consistent, and rigorous academic instruction, we call the Education Department's (ED) attention to the follow areas:



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The Coronavirus Disproportionately Impacts Students of Color and Students from Low-Income Backgrounds

In the interim final rule, the Secretary notes that the coronavirus has harmed all schools and students. While it is true that nearly every school in the country closed as a result of the pandemic, the grim reality is that COVID-19 has made the inequities present in our education system even worse. As was noted in the [testimony](#) of John B. King Jr., president and CEO of Ed Trust, before the Senate Health, Education, Labor, and Pensions (HELP) Committee in June:

“While our nation faces this pandemic together, it is important to recognize that we do not confront it with an equitable distribution of resources, and the impact of the virus does not impact all communities and groups of people in the same way. Relatedly, we see the coronavirus has only intensified inequities in education, in employment, in healthcare, and in other areas that already disproportionately impact people of color and low-income families.”

Even before the coronavirus, districts with the most Black, Latino, and Native American students spent [almost \\$2,000 less per student per year](#) than districts with mostly White students. Students of color are [less likely to be assigned to the strongest teachers](#), less likely to have access to school [counselors](#), less likely to be enrolled in [advanced coursework](#), and more likely to be subjected to [exclusionary discipline](#). These opportunity gaps in turn generate gaps in learning; high school graduation; and college matriculation. COVID-19 has only exacerbated these educational disparities, putting educational equity and opportunity even farther out of reach for these students.

During the necessary school closures this spring, Black, Latino, and Native American students disproportionately had [less access to devices and home internet service](#); teachers with less support to execute online learning; [parents unable to telework](#) and assist with schoolwork; and more socio-emotional stressors. [Initial estimates](#) of learning loss suggest that Black students may fall behind by 10.3 months, Latino students by 9.2 months, and students from low-income backgrounds by more than a year as a result of significant educational disruptions caused by COVID-19.

For ED to imply that COVID-19 has equally harmed communities is incorrect and irresponsible given the substantial data we have on how this virus disproportionately impacts people of color, those in low-income communities, and those working in “essential roles.” [As of June](#), 1 in every 1,625 Black Americans has died from COVID-19, compared to 1 in 3,800 White Americans. After adjusting for age, [Brookings](#) found that Black people are almost four times more likely to die from COVID-19 than their White peers. [Recent data](#) from the Centers for Disease Control and Prevention (CDC) shows that a disproportionate number of Latinos are suffering from COVID-19 relative to their share of the U.S. population. For example, [in Anne Arundel County](#), Maryland, Latino residents account for 38% of all cases, despite only making up 8% of that county’s population. [Racially disaggregated CDC data](#) recently obtained by *The New York Times* shows “Latino and African-American residents of the United States have been three times as likely to become infected as their white neighbors...which provides detailed



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characteristics of 640,000 infections detected in nearly 1,000 U.S. counties. And Black and Latino people have been nearly twice as likely to die from the virus as white people, the data shows.”

It is clear that the impact of COVID-19 on students of color is significant and disproportionate. For these reasons, it is unacceptable for federal funds to be funneled away from the schools that primarily support these students and who seek to serve them during this challenging time.

The Education Department’s Interpretation is Not Consistent with the CARES Act

Congress chose to provide most of the CARES Act funding to local educational agencies (LEAs) — via their states — based on Title I’s poverty-driven funding formulas. Therefore, the only logical interpretation of the equitable services provision is that the proportional share of services for non-public schools should be based on the number of students from *low-income families* participating in non-public schools in the LEA, not the total number of students attending non-public schools in the LEA.

Specifically, the language in section 18005(a) of the CARES Act plainly directs LEAs receiving CARES funding 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), as amended by the Every Student Succeeds Act (ESSA): “A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner *as provided under section 1117 of the ESEA of 1965* to students and teachers in non-public schools...” Section 1117(a)(4) of ESEA clearly states that LEAs must determine the share of funding to use for equitable services based on counts of students from low-income families: “Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas *based on the number of children from low-income families who attend private schools.*” ED’s rule runs contrary to the statute as written in ESEA and ignores decades of precedent. It has been rejected [by states](#) and their [education leaders](#) and has received criticism from lawmakers in [both chambers](#) and on [both sides of the aisle](#). Had Congress intended to stray from the widely accepted and targeted Title I equitable services formula as it is currently written in law, such direction to ED would have been explicit.

Given the nature of this public health crisis and the impact it has had on public education and state budgets, it remains critical that ED implements the CARES Act with fidelity, as Congress has drafted.

Districts Must Choose Between Funding Exclusively Title I Schools or Providing Broader Relief

As written, the regulations force false choices between directing funds only to Title I schools or using some funds for districtwide relief efforts to support students from low-income backgrounds that may be in non-Title I schools. Decisions about how to best use federal relief funds should be made by local leaders, with input from public health experts and a diverse set of stakeholders, with priority given to input from families most impacted by COVID-19 and those that have been historically marginalized. The Department’s assertion that this rule provides flexibility is inaccurate; it forces districts that want to implement equitable services as it has been done for decades to restrict the use of CARES funding to



The Education Trust

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Title I schools only, regardless of the needs of historically underserved students, including students from low-income backgrounds, students of color, English learners, students with disabilities, and students experiencing homelessness or foster care in non-Title I public schools.

For the reasons outlined above, **we urge the Education Department to withdraw this rule in its entirety and further clarify that the allocation requirements for equitable services in the CARES Act align with the requirements for non-public schools are consistent with Title I of ESSA** to ensure that federal dollars follow in an equitable manner to schools and districts serving the greatest number of students from low-income backgrounds and students of color. Now is not the moment to take critical resources away from public schools who rely solely on this assistance to educate our nation's students, especially during this time of unprecedented crisis.

Sincerely,

A handwritten signature in black ink that reads "Ary Amerikaner". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Ary Amerikaner
Vice President for P-12 Policy, Research, and Practice
The Education Trust