



**ASHA**  
American  
Speech-Language-Hearing  
Association

July 30, 2020

The Honorable Frank T. Brogan  
Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education 400 Maryland Ave., SW  
Washington, DC 20202

RE: CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools (Docket ID ED-2019-OESE-0091)

Dear Assistant Secretary Brogan:

On behalf of the American Speech-Language-Hearing Association (ASHA), I write to offer comments on the July 1, 2020, *Federal Register* notice on Equitable Services to Students and Teachers in Non-Public Schools under the Coronavirus Aid, Relief, and Economic Security (CARES) Act Programs (P.L. 116-136). While ASHA appreciates the opportunity to provide comments, ASHA opposes the proposal to distribute Congressionally-allocated equitable services funding to non-public schools under the CARES Act in a manner other than that which is specifically prescribed by the statute.

ASHA is the national professional, scientific, and credentialing association for 211,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

Audiologists specialize in preventing and assessing hearing and balance disorders as well as providing audiologic treatment, including hearing aids. Speech-language pathologists (SLPs) identify, assess, and treat speech and language problems, including swallowing disorders. More than half of all ASHA members work in educational settings and provide services to students in regular and special education.

The interim final rule (IFR) misinterprets how equitable services funding for non-public schools under the CARES Act should be apportioned. ASHA opposes the diversion of federal education funds from public schools and notes that this action does not comply with the CARES Act or the Every Student Succeeds Act/Elementary and Secondary Education Act (ESSA/ESEA). The CARES Act includes approximately \$13.23 billion for an Elementary and Secondary School Emergency Relief (ESSER) Fund, which Congress has approved for distribution to state and local education agencies (SEAs and LEAs) proportionate to the share of Title I, Part A funding in the prior fiscal year.

Section 18005(a) of the CARES Act states that an LEA receiving funds under ESSER, as well as under the Governor's Emergency Education Relief (GEER) Fund, must provide equitable services to students and teachers in non-public schools "in the same manner as provided under section 1117 of the ESEA of 1965." Section 1117(a)(4)(A) of ESEA is also explicit: "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."

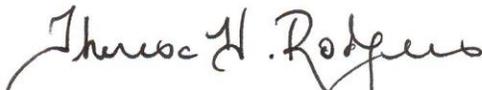
This IFR disregards Congress' clear mandate in Section 1117 that the number of low-income students attending non-public schools in the LEA should serve as the basis for calculating the allocation of equitable services funding. Instead, the IFR introduces a different concept that apportionment should be based on the total number of students enrolled in non-public schools in the LEA, or that the use of CARES Act funds must be restricted to only schools receiving assistance under Title I, Part A. This concept is not only a misinterpretation of the CARES Act, but also a contradiction to well-established interpretations by the U.S. Department of Education (ED), such as an interpretation from October 2019 that stated that equitable services allocations are to be based on the number of low-income students in non-public schools from a particular LEA under section 1117(a)(4)(A)(i) and (c)(1).<sup>1</sup>

The equitable services allocation should appropriately be based on the number of low-income students attending non-public schools from the particular LEA since ED has based, over many decades, an LEA's Title I allotment on the total number of low-income students, whether attending public or non-public schools. While the CARES Act permits the use of ESSER and GEER funds for non Title I schools, Section 18005(a) directs the use of Section 1117 to determine the equitable share for non-public schools. Neither of the IFR's options to provide equitable services funding for non-public schools complies with the requirements found in the CARES Act or Section 1117 of ESEA.

ASHA strongly supported the CARES Act, including its equitable services provisions, and supports funding for non-public schools in accordance with the clear intent of the Act. This IFR would disadvantage already underfunded public schools by requiring LEAs to transfer a disproportionate amount of CARES Act funding to non-public schools, at the precise moment that public schools face an acute need for additional funds in order to provide a safe and healthy education for all children within the public charge.

Thank you for your consideration of these comments on Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act. If you or your staff have any questions, please contact Catherine D. Clarke, ASHA's director of education policy, at [cclarke@asha.org](mailto:cclarke@asha.org).

Sincerely,



Theresa H. Rodgers, MA, CCC-SLP  
2020 ASHA President

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<sup>1</sup> The United States Department of Education. (2019). *Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Providing Equitable Services to Eligible Private School Children, Teachers, and Families; Updated Non-Regulatory Guidance*. <https://www2.ed.gov/about/inits/ed/non-public-education/files/equitable-services-guidance-100419.pdf> and <https://www2.ed.gov/about/inits/ed/non-public-education/files/equitable-services-response-comments-100419.pdf>.