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 *XX*, 2020

Dear Ms. Huber,

I am <*insert name*>, and I serve as <*insert title*> for <*insert school district*> in <*City, State*>. I write today in response to the US Education Department’s (USED) interim final rule on CARES Act funding and equitable services to students and teacher in non-public schools. I write to express my strong opposition to the interim rule.

**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 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 interim final rule, 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 my district. If we were to set aside education stabilization funds for equitable services based on poverty as directed by the CARES Act it would amount to approximately *XX* percent <*insert % of Title I dollars your district allocated to equitable services in 2019-20*> of our CARES funding. If we were to set aside education stabilization funds for equitable services based on enrollment under the interim rule it would amount to at least *XX* percent < *insert % of Title II dollars your district allocated to equitable services in 2019-20>* of our CARES Act funding, a difference that amounts to approximately $XX <*insert approximate dollar amount, the additional money that your LEA would have to use for private schools equitable services>*.

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.

I respectfully request that USED withdraw the interim final rule so LEAs can provide equitable services as Congress plainly directed in the CARES Act.

Sincerely,